

**Upper Tribunal**

**(Immigration and Asylum Chamber)** Appeal Number: EA/12349/2016

EA/12350/2016

**THE IMMIGRATION ACTS**

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| **Heard at Field House** | **Decision & Reasons Promulgated** |
| **On 7th June 2018** | **On 13th June 2018** |
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**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**Uzma [S]**

**[S I]**

**(ANONYMITY DIRECTION not made)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms M Nollet (Instructed by Migrant Legal Action)

For the Respondent: Mr S Walker (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is an appeal to the Upper Tribunal by the Appellants who are nationals of Pakistan and are mother and daughter. They appeal against the judgment of Judge M B Hussain who heard the appeals at Hatton Cross on 8th February 2018 and who, by a Decision promulgated on 9th March 2018, dismissed the appeals.
2. The First Appellant had applied for a derivative right of residence under the EEA Regulations on the basis that she is the primary carer of a British citizen child. The Second Appellant is her dependent child (not British). It was the Secretary of State’s refusal of that application that was the subject of the appeal before Judge Hussain.
3. The First Appellant originally entered the UK as a Tier 4 Migrant with leave valid until May 2013. Her child, the Second Appellant joined her later. The Second Appellant was born on [ ] 2008 during a marriage which was subsequently dissolved.
4. In the UK the First Appellant struck up a relationship with a British citizen and gave birth to his child on [ ] 2014. Her relationship with the child’s father broke down soon after the birth and the First Appellant and both her children left the home that they had shared with him in August 2014. The evidence before the judge was that since that time there has been very little contact with the father; some three times only. He did however assist in obtaining a British passport for the child. His name is on the birth certificate and the child was given a British passport. That indicates that the passport office accepted that she was British by birth.
5. Since August 2014 the British citizen child has lived with her mother and older sibling. The First Appellant is a single parent. There was evidence before the judge from various sources, including the family’s GP practice, that she lives alone with the children and that no-one else had responsibility for the children or shared in their care.
6. The judge in his Decision and Reasons made several errors. The first is that he made a comment about the Second Appellant being born after her mother’s divorce. That is incorrect. The child was born in August 2008 and the divorce was in July 2009.
7. The second error is that the judge speculated that a woman from Pakistan, who is divorced, would not have struck up a relationship with and lived with another man outside marriage. That is entirely speculative and is by no means unusual; it regularly features in cases before this Tribunal.
8. The third error is making adverse findings on the basis that the Appellant had not given any details about the contact that the father had had when she was not asked to do so by the judge.
9. What the First Appellant has to establish, under the EEA Regulations (Regulation 16 (5) in order to have a derivative right to reside in the UK is simply that she is the primary carer of a British citizen child who would be obliged to leave the UK or another EEA State if her primary carer was not allowed to remain. It is quite clear in this case that that would be the case because there is no-one else able or willing to look after the child. Local Authority care is not an acceptable alternative to her mother’s care. For all these reasons therefore and on the evidence, these Appellants were clearly entitled to succeed in their appeals.

**Notice of Decision**

1. The judgment of Judge Hussain is set aside in its entirety for the various errors that I have identified above and the judge’s conclusion, being against the weight of evidence in front of him, is bordering on the perverse. I set it aside and redecide the appeal by allowing the appeals for the Appellant and her dependent child.
2. There has been no application for anonymity and I see no justification for making an anonymity direction.

Signed Date 12th June 2018

Upper Tribunal Judge Martin

**TO THE RESPONDENT**

**FEE AWARD**

So far as a fee award is concerned, on the basis of the evidence, I consider that the Secretary of State ought to have granted this application. It is not a case where fresh evidence has been put before the Tribunal and therefore I make a full fee award.

Signed Date 12th June 2018

Upper Tribunal Judge Martin