



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/05877/2014

THE IMMIGRATION ACTS

Heard at Field House

On the 13th November 2014

**Determination
Promulgated**

**On the 9th December
2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**MISS LISA CHISHA KAPOPOLE
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Yousefiam, instructed by DJ Webb & Co Solicitors
For the Respondent: Mr Bramble, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Miss Lisa Chisha Kapopole, date of birth 13th September 1984, is a citizen of Zambia. Having considered the facts there is no need for an anonymity direction.

2. This is an appeal by the appellant against the determination of Designated First-tier Tribunal Judge Digney promulgated on 26th August 2014, whereby the judge dismissed the appellant's appeal against the decision by the respondent to refuse the appellant's application for a derivative residence card under Regulation 15 A of the Immigration (EEA) Regulations 2006.
3. By decision of 6 October 2014 I granted permission to appeal. The case now appears before me to determine whether or not there was a material error of law in the original determination.
4. The appellant appears to have entered the United Kingdom on 19 January 2006 on a visitor visa valid until 22 June 2006. The appellant clearly overstayed. The appellant entered into a relationship with a Mr Karem. It appears that Mr Karem had indefinite leave to remain in the United Kingdom.
5. As a result of the relationship the appellant gave birth to a child who is a British citizen. On 20 February 2013 the appellant made application for a Derivative Residence Card by reason of her relationship with the child.
6. The appellant's case was that shortly after the birth of the child the relationship with Mr Karem came to an end. The appellant's case was and is that Mr Karem has had nothing to do with the child.
7. Before me it was accepted that the only issue before the Tribunal was whether or not, if the appellant were removed from the United Kingdom, the child, a British citizen, would be required to leave the United Kingdom in accordance with Regulation 15A (4A) of the 2006 Regulations.
8. In the course of the hearing the judge heard evidence from the appellant and her two sisters. On the evidence available the judge found that Mr Karem was not in the United Kingdom and would not care for the child. However the judge went on to consider that the child would not have to leave the United Kingdom because the appellant's two sisters were in the United Kingdom and they could look after the child.
9. The statements indicated that the sisters would not be able to look after the child. The status of one of the sisters is not settled and she may have to leave the UK. The other sister indicated that she had two children and could not cope with a third. It does not appear that the sisters were asked about the matter during the course of the hearing. The evidence to that extent was unchallenged.
10. There may be a number of legal issues with leaving a child with a relative without proper investigation having been carried out by social services, especially as to the suitability of such a placement. However there was no legal basis in the evidence for the finding that the two sisters would look after the child. That is a matter that has to be investigated properly.

Without the evidential base to make that finding of fact, the judge was not entitled to conclude that the child would be looked after by the sisters.

11. That is a material error of law. The appropriate course is for the matter to be remitted back to the First-tier Tribunal. I have considered whether any of the findings of fact made by the original judge should be preserved. However new findings of fact will have to be made on the basis of the factual situation that exists at the time of the new hearing. In the light of that I do not preserve any of the findings of fact made by the original judge.
12. There is a material error of law in the determination. I set the decision aside and remit the matter for a fresh hearing in the First-tier Tribunal.

Signed

Date

Deputy Upper Tribunal Judge McClure