



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/10941/2016

THE IMMIGRATION ACTS

Heard at Field House
On 23 August 2017

Decision & Reasons Promulgated
On 04 September 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

EJIMIAGBON GRACE OMONKHOA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Rashid of Counsel instructed by Carlton Law Chambers

For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Shergill promulgated on 4 January 2017 brought with the permission of First-tier Tribunal Judge Pullig granted on 4 July 2017. Judge Shergill dismissed the Appellant's appeal against a decision of the Respondent dated 23 August 2016 to refuse to issue a derivative residence card as a primary carer of an EEA national child.

2. The Appellant is a citizen of Nigeria born on 15 October 1985. She entered the United Kingdom pursuant to a visa granted on 24 January 2014, valid until 8 May 2016. On 27 April 2016 she made an application for a derivative residence card. That application was refused for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 23 August 2016.
3. The Respondent addressed seriatim the requirements for a derivative residence card and reached the following conclusions in support of the refusal. It was accepted that the Appellant was the mother of an EEA national child, a German citizen under the age of 18. It was not accepted that the Appellant had produced satisfactory evidence that the child was self-sufficient. It was nonetheless accepted that the Appellant held fully comprehensive medical insurance. It was also accepted that she was, as the mother of the child, a direct relative. It was also accepted that she was the child's primary carer.
4. In addition to refusing the application on the basis that the Respondent was not satisfied that the child was self-sufficient, the Respondent also considered that the mother's departure from the UK would not inevitably require her child also to leave - it was considered that the child's father would be in a position to care for the child.
5. The Appellant lodged an appeal. Her appeal was considered without a hearing @on the papers' by First-tier Tribunal Judge Shergill.
6. At paragraphs 3 and 4 of the Decision the Judge characterises the appeal in these terms:
 - “3. *The Appellant is a national of Nigeria date of birth 15/10/85 and is therefore not an EEA national. She appeals against the Respondent's decision not to issue her with a derivative residence card under Regulations 15A and 18A. The Appellant relies on the fact she is the primary carer (i.e. mother) of a self-sufficient German child.*
 4. *The Respondent refused the application ostensibly on the grounds that the Appellant had failed to prove that she was the primary carer”.*
7. It may be seen that the Judge fundamentally misunderstood the nature of the issues in the RFRL. The Respondent had in fact accepted that the Appellant was the primary carer of her child; the issues upon which the Respondent had refused the application were those that I have outlined above.
8. The Judge went on to address the question of whether or not the Appellant was the primary carer, and at paragraph 12 concluded in these terms “*I am not satisfied she has satisfactorily shown she is the primary carer for the child*”. That is the core of the Judge's brief decision.
9. It seems to me inevitable that this case must be set aside for error of law in circumstances where the Judge has seemingly failed to identify the issues in the

Respondent's decision, and has seemingly failed therefore to address those issues. Moreover this mistake is compounded by the fact that the Judge has focused on a matter that was conceded by the Respondent. I find the Decision of the First-tier Tribunal is vitiated for error of law and must be set aside.

10. In respect of remaking the decision it seems to me that the Appellant has in substance been deprived of a full and fair First-tier Tribunal hearing and that the most appropriate forum therefore for remaking the decision is indeed the First-tier Tribunal.
11. Although this case was decided 'on the papers' at the request of the Appellant it is to be noted that the Judge observed that there were a number of factors or issues that he would like to have had the opportunity of exploring in oral evidence. In those circumstances it does seem to me that perhaps this case is not best suited to disposal without a hearing, and accordingly I direct that the appeal should be listed for an oral hearing for the decision to be remade with all issues raised in the RFRL at large.
12. It is unnecessary to issue any particular Directions; standard Directions will suffice.

Notice of Decision

13. The Decision of the First-tier Tribunal contained a material error of law and is set aside.
14. The decision in the appeal is to be remade pursuant to an oral hearing before any First-tier Tribunal Judge other than First-tier Tribunal Judge Shergill.
15. No anonymity direction is sought or made.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed:

Date: **2 September 2017**

Deputy Upper Tribunal Judge I A Lewis