



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

Appeal Number: IA/50216/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 16 June 2014**

**Determination  
Promulgated  
On 3 July 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ROBERTSON**

**Between**

**MRS ESTHER OTOO  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms R Spio-Aidoo, Solicitor, from R Spio & Co  
For the Respondent: Mr S Kandola, Home Office Presenting Officer.

**DETERMINATION AND REASONS**

**Introduction**

1. The Appellant is a female citizen of Ghana. She applied for a residence card as confirmation of her right to reside in the UK on the basis that she was in a durable relationship with Mr Steven Yvon Legrand, a French national exercising treaty rights in the UK (the Sponsor). Her application was refused because she had failed to provide sufficient evidence to establish that she and the Sponsor were in a durable relationship. She

appealed and her appeal was determined on the papers by First-tier Tribunal Judge Pirotta (the Judge), in a determination promulgated on 26 September 2014. The Judge dismissed the Appellant's appeal on all grounds.

2. The Appellant sought permission to appeal on the basis that the Judge erred in:
  - a. Making improper findings of fact and taking into consideration matters that were not before her because she stated that the Appellant had made two previous applications on the basis of a proxy marriage between her and the Sponsor, submitting two different proxy marriage certificates, neither certificate was accepted by the Respondent and both applications had been refused. The Judge had erroneously found that the Appellant had not appealed either decision. In fact the second decision was appealed and the appeal dismissed; the Appellant had provided at that previous appeal hearing an explanation for why two proxy marriage certificates had been obtained.
  - b. Taking into account matters which were not before her in that: (i) the third application, which was the subject of the appeal before the Judge, was on the basis that there was a durable relationship between the Appellant and her Sponsor and this had been the basis of refusal. The Judge's view of the evidence was coloured by her consideration of the previous applications, when they were not relevant to the current application; and (ii) she referred to the letter in the Appellant's bundle which referred to the pregnancy of the Appellant but this issue was not before her and it was wrong for her to speculate on the pregnancy and her 'judgement was blurred by these factors' (grounds paragraph 3);
  - c. Incorrectly finding, from the payslips of the Sponsor, that that he was living in Walsall. However, the address given on the payslip was the address of the Sponsor's employer, not the Sponsor's home address;
  - d. Failing to make proper findings under the Borders, Citizenship and Immigration Act 2009 and to 'reach a proper decision under Article 8' because she stated that the letter from the social worker was silent on the issue of whether the Sponsor was living with the Appellant when the social worker had stated that the Appellant's son had 'grown up' with the Sponsor, had formed a positive relationship with him and that the Sponsor was a role model for him.
3. Permission was granted on the basis that the Judge "...made an arguable error of law in coming to the conclusion that the Appellant and the Sponsor were not in a durable relationship and by failing to have regard and/or failing to make adequate findings in regard to the evidence produced on behalf of the Appellant (in particularly the letter of Islington

Specialist Children's Services of 3 June 2013 which describes in detail the relationship between the Appellant, the Appellant's child, and the Sponsor)."

4. The Respondent submitted a Rule 24 response, opposing the appeal.

### **Submissions**

5. Ms Spio-Aidoo relied on the grounds of application. When asked if the decision letters in relation to the Appellant's two previous applications on the basis of her proxy marriage to the Sponsor were in the Respondent's Bundle, she confirmed that they were. When asked to confirm whether the appeal determination which related to the Appellant's appeal of the second decision was before the Judge, Ms Spio-Aidoo referred me to the Appellant's bundle. However, whilst the Judge had the previous Respondent's decisions before her, the appeal determination was not included in the Appellant's bundle. Ms Spio-Aidoo confirmed that it was not submitted as part of the Appellant's bundle although she did have a copy of it.
6. I said to Ms Spio-Aidoo that as the letters refusing the first two applications were before the Judge, they would have formed the background evidence against which she was considering the current appeal on the third application. Ms Spio-Aidoo stated that she understood what I was saying but the Appellant only addressed those issues that were raised in the decision letter relating to the third application and if the Respondent had wanted to put the previous proxy marriage in issue, it would have been raised in the third decision letter. She also stated that she was not sure if the Respondent's bundle was received by them after the Appellant had filed her bundle of evidence.
7. Ms Spio-Aidoo continued that the Judge stated at [24] that the Appellant had failed to provide independent evidence of a durable relationship but here was a letter from a social worker at Islington Council in the Appellant's bundle and the Judge did not give it her full attention. The Judge had said "Nor is there evidence that the Sponsor has had any sort of relationship with the Appellant's son" at [24] but at [31] she stated "The child may have some form of relationship with the Sponsor but I am not satisfied to standard of proof required that the Sponsor is seen by the child as a step father..." She submitted that there was an inconsistency there and both statements could not be right; if the Judge had considered the letter and the documentary evidence that the Appellant and the Sponsor were residing at the same address, she would have concluded that they were in a durable relationship.
8. As to the address on the payslip referred to by the Judge at [27], Ms Spio-Aidoo stated that no submissions were made by the Respondent in relation to this and the Judge erred in finding that he resided in Walsall on the basis of the payslip. It was unclear from the documentary evidence before me as to where this information came from and Ms Spio-Aidoo, who had the bundle of original documents, provided the original payslips. On the back of these the Walsall address was given as the 'return address' if the payslip was undelivered and the address of the Appellant was given as 33B Hawes Street London.

9. I referred Ms Spio-Aidoo to paragraph 3 of the grounds in which the letter referring to the pregnancy of the Appellant was mentioned. She stated that the letter was not adduced as evidence that the Appellant was pregnant but to confirm that the Appellant was residing at the address to which it was sent.
10. Mr Kandola relied on the Rule 24 response, submitting that the background to the determination was that the Appellant had elected a determination on the papers and the letters relating to the Appellant's first two applications were before the Judge. Whilst there is no prejudice to an appellant when a determination on the papers is elected, if it was not the intention of the Appellant to attend, she should have considered the evidence before the Judge and met any concerns raised by the documentary evidence. If she was not going to be attending, she needed to explain in her witness statement what had occurred with her previous applications.
11. He also submitted that the Judge gave her findings of fact from [24] onwards; it was proper for the Judge to refer to the letter confirming the Appellant's pregnancy and the fact that it was not referred to in the statements of either the Appellant or the Sponsor, both of which were remarkably brief. The Judge did not overlook the letter from the Key Worker (incorrectly referred to in the grounds as the Social Worker). The Judge referred to it at [27] and the Judge must have gone through the Appellant's bundle of 70 or so pages to get to it. Although it is stated within the letter that the Appellant's son had 'grown up' with the Sponsor, there was no evidence as to whether this was written because the Key Worker had visited the home or because she had been told by the Appellant and had simply set down what she had been told. It was not confirmed within the letter that the matters set out within it were the result of independent observation. This matter was not addressed in the witness statements of the Appellant and the Sponsor.
12. Mr Kandola submitted that there may be disagreement now about the findings of the Judge but she had only the documentary evidence before her and her findings were open to her.
13. In reply, Miss Spio-Aidoo stated that:
  - a. The issue raised by the Judge in relation to employment was not raised in the decision letter and therefore the Appellant would not have addressed it in the witness statement;
  - b. It was stated in the letter from the Key Worker that she had worked with the family for the past 6 months and therefore the contents of the letter could not have been dictated to her; it was written from her experience and what she made of the situation as a whole; and
  - c. The Appellant's bundle had been submitted before the Respondent's bundle was received; she stated that the Respondent's bundle was date stamped received on 27

January 2014, which was the date when the Appellant's bundle had been sent out. When asked if she had a copy of the covering letter, Miss Spio-Aidoo stated that it had been sent on 27 January 2014, but she did not have a covering letter; she was simply going by the date on which the index to the bundle was printed. Mr Kandola stated that there was still time for the Appellant to respond prior to the date of hearing.

### **Decision and reasons**

14. Throughout her findings of fact, the Judge was assessing the evidence before her to try to establish whether sufficient *independent evidence* (my emphasis) had been adduced to establish that the Appellant and the Sponsor had been in a durable relationship for a substantial period of time [24]. She finds that documentary evidence was provided that they were residing at the same address but the "evidence is ambiguous as they could have been living in shared accommodation." She notes that they did not register for council tax as one household at any time and there was no evidence of joint economic activity in any sense of the word. Furthermore despite the lengthy period during which they were said to have been in a durable relationship, the Judge noted that only "...two photographs, obviously taken at the same time, without evidence of the date or occasion..." were submitted. These findings were not challenged and were open to her on the evidence before her.
15. Ms Spio-Aidoo confirmed that the Respondent's bundle was date stamped received by her firm on 27 January 2014. She was not able to provide a covering letter to the Tribunal sending the Appellant's bundle in accordance with directions. She agreed to send me a copy of the bundle after the hearing. I did, however, subsequently locate the Appellant's bundle that was before the Judge and it appears that this was faxed to the Tribunal on 28 January 2014, a day after the Respondent's bundle was received by her. The Appellant would therefore have had notice of the issues that were raised in the Respondent's bundle and it was for her, within her statement, to address any issues raised by the documentary evidence from which adverse inferences could be drawn.
16. The Judge would not have known that the Appellant had addressed the issues raised in relation to the two proxy marriage certificates previously submitted unless either the appeal determination relating to the second decision was provided or it was addressed in the Appellant's witness statement. It is extraordinary that the appeal determination was not supplied by the Appellant, particularly bearing in mind that her representative had a copy of it and bearing in mind the submissions made that an explanation as to the issue of the proxy marriage certificates had already been supplied during the course of the appeal hearing in relation to the decision on the second application. Neither an explanation nor the appeal determination were before the Judge and she was entitled to find that no explanation was provided by way of background to her consideration of the Appellant's assertion that she was in a durable relationship with the Sponsor. It is not arguable that the Judge made 'improper findings' in relation to this issue; her findings were open to her

on the evidence before her. Without a copy of the determination, it is not possible to confirm whether or not adverse conclusions were drawn by the Judge who heard the appeal.

17. It is also not arguable that the Judge erred in finding that the Appellant was working in Walsall at [27]. The address of the employer on the payslip did not indicate that it was the head office and there was no evidence before the Judge that it was the head office of the company that the Appellant was working for. It is not arguable that no submissions were made on this issue. It was a determination on the papers and where inconsistencies are noted within the paperwork submitted on behalf of the Appellant and details are not clarified within the statement, the Judge is not wrong to make findings of fact on the evidence submitted.
18. There is no merit in the submission that the Judge should not have referred to the documentary evidence as to the Appellant's pregnancy at p14 of the Appellant's bundle (because the letter was only submitted to establish where the Appellant was residing). The Judge states that the Appellant was pregnant in July 2013. I note that this is within the period of time during which it is asserted that the Appellant and Sponsor were in a durable relationship. The Judge states, "The Appellant and Sponsor have never mentioned the pregnancy, birth or possible loss of the pregnancy, though both submitted statements in the appeal dated 23:1:2014. Had they been in a genuinely committed relationship, there would have been documentary evidence of the pregnancy, that the Sponsor was the father, that he was noted on the pregnancy notes as the father. It would not be unreasonable to expect that they would have mentioned the pregnancy, forthcoming birth or loss of pregnancy in their statements had they been in a relationship and the Sponsor the father of the child." These findings were open to the Judge on the evidence before her; they are not irrational or perverse and are damaging to the assertion that there has been a durable relationship between the Appellant and the Sponsor over a substantial period of time.
19. The letter from Ms Bethan Leigh-Brown, the Early Support Key Worker from Islington Specialist Children's Service, starts at p 61 of the Appellant's bundle and is referred to by the Judge at [27]. She notes that the Key Worker only states that the Appellant's son had 'grown up with the Sponsor's support and formed a positive relationship because he shared responsibility' but did not confirm that the Appellant and Sponsor were living together. It is a fact that the Key Worker does not state that the Sponsor lives with the Appellant. Miss Spio-Aidoo submitted that the Key Worker had worked with the family and her observations were from working with the family. However, this is not correct. The Key Worker states that she has worked with "Ms Otoo and her son" (Appellant's bundle p 61); she does not confirm that she has worked with the 'family'. There is reference to the Appellant's support network at paragraph 4 of page 62, and at paragraph 5, to her commitment to her son. The Sponsor is not mentioned until she refers to the impact on the Appellant's child of separation from the Sponsor, whom she refers to as his 'step-father'. There is no confirmation that her comments are based on an independent assessment from having worked with the family and witnessed the interaction between the Appellant's child and the Sponsor. It can be

inferred that the Judge gave limited weight to the evidence provided by the Key Worker as to the relationship between the Appellant's child and the Sponsor when she found, at [24], there was no evidence that "...the Sponsor has had any sort of relationship with the Appellant's son".

20. Is this finding inconsistent with the statement at [31] that "The child may have some form of relationship with the Sponsor..."? I find that it is not when [31] is looked at as a whole. The Judge states:

"The child may have some form of relationship with the Sponsor but I am not satisfied to the appropriate standard of proof required of an appellant that it has been established that the Sponsor is seen by the child as a step father or significant male or what comprehension, cognisance, intellectual or emotional ability the child has to make attachments or connections with a person other than his mother."

21. Bearing in mind the observations of the Key Worker as to the challenges faced by the Appellant's child, which were made on the basis of the work she had done with the Appellant and her child, this finding was open to the Judge on the evidence before her.
22. Did the Judge give sufficient consideration to the best interests of the child under s 55?
23. Having made her findings as to the lack of a family life between the Appellant, the Appellant's child and the Sponsor, the Judge considers the best interests of the Appellant's child at [30]. There is nothing within the findings which is perverse, irrational or unreasonable and the findings were open to her. She correctly finds at [31] that "There is no independent evidence to establish that the child cannot be provided for in Ghana or that services are not available there to address his autism and development needs".
24. The Judge confirms that the Appellant would have formed a private life in the UK but that this would have been whilst she was here unlawfully, having left behind her children in Ghana, and that she would be able to re-establish her life there [29]. She considers the best interests of her child at [30-31]. Whilst the determination could have been structured better, the grounds of application are merely a disagreement with the findings of the Judge, which findings were open to her on the evidence before her. The determination, read as a whole, contains no arguable material errors of law.

## **Decision**

25. The determination of Judge Pirotta contains no material errors of law and her decision must therefore stand. The Appellant's appeal is dismissed.
26. I note that an anonymity direction was not made and on the facts of this case, I see no reason why an order should be made pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date

Manjinder Robertson  
Sitting as Deputy Judge of the Upper Tribunal

TO THE RESPONDENT

No fee was paid or is payable therefore no fee order is made.

Signed

Dated

M Robertson  
Sitting as Deputy Judge of the Upper Tribunal