



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/13219/2013

THE IMMIGRATION ACTS

Heard at Field House
On 28 February 2014
Prepared 28 February 2014

Determination Promulgated
On 4 April 2014

Before

UPPER TRIBUNAL JUDGE MCGEACHY
UPPER TRIBUNAL JUDGE A M KOPIECZEK

Between

MS AKUA AFRIYIE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant, a citizen of Ghana born on 2 September 1949, applied for leave to remain as the dependant of an EEA national exercising Treaty rights whom she asserted was her son.

2. Her application was refused, the notice of refusal emphasising that the only evidence of the relationship between her and her claimed son was a birth certificate which had been issued long after his birth and that, in Ghana, a birth certificate could be obtained merely on the assertions of those applying for the birth certificate.
3. The appellant's appeal against refusal was heard by Judge of the First-tier Tribunal Pirotta and dismissed. The judge referred to her concerns about the genuineness of the birth certificate and in particular to discrepancies in the background printing and spelling mistakes therein. She noted that the appellant had not considered it relevant to apply for a DNA test to show the relationship between her and her son.
4. The appellant appealed the decision. In her application she made various allegations about the conduct of the judge and in particular the fact that she herself had been excluded from the hearing during the evidence given by her son.
5. Although permission was refused in the First-tier, in the Upper Tribunal permission to appeal was granted by Upper Tribunal Judge Rintoul.
6. At the hearing, Mr Melvin asserted that the judge had properly considered all the evidence before her and had reached a conclusion which was fully open to her on the evidence. The appellant's conduct at the appeal was such that the decision of the judge to exclude the appellant was not inappropriate.
7. We note from the determination that the judge did exclude the appellant from the hearing because she appeared to be prompting the second witness and did not desist when told to do so by the judge.
8. We consider that the fact that the appellant was excluded from the hearing might well give the appearance that the hearing was not fair, and we have decided that, in all the circumstances, it is appropriate that the appeal should be heard afresh. We also consider that, in accordance with Practice Direction 7.2 of the Practice Directions of the Senior President of Tribunals, it is appropriate that this appeal should be remitted to the First-tier for the hearing afresh.
9. We therefore allow the appeal to the limited extent that it is remitted to the First-tier.
10. We would add that the appellant must be aware that once she has given evidence and while the supporting witness is giving evidence she must not interrupt the proceedings, let alone appear to be prompting him to give appropriate answers. She should also be aware that for her appeal to succeed she would have to produce evidence which, on the balance of probabilities, showed that she is the mother of her claimed son.

Directions

1. This appeal is remitted to the First-tier Tribunal for hearing afresh and that no findings are preserved. The hearing will take place at Sheldon Court, Birmingham, on 15 May 2014.

Signed

Date

Upper Tribunal Judge McGeachy