



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

Appeal Number: EA/05318/2017

THE IMMIGRATION ACTS

No hearing

29 November 2018

**Decision & Reasons
Promulgated
7 December 2018**

Before

MR C M G OCKELTON, VICE PRESIDENT

Between

QUATHU KAPANDA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. On 29 October 2018 I wrote to the parties as follows:

“In this case, permission to appeal has been granted in the following terms:

“The grounds assert that the judge erred in determining that the appellant did not have primary care of the child in the absence of a residence order made in her favour and in failing to take into account the copy of a residence order that was sent to the judge after the hearing and before the appeal was determined.

The file reflects that a copy of an interim order made on 4 December 2015 providing that the appellant’s child shall reside with her was provided to the judge on 28 April 2018, prior to promulgation of the decision. The order is not referred to in the judge’s decision and there is nothing to suggest the judge considered whether or not to admit the evidence, or if the judge

did so, any reasons for refusing to admit it. The existence of the order was clearly in issue in the appeal, as the appellant referred to it in her oral evidence and its absence was a substantial reason for the judge not accepting the appellant was the primary care of her British citizen child. The failure to consider whether or not to admit the document amounts to an arguable error of law.”

I have reviewed the file. The grounds appear indeed to have merit.

In the circumstances I propose to set aside Judge Gillespie’s determination for error of law and remit the appeal for fresh determination by the First-tier Tribunal. Any submissions to the contrary will be considered if received **within 21 days** of the date of this letter.”

2. No response has been received.
3. I now allow the appeal to this Tribunal, set aside the decision under appeal on the ground of error of law. I remit the appeal to the First-tier Tribunal and direct that it be determined afresh.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 29 November 2018.