



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

Appeal Number: IA/31229/2013

THE IMMIGRATION ACTS

Heard at Field House

Determination

On 11th September 2014

Promulgated

On 18th September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

MISS ANDREA ANNETTE FLETCHER

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DETERMINATION AND REASONS
EX TEMPORE JUDGMENT

1. The Appellant was not in attendance at the hearing before me. The solicitors representing her wrote in to tell me that the Appellant had told them she would not be attending. No explanation is provided. The solicitors in the same letter tell me that although they are still representing the Appellant they too would not be in attendance, having received specific instructions from the Appellant not to attend. No explanation is provided. I am invited to deal with the appeal "on the papers".

2. The matter has been listed for an oral hearing and the Respondent's representative is present. In light of that letter I am satisfied that it is appropriate for me to proceed in the absence of the Appellant and her representatives.
3. The Appellant appeals with permission a decision of First-tier Tribunal Judge Pygott promulgated on 4th July 2014 in which the judge dismissed this Appellant's citizen's appeal brought against an EEA decision of the Respondent dated 11th July 2013 to refuse her a derivative residence card as the primary carer of her British son with reference to Regulation 15 of the 2006 EEA Regulations.
4. The Grounds of Appeal were that the judge had failed to take into account correspondence received from Social Services and further that the decision was perverse in the context of the finding that the Appellant was the primary carer of a British child. Permission was granted in connection with the arguable inconsistency between the judge's finding of the Appellant being the primary carer of a 5 year old child and the finding that nonetheless the removal of the Appellant would not substantially interfere with the child's ability to exercise treaty rights.
5. The Appellant is not assisted by her absence and the absence of her representatives here today who might otherwise expand or enlarge upon the grounds and provide argument in support of their contention. There is a world of difference between grounds being found arguable at the permission stage and the argument in fact being made and found to be persuasive.
6. The argument in the grounds is that the judge's finding that the child of the Appellant would be able to rely on alternative care in the United Kingdom in order to exercise his substantive treaty rights and to be able to exercise them fully and properly without significant detriment is speculative in the absence of evidence of the availability of such care.
7. In the response to the grant of permission the Respondent points out that there is an order of the family court granting joint residence to both parents in this case as well as a prohibited steps order having been obtained by the father, as well as the evidence of the social worker was that contact remained. In that context the findings that the father was suitable and able to provide care is not speculative.
8. The Appellant's version of events, in the grounds of the application, is that in fact the father had little to do with the child.
9. The evidence provided by the Appellant was obviously incomplete in that the order of 2010 refers to subsequent hearings the outcome of which is not disclosed. However the social work evidence reveals that the child's father remains interested and involved with the child and although obtained for the proceedings, did not does disclose any difficulties or concerns about the father. The judge had evidence before him in the

context of the court orders which supported the conclusion as to the availability of suitable care from the father.

10. The finding cannot be said to be perverse as being unsupported by evidence so as to be speculative. Nor, in light of the EEA regulations affording primary carer status even where care is joint, can it be said that the findings is internally incoherent.
11. In conclusion my decision is that the decision of the First-tier Tribunal is not vitiated by material legal error requiring me to set the decision aside and to remake it. The decision of the First-tier Tribunal dismissing the Appellant's appeal stands.

Signed

Date

Deputy Upper Tribunal Judge Davidge