



IAC-FH-NL-V1

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

Appeal Number: IA/49512/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 22nd February 2016**

**Decision &
Promulgated
On 4th May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

S L R

(ANONYMITY DIRECTION MADE)

Appellant

Respondent

Representation:

For the Appellant: Mr Melvin, Home Office Presenting Officer
For the Respondent: Mr Abrahams

DECISION AND REASONS

1. The Appellant in this appeal is the Secretary of State for the Home Department and the Respondent was the Appellant before the First-tier Tribunal and for the sake of clarity I shall refer to the parties as the Secretary of State and Claimant respectively.
2. The Claimant applied on 21 August 2014 for the extension of discretionary leave based on her relationship with her son. She had previously been

granted discretionary leave to remain from 6 August 2011 to 6 August 2014 on the basis of this relationship. The Respondent refused to vary her leave to remain in a decision dated 21 November 2014 and made a decision to remove her under section 47 of the Immigration, Asylum and Nationality Act 2006. The Respondent found that the Claimant had failed to fulfil the requirements of E-LTRP2.4 as she had not submitted evidence of contact with her son.

3. The appeal against that decision was heard by First-tier Tribunal Judge M Symes and in a decision promulgated on 19th August 2015 he allowed the appeal on the basis that the Claimant met the requirements for limited leave to remain as a parent. He found that she had a genuine ongoing relationship with her son and that the relationship was a long one. He accepted the oral evidence he had heard as set out in the decision and that the documents provided confirmation of her ongoing involvement with his education confirmed by the school. He found that she satisfied the relevant aspects of the exception route as to the eligibility criteria and was clearly playing an active role in the child's upbringing in circumstances where she had direct access in person to the child as ordered by a court in the United Kingdom.
4. Neither the Claimant nor the Secretary of State was represented at that appeal. The Secretary of State sought permission to appeal against the First-tier Tribunal's decision. In the grounds for seeking permission it is submitted that there was insufficient evidence before the First-tier Tribunal to come to the conclusion that there was an access order in favour of the Claimant. The First-tier Tribunal identified documentary evidence put before it amongst other things that there were ongoing family proceedings and a court hearing of 2nd February 2015. The grounds assert that it was not explained in the decision what document it was that produced that information. It is asserted that if the Claimant did not produce the order then she had not complied with the requirements of the Rules and the First-tier Tribunal erred in accepting the same.
5. Permission was granted by First-tier Tribunal Judge Cruthers on 15th December 2015. The reasons for the grant of permission were that it was considered arguable that it was insufficient for the Claimant to tell the judge that the family court had granted her an order for direct access to her son and that corroboration was required.
6. The appeal now comes before the Upper Tribunal to determine whether or not there was an error of law in the decision of the First-tier Tribunal.
7. I heard representations from Mr Melvin for the Secretary of State and from Mr Abrahams for the Claimant in his appeal. As neither party was represented at the hearing before the First-tier Tribunal the Secretary of State was not aware precisely what documentation was before the First-tier Tribunal when the decision was made. The First-tier Tribunal recorded at paragraph 7 of the decision that he was provided with

documents at the hearing including confirmation that family proceedings were ongoing and that a hearing was due on 2 February 2015. I am satisfied, having perused the file and having established that there was indeed a contact order dated 20 May 2015 before the First-tier Tribunal confirming that there was a hearing on 2 February 2015 and that contact was ordered to take place between the Claimant and her son every other Sunday from 10:00am to 7:00pm. The First-tier Tribunal had sufficient evidence before it to conclude that the Claimant was taking an active role in her child's upbringing. That order predated the First-tier Tribunal appeal hearing by about two months and was not the only basis on which the First-tier Tribunal made the decision, credibility also having been accepted. In the circumstances I am satisfied there was sufficient evidence for the First-tier Tribunal in terms of court documentation confirming access rights to the child and an ongoing active role in the child's upbringing to justify the conclusion that the requirements of section E-LTRPT.2.4 were met. Therefore there was no error of law.

8. I dismiss the Secretary of State's appeal in those circumstances.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I do not set the decision aside.

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

Date

Deputy Upper Tribunal Judge L J Murray