



IAC-FH-AR-V1

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

Appeal Numbers: IA/15174/2014  
IA/15184/2014  
IA/15203/2014  
IA/15223/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 12 January 2016**

**Decision & Reasons Promulgated  
On 27 January 2016**

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**RD  
OA  
ND  
EA**

**(ANONYMITY DIRECTION MADE)**

**Appellants**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Mr J Waithe, Counsel, instructed by Greenland Lawyers LLP  
For the Respondent: Miss A Brocklesby-Weller, Home Office Presenting Officer

**EX TEMPORE  
DECISION AND REASONS**

1. Permission to appeal has been granted to appeal the decision of First-tier Tribunal Judge Raymond which was promulgated on 24 June 2015 following a hearing on 26 January 2015. The appellants before him numbered four. The principle appellant was RD and three individuals whom she states are her sons.
2. The first difficulty in this appeal as it appears before me is that the only person who had a statutory appeal was RD. The appellants, OA and EA had failed to provide any evidence to demonstrate that they were a direct relative of the primary carer of a British citizen, specifically original birth certificates showing the relationship link. As such they had no right of appeal against the decision of the Secretary of State to refuse to grant a derivative residence card.
3. The purported appeal and the purported conclusion by Judge Raymond is thus a nullity.
4. Insofar as the other child is concerned, ND, he also had no right of appeal. He had not provided a valid passport as evidence of his identity and nationality and therefore he had no right of appeal under the EEA Regulations. Therefore the only person whose decision should have been considered by Judge Raymond was that of RD.
5. RD was refused a derivative residence card in a decision dated 13 February 2014 for reasons set out in a letter dated the same day. The only decision subject of appeal is the refusal to issue a derivative residence card. There was no application made and therefore no decision made under the Immigration Rules or on Article 8 grounds. Insofar as the judge attempted or purported to reach a decision on Article 8 or under the Rules that again is a matter over which he had no jurisdiction.
6. One of the difficulties that has arisen in connection with the decision by Judge Raymond is first of all he seems to have been completely sidetracked by the family set up and his views on the evidence and the illegal entry of some of these individuals to the UK. His decision was promulgated some six months after he heard evidence. He takes note of the change in birth certificate as to who the father of the first appellant's British citizen child is and one of the other children. He raises questions as to whether another man, Mr O is the father of the British citizen child and the other child.
7. He fails to make findings as to whether RD is in fact the primary carer although he refers to evidence before him that the two other adults appear to be playing a significant role in the upbringing of the British citizen child. He draws attention to the discrepancies in terms of her claimed and evidenced income and her claims that she has paid something in the region of at least £12,000 a year in university fees for two older purported children.
8. Although there is evidence that the person who was originally listed on the British citizen child's birth certificate as his father has been either deported or removed from the UK, there appears to be no evidence as to who the child's father actually is or where he is or what has happened to him.

9. The decision by the judge is also unfortunate in the extent to which he appears to have taken against the family to a large extent because of their immigration history. He makes comments about “cynical manipulation” of their right to an identity and to the “cynical exploitation” of the two youngest children by RD. He talks of smoke and mirrors in terms of the evidence and he says that she has shown scant regard for the children’s welfare.
10. It is possible that his comments as to welfare stem from his view that she abandoned the two older claimed children and it appears that this may well have infected his findings, such as they are, in connection with whether or not RD is in fact the primary carer of a British citizen child. It is unfortunate that the judge has made findings in connection with the two adult claimed children. It appears, particularly given the length of time that it took the judge to promulgate his decision, that may well have infected his findings. It certainly appears to have prevented him from seeing that three of the appellants that are listed on the decision did not in fact have a right of appeal. It is not clear what assistance he was given by either representative before the First-tier Tribunal.
11. In summary the judge has failed to address the relevant appeal before him and make relevant, as oppose to irrelevant, findings of fact.
11. I find an error of law in the decision by the First-tier Tribunal Judge in his conclusions that the first appellant, RD did not succeed in her appeal against the refusal to issue a derivative residence card. I quash the decision insofar as Article 8 and the Rules is concerned, the judge having no jurisdiction to reach that decision and I quash the decisions of the other three named appellants, the judge having no jurisdiction to hear those appeals.

**Notice of Decision**

12. I send the appeal of RD against the decision to refuse to issue her with a derivative residence card back to the First-tier Tribunal for a First-tier Tribunal Judge other than Judge Raymond to reach a decision. Of course the purported appeals of OA, ND and EA are not remitted because there is no appeal to remit.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Signed  
Upper Tribunal Judge Coker

Extempore judgement given on 12<sup>th</sup> January 2016