



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/14762/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 14 February 2014

Determination Promulgated  
On 6 March 2014  
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Before

UPPER TRIBUNAL JUDGE KING TD

Between

MRS ROSE KWAKWA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr G Brown, Counsel, instructed by IPS Immigration Practitioners  
For the Respondent: Miss A Everett, Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. The appellant is a citizen of Ghana born on 10 September 1970. She seeks to appeal against the decision made by the respondent dated 16 April 2013 refusing to vary her leave to remain in the United Kingdom.
2. The appeal came before First-tier Tribunal Judge Warren Grant on 28 November 2013 and was dismissed on all grounds.

3. The appellant's husband had come to the United Kingdom in 2000 to study. In September 2004 the appellant came to join him and was granted leave as his dependant.
4. In 2012 the husband made an application for indefinite leave to remain which was granted. The appellant therefore became the spouse of a settled person. The respondent then considered her application under ELTRP and Appendix FM. Her application as a dependant spouse under paragraph 319A meant that she would have to satisfy the "life in the UK" test under subsection 4(g) as well as the English language requirement.
5. The appellant's husband Mr Ampong had by a former relationship a daughter, Nana. The daughter lived with his former partner but came to visit and stay with himself and the appellant at weekends on a regular basis.
6. The appellant's husband is hopeful of completing his PhD and the appellant has worked since her arrival in the United Kingdom.
7. It was accepted that the appellant could not presently meet the Rules as she was required to pass the English language test. Further the Judge went on to consider EX1 and whether there were insurmountable obstacles to prevent the appellant from returning to Ghana either with her husband or without him.
8. Although reference to obstacles is made in paragraph 16 of the determination the test is essentially whether or not there are insurmountable obstacles to family life being conducted in Ghana. The Judge concluded that there were no such insurmountable obstacles.
9. It was clear that the Judge misunderstood to some extent the evidence that was given in relation to contact with Nana. She lived in Slough with her mother and the appellant and sponsor lived in Thamesmead. The Judge did not find it credible that a 9 year old girl could travel from Slough to Thamesmead every weekend or spend her holidays in Thamesmead away from her mother. He accepted however that the sponsor was the father of Nana.
10. The Judge concluded that the appellant did not meet any of the Rules. The Judge considered Article 8 of the ECHR briefly, concluding that her removal did not engage Article 8 of the ECHR.
11. Concerns were raised in the grounds of appeal that the Judge focused essentially upon the reasons why the appellant could return to Ghana but did not consider the positive factors supporting her application to remain. Scant consideration was given, it is said, to the interests of the sponsor and that of Nana herself.
12. Indeed, touching the issue of return, although EX1 speaks of insurmountable obstacles to family life continuing in Ghana that is not the test that is to be applied in relation to Article 8 of the ECHR when the issue is one of reasonableness.

13. There would appear to be in the determination little about reasonableness and certainly proportionality is not considered in any detail or at all.
14. There is no suggestion that the appellant has breached any of her conditions imposed upon her by the immigration authorities. She was legitimately in the United Kingdom as the dependant of the sponsor whilst he was a student and there is no suggestion other than it is a genuine marriage.
15. The sponsor has achieved indefinite leave to remain and nowhere in the determination is it considered why it would be reasonable to expect him to give up all that he has worked for, both in terms of study but also in terms of status to go to live in Ghana. An assessment has to be made as to whether or not it is reasonable in all the circumstances to expect the sponsor as well as the appellant to return to Ghana and why such an expectation is proportionate in all the circumstances.
16. All that seemingly stands in the way of the appellant complying under the existing case law as an in-country dependant is that of the language test.
17. Permission to appeal was granted on the basis that the Judge failed to assess proportionality of removal.
18. Miss Brown, who represents the appellant, invites my attention to her skeleton argument. She submits that inadequate consideration was given to the best interests of Nana and that in any event the case of Chikwamba was relevant as to the issue of the proportionality of removal. The Judge failed to ask the simple question "what is proportional about the removal of the appellant from the United Kingdom".
19. In all the circumstances I do find there to be an error of law such that the decision should be set aside and to be remade.
20. Given the extensive fact finding that would be required of the various witnesses I consider in the light of the Senior President's Practice Directions paragraph 7 that the appeal should remain to be considered within the First-tier Tribunal.
21. Any further evidence that is to be relied upon should be submitted no later than 7 days prior to the hearing otherwise any further directions will be as determined by the First-tier Tribunal.

Signed

Date

Upper Tribunal Judge King TD