



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

Appeal Numbers: OA/03892/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 21 January 2014**

**Determination  
Promulgated  
On 29 January 2014**

**(Given orally on 21 January 2014)**

**Before**

**UPPER TRIBUNAL JUDGE SOUTHERN**

**Between**

**OSAZEE PALMER AKENUWA**

Appellant

**and**

**THE ENTRY CLEARANCE OFFICER, MADRID**

Respondent

**Representation:**

For the Appellant: No representative

For the Respondent: Ms Z Kiss, Home Office Presenting Officer

## **DETERMINATION AND REASONS**

1. The respondent, the Entry Clearance Officer at Madrid, has been granted permission to appeal against the decision of a Judge of the First-tier Tribunal, Dr Majid, who by a determination promulgated on 25 October 2013 allowed the appellant's appeal against the decision of the Entry Clearance Officer to refuse entry clearance as the spouse of a person present and settled in the United Kingdom. The sponsor, Miss Cecilia Akpan is a British citizen as indeed is her daughter and although the appellant is not represented before me today, Miss Akpan has attended with her daughter and I have heard what she has to say in response to the challenge brought today by the Secretary of State on behalf of the Entry Clearance Officer.
2. The grounds for seeking permission to appeal are that the judge simply failed to grapple with what was in issue between the parties and failed to provide any reasoning to support his conclusion that this application, which failed to meet the requirements of the applicable immigration rules, was one that should succeed on the basis that refusal to grant entry clearance would bring about an unlawful infringement of rights protected by Article 8 of the ECHR.
3. Regrettably, I have no doubt at all that the grounds are made out. It may be that it is necessary to say no more than that this is a hopelessly inadequately determination which discloses a misunderstanding of the applicable legal principles and fails altogether to resolve the matters in issue between the parties.
4. The respondent did not accept that the relationship between the appellant and the person said to be his sixteen year old daughter living here in the United Kingdom, as is claimed. The marriage to the sponsor took place as recently as August 2012 and the respondent points out that the sponsor was previously married to someone else. There was no birth certificate produced to the Entry Clearance Officer with the application, and there was no evidence of contact between the appellant and this child. Indeed, it is said that there was no evidence that the appellant had ever visited the United Kingdom at all. The judge has simply not engaged with any of this.
5. We have, today, evidence of a DNA test which may represent cogent evidence speaking in favour of that which the appellant asserts; but that does not assist with the real hurdles that face Miss Akpan in seeking to persuade me to salvage anything at all from this determination.
6. Other reasons given by the Entry Clearance Officer for refusing the application include that the appellant had failed to provide required documentary evidence of the sponsor's financial position. Again, that is an issue which the judge has simply not addressed and, in the context of this particular application and in the context of an assessment of public interest issues, this was an important issue that the judge had to deal with.

The consequence of all this is that in reality there has been no proper assessment at all of the issues arising in this appeal. The failure of the judge to deal with the issues in the appeal, or to provide any proper reasoning to explain why this was an appeal that should succeed on human rights grounds, amounts to an error of law such as to require his decision to be set aside in its entirety.

7. For those reasons, this appeal to the Upper Tribunal will be allowed to the extent that it will be remitted back to the First-tier Tribunal to be listed before a different judge of that Tribunal to be determined afresh.

Upper Tribunal Judge Southern  
Immigration and Asylum  
Chamber  
Date: 21 January 2014