



**The Upper Tribunal
(Immigration and Asylum Chamber) Appeal number: OA/01321/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On 12th January 2015**

**Decision & Reasons Promulgated
On 21st January 2015**

Before

Deputy Upper Tribunal Judge J M Lewis

Between

**MR EMMANUEL OSEI POKU
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Dixon, Counsel instructed by IMK Solicitors
For the Respondent: Miss J Isherwood, Home Office Presenting Officer

**REASONS FOR FINDING THAT TRIBUNAL MADE AN ERROR OF LAW,
SUCH THAT ITS DECISION FALLS TO BE SET ASIDE**

The History of the Appeal

1. The Appellant, Mr Emmanuel Osei Poku, a citizen of Ghana, appealed against a decision of the Respondent of 16 December 2013 refusing his application for entry clearance as the child of his mother, the Sponsor, Cecilia Boakye, who is settled in the UK. His appeal was heard by Immigration Judge Gurung-Thapa sitting at Nottingham Magistrates' Court

on 28 August 2014. Both parties were represented by Counsel, the Appellant by Mr Dixon. In a full and careful determination of 24 September 2014, promulgated the following day, the judge dismissed the appeal under the Immigration Rules and on Article 8 human rights grounds.

2. Subsequently supplemented by procedural directions, permission to appeal was granted by Judge Andrew on 2 December 2014 in the following terms:
 - “1. The Appellant seeks permission to appeal, in time, against a decision of the First-tier Tribunal (Judge Gurung-Thapa) promulgated on 25th September 2014 whereby it dismissed the Appellant’s appeal against the Secretary of State’s decision to refuse to grant entry clearance.
 2. It is arguable that because of the identified difficulties with the interpreter the Judge should have asked for a de novo hearing of this appeal.
 3. I find there is an arguable error of law.”
3. The Sponsor attended the error of law hearing, which took the form of submissions. I have taken these into account, together with the grounds of appeal and the supplementary statement, of which paragraphs 2 to 6 are in point, of the Sponsor. At the end of the hearing I stated my decision.

Determination

4. The matter revolves around a sequence of events relating to the court interpreter in the Twi language who interpreted the evidence of the Sponsor. These events are narrated in paragraphs 30 to 38 of the determination, the grounds of appeal and the supplementary statement of the Sponsor, and I do not need to reiterate them. Shortly after the end of the hearing Mr Dixon requested of the judge a de novo hearing. After taking time for consideration, the judge declined the application. This was an exercise of her judicial discretion, which is not to be lightly interfered with.
5. Nevertheless, standing back and addressing the question whether the hearing was safe, I have concluded that it was not. The concerns about the interpreter were articulated and particularised to the judge. A similar concern about him had arisen in another case the previous week. Cumulatively the concerns were grave. The application was made before the outcome of the appeal was known. The judge was content that the hearing was safe. Whilst her decision was entirely understandable, I have concluded that in the light of the gravity of the concerns it was erroneous in law.

6. Without in any way reflecting on the quality of her determination, I conclude that for reasons of perceived procedural unfairness it cannot stand. I accordingly set it aside. Since the effect is that the Appellant has not had a fair hearing, the appeal should be reheard in the First-tier Tribunal. I accordingly direct that it be reheard at the Birmingham hearing centre or one of its satellite courts by any judge other than Judge Gurung-Thapa.
7. I cannot identify from the file the name of the interpreter. Without casting any aspersion upon him, which I am not in a position to do, there should be a different interpreter in the Twi language. The administration should please identify the interpreter who acted in this appeal on 28 August 2014 and ensure that another interpreter is engaged for it.

Decision

8. The original decision reflected a procedural error of law and is set aside.
9. The appeal is to be reheard on all issues in the First-tier Tribunal.
10. No anonymity direction is made.

Signed

Dated: 20th January 2015

Deputy Upper Tribunal Judge J M Lewis