



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

Appeal Number: HU/17776/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 14 November 2018**

**Determination
Promulgated
On 18 December 2018**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

**GLORIA [A]
(No Anonymity Order Made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Bennett, Solicitor, Kesar & Co.

For the Respondent: Ms Everett, Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant is a citizen of Ghana born in 1986. She appealed against a decision of the respondent made on 7 July 2016 to refuse her application for leave to remain on the basis of her family life with her daughter born in 2013, who, she claims, is a British citizen.

2. The application was refused on the basis that the appellant had dishonestly claimed that her daughter is a British citizen. She had given two different accounts of where her daughter was conceived and in what circumstances. As she was not considered to be a British citizen neither the appellant nor her child had any entitlement to remain under the immigration rules.
3. She appealed.

First tier hearing

4. Following a hearing at Birmingham on 10 August 2018, Judge of the First-tier Tribunal Grimmett dismissed the appeal.
5. The judge found that the claim made by the appellant in her witness statement dated 10 December 2013 to the effect that her child was conceived following a party in Luton in October 2012 amounted to "*attempted deception*" [15], as she had left the UK in March 2012 and did not return until May 2013.
6. She also found that the need to provide such a statement in the first place "*strongly suggests*" that she and the claimed father, Prince [O], were not married "*because it would not have been necessary to produce that document if she had a valid marriage certificate and birth certificate of the child*" [15].
7. The judge went on to find:-

"17 Because of the inconsistent evidence given by the appellant about her reasons for seeking leave to remain I do not believe that she has told the truth. I am not satisfied that she has shown her daughter is the child of a British citizen. I am not satisfied that she herself was married to [a] British citizen or that the child was conceived in the UK as she claims."
8. She sought permission to appeal which was granted on 27 September 2018.

Error of law hearing

9. At the error of law hearing before me Ms Everett agreed with Ms Bennett that the decision showed material error of law such that the case must be heard again.
10. In summary, the judge failed to consider the appellant's comprehensive witness statement dated 8 December 2017 (pp 13-20 of the "Consolidated Appellant's Bundle.") explaining, *inter alia*, the late appreciation of her pregnancy, the circumstances which led to her witness statement dated 10 December 2013 being prepared, her growing suspicion towards the father of her child and the sexual abuse she suffered while destitute in the

UK which ought to have led her to being treated as a vulnerable adult in accordance with the Joint Presidential Guidance Note No 2 of 2010.

11. That statement was before the judge. However, her only reference to the appellant's written evidence is her short statement (10 December 2013) lodged with the application and a later unsigned, undated statement prepared without the benefit of legal representation.
12. Further, the judge at [14] stated "*It appears that tax credits were awarded but there was no evidence to suggest that any money was deducted from [Mr [O]'s] income and paid to the appellant.*" She failed, however, to have regard to a statement of Kevin Smyth dated 9 April 2018 (pp 3-4 of "Appellant's Consolidated Bundle.") which was before her where it was indicated that maintenance payments had been collected from him which supported her claim that he is the child's father.
13. In addition, what bears to be the appellant's marriage certificate is at page 99 of the "Consolidated Appellant's Bundle." Although at [13] the judge referred to a "*marriage certificate purporting to show she and her claimed husband were married on 22 August 2010*" in Ghana, she made no findings on it nor on a letter from Kumasi Metropolitan Assembly (at page 100) which stated that the Assembly has a record of the marriage and the certificate is therefore genuine. Further, although these items make reference to her marriage to Prince *Okeyere*, she submitted evidence to show that *Okeyere* is the Twi spelling of [O] (e.g. at pp 25-26, 26A of "Consolidated Appellant's Bundle.")
14. By failing to have regard to material evidence and make findings thereon the judge erred.
15. By consent the decision was set aside to be remade. It was agreed that the case be remitted to the First-tier Tribunal for a de novo hearing. This is because entirely new findings are required on all material matters.
16. The decision of the First-tier Tribunal is set aside. The nature of the case is such that it is appropriate under section 12(2) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement paragraph 7.2 to remit to the First-tier Tribunal for an entirely fresh hearing. No findings stand. The members of the First-tier Tribunal chosen to consider the case are not to include Judge Grimmett.
17. No anonymity order made.

Signed

Date

Upper Tribunal Judge Conway

17 December 2018