



**Upper Tribunal
(Immigration and Asylum Chamber)**
HU/17194/2017

Appeal Number

THE IMMIGRATION ACTS

**Heard at Field House
On 18th March 2019**

**Decision and Reasons Promulgated
On 19th March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

**GLA
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs H Gore (Counsel, instructed by R Spio & Co, Solicitors)
For the Respondent: Ms A Everett (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant applied for leave to remain on the basis of her family life with her daughter who had been born in March 2016 and was a British Citizen. The application was refused for the reasons given in the Refusal Letter of the 22nd of November 2017. It was believed that the Appellant had been pregnant when she entered the UK and it was not accepted that the man named on the birth certificate was in fact the child's father. There was presumption that the Appellant's husband was the father. In addition it had not been shown that the Appellant had sole responsibility for her child.
2. The appeal was heard by First-tier Tribunal Judge M A Khan sitting at Harmondsworth on the 29th of November 2018. The appeal was dismissed for the reasons given in the decision promulgated on the 31st of December 2018. The Judge had regard to the medical evidence

discussed in paragraph 15 of the decision and the Appellant's denial of having had sexual intercourse with her husband for 5 months before leaving Ghana. The Judge's reasons for rejecting the Appellant's claim with regard to the paternity of her child are set out at paragraphs 20 to 25 of the decision. The Judge went on to find that the removal of the Appellant and her daughter would be proportionate.

3. The Appellant sought permission to appeal on the grounds that the Judge had erred in finding that the Appellant's child was not a qualifying child and had not had sufficient regard to the fact that the child had a British passport or the contents of the birth certificate. It is argued that the decision was ultra vires. It is also argued that the Judge failed in the assessment of article 8 and the balancing exercise and the decision was perverse.
4. At the hearing both sides made representations in line with their respective cases, these are set out in the Record of Proceedings and I have considered those along with the grounds of application and against the decision. In addition to the grounds it was submitted on behalf of the Appellant that the Judge had not made findings in respect of the Appellant's background in Ghana.
5. The fact that the Appellant had been granted a British passport and has a birth certificate naming a man as her father is strong evidence but it is not determinative of the issue. The Judge was clearly obliged to have regard to that evidence but was not bound to follow but had to consider the evidence from all sources in deciding the appeal.
6. The issue of paternity was clearly and unambiguously raised in the Refusal Letter of the 22nd of November 2017. In the body of the letter the Secretary of State asserted that the Appellant would have been pregnant before she left Ghana and the Appellant had not responded to a request for information sent on the 11th of October 2017. The Appellant cannot complain that she had not been made aware of the Respondent's position with regard to paternity and cannot complain that she had not been given sufficient opportunity to address the concerns that had been raised.
7. Against that background the Judge was faced with medical evidence that showed when she gave birth the Appellant was in week 38 + 1 of pregnancy, i.e. 39 weeks and not 35 weeks as claimed. That figure must have come from somewhere and given the need for a reliable assessment of the state of a pregnancy and the need for appropriate care the Judge was entitled to place weight on that. In submissions Mrs Gore noted that there was no medical evidence. The Appellant had had the opportunity to obtain explanatory evidence if she had wished and there was nothing in the medical evidence that suggested that the figures provided were not reliable.
8. The Judge had also considered the Appellant's account of how she came to be pregnant by a British Citizen and had regard to inconsistencies in that account. The Judge rejected the Appellant's credibility and was entitled to do so for the reasons given. Having rejected the claim that Mr Bonney was the father the default would be the presumption that her husband was the father. In rejecting the Appellant's credibility it follows that the Judge rejected that aspect of her case too.
9. Although not raised in the grounds it was argued at the hearing that the Judge had not made findings with regards to the Appellant's case about her 2 other children. One view would be that in rejecting the Appellant's credibility this aspect fell in the same way. However, in the alternative distressing as such events would clearly be evidence would be needed to show that

the circumstances on return would be such that removal would be disproportionate and whatever had taken place before evidence to that effect was not available.

10. The grounds proceed on the basis that the child is British and are to a large extent circular. The basic premise, that the Judge had no alternative but to find that the child is British on the basis of the passport and birth certificate, is simply not right. What was required was an evaluation of all the evidence. Having re-read the decision I am satisfied that the Judge was entitled to find that the evidence was such that the passport and birth certificate did not provide reliable evidence of paternity and therefore not of nationality either. The Judge was entitled to rely on the medical evidence and to find that the Appellant was pregnant before she had left Ghana and to reject her claim not to have had intercourse with her husband. The Judge was entitled to find that the child was not British but Ghanaian and that removal would be proportionate having regard to the child's best interests.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.)

Fee Award

In dismissing this appeal I make no fee award.

Signed: 

Deputy Judge of the Upper Tribunal (IAC)

Dated: 18th March 2019