Upper Tribunal
(Immigration and Asylum Chamber) Appeal No:
IA/25151/2013

IA/25159/2013

THE IMMIGRATION ACTS

Heard at Field House
Determination Promulgated
On 12 August 2014 **On 26 August**
2014

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL DIGNEY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

IRENE SOMUAH +1

Respondents

Representation:

For the appellant: Mr Duffy, Home Office Presenting Officer
For the respondents: Mr Collins

DETERMINATION AND REASONS

1. The first respondent, whom I shall call the respondent, a citizen of Ghana applied for a derivative residence card as the primary carer of a British citizen (Juanita). That application was refused and an appeal aginst the decision allowed. The respondent has another daughter (not the British citizen) and her appeal was allowed in line with that of her mother. It has not been disputed that that decision stands or falls with that of her mother.

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2. Permission to appeal was granted and I have to decide whether the original decision contained an error of law. The relevant law is to be found in section 15A of the Immigration (European Economic Area) Regulations 2006. Regulation 4A, which is the relevant regulation, reads:

> [The appellant is entitled to a derivative residence card if]:
>
> (a) [the appellant] is the primary carer of a British Citizen ("the relevant British citizen")
>
> (b)The relevant British citizen is residing in the United Kingdom; and
>
> (c)The relevant British citizen would be unable to reside in the UK or another EEA state if [the respondent] were required to leave.

3. The original judge concluded that the respondent was the primary carer of a British citizen who would be unable to reside in this country if her mother left. The grounds of appeal argue that the child would be able to reside in this country with her father who has had involvement with the child and there is no evidence that the father is unable to look after the child. It was said in paragraph 4 of the determination that the father said that he could not bring Juanita into his household as this would cause a rupture in his marriage which came under stress on account of his having a child outside the home. The grounds argue that this amounts to an unwillingness to look after the child as opposed to an inability to care for the child and in those circumstances it was wrong to conclude that that the child was unable to remain in this country.

4. No doubt the father would be capable of looking after the child. The question at issue is not the father's ability to look after the child but her ability to remain here and that turns on whether any suitable person is prepared to look after her. It is not disputed that the father is the only suitable person. The judge concluded on the evidence before him that the father was not prepared to look after his daughter. The father reached that conclusion because he thought that bringing Juanita into his family might destroy his marriage. The judge was entitled to conclude, on the evidence before him that the father meant what he said and was not prepared to look after Juanita. That was a factual conclusion that was open to the judge on the evidence and his reasoning is not vitiated by any error of law. It follows, as a factual matter that Juanita would be unable to remain in this country if her mother was required to leave.

5. It follows that the original judge made no error of law. The original decision stands.

The appeal is dismissed

Designated Judge Digney

Judge of the Upper Tribunal 15
August 2014