



IAC-FH-CK-V1

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

Appeal Number: IA/10246/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 11th August 2015**

**Decision & Reasons Promulgated
On 2nd December 2015**

Before

**UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE BAGRAL**

Between

**GLORIA OFFEI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Vincent Gyasi, Sponsor

For the Respondent: Mr R Hopkin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the Appellant's appeal against a decision of the First-tier Tribunal (Judge P.A Grant-Hutchison) promulgated on 13th November 2014 dismissing the Appellant's appeal under the Immigration Rules and on Article 8 grounds.
2. The Appellant is a national of Ghana born on 19th December 1982. On 20th December 2013 she applied for leave to remain as the spouse of a person

present and settled in the United Kingdom, namely Mr Vincent Gyasi (hereafter “the Sponsor”).

3. The application was refused but on appeal the First-tier Tribunal Judge accepted that the Appellant was in a genuine and subsisting relationship with the Sponsor and noted at paragraph 18 of his decision that the Appellant and Sponsor were expecting their first child.
4. The judge concluded, it being conceded before him that; the Appellant could not meet the requirements of the Immigration Rules; that there were no insurmountable obstacles to family life continuing in Ghana and accordingly, went on to find that the Appellant failed to meet the exception in Appendix FM of the Rules, namely EX.1.(b).
5. The judge considered Article 8 in brief terms and found that in the absence of compelling circumstances there was no arguable case for granting leave outside of the Immigration Rules on human rights grounds.
6. The Appellant appealed. In particularising her grounds of appeal, in essence, the Appellant said that she gave birth on 16th October 2014 and that the Sponsor had notified the Tribunal to that effect by way of email dated 20th October 2014. Along with that email were sent long and short birth certificates in respect of the child.
7. We note that in accordance with what was expressed by the Sponsor in that email he also requested that the contents therein be drawn to the attention of the judge who heard the appeal. We also note that the evidence was filed with the Tribunal before the decision was promulgated on 13th November 2014.
8. Before us, Mr Hopkin helpfully does not dispute that the email and corresponding evidence was sent by the Sponsor to the Tribunal on 20th October - we note four days after the date of birth of the child. We consider therefore that the Sponsor acted somewhat expeditiously.
9. It is not clear to us, however, why the Sponsor’s email was not brought to the attention of the judge and this is somewhat unfortunate. It should have been. We also consider that that evidence was material to the substance of the decision and should have been taken into account. The birth of a child indicated that there was a change in the Appellant’s circumstances that could materially affect the outcome of the decision that was reached by the judge, particularly in view of the fact that the Sponsor is now a British citizen and his son is entitled to British citizenship.
10. It is on that basis, although we take account of Mr Hopkin’s helpful submissions, we find that the judge did materially err in law. That is, we must say, as a consequence of no fault of his own but, we are satisfied that a procedural irregularity has occurred in this case in the way that the proceedings were conducted and thereby an error of law has been committed. We thereby set aside the decision of the First-tier Tribunal.

11. We do not consider that we are in a position to remedy the error and we agree with Mr Hopkin that the appropriate course in this case is to send the matter back to the First-tier Tribunal. This will allow the Appellant to submit further evidence should she wish to do so in support of an Article 8 claim. We send the matter back on that basis. The appeal is to be heard by a judge other than Judge P.A. Hutchison.

Notice of Decision

12. The First-tier Tribunal Judge materially erred in law.
13. We direct that the case be heard again in the First-tier Tribunal.

No anonymity direction is made.



Signed

Date

Deputy Upper Tribunal Judge Bagral