



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

Appeal Number: VA/09160/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1<sup>st</sup> July 2014**

**Determination  
Promulgated  
On 9<sup>th</sup> July 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MRS GRACE ASARE  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER, ACCRA**

Respondent

**Representation:**

For the Appellant: No Legal Representation

For the Respondent: Mr Nigel Bramble (Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Herlihy promulgated on 8<sup>th</sup> April 2014, following a hearing at Taylor House on 26<sup>th</sup> March 2014. In the determination, the judge dismissed the appeal of Mrs Grace Asare. The Appellant subsequently applied for, and was granted,

permission to appeal to the Upper Tribunal, and thus the matter comes before me.

### **The Appellant**

2. The Appellant is a citizen of Ghana who was born on 11<sup>th</sup> November 1948. She appeals against the refusal of entry clearance to visit her son, Mr Alfred A Opoku, present and settled in the UK, under paragraph 41 of HC 395.

### **The Judge's Findings**

3. The judge's findings are confused and confusing. What appears to have happened is that the facts of this case have been conflicted with the facts of another visitor's appeal (which was presumably before the same judge on the same day) and which have led to findings of fact which bear no relationship to what actually transpired on the day in question before the judge. Thus, whereas this appeal is that of the mother of Mr Alfred Opoku, and the judge appears to that extent to be correct when referring to the facts here at paragraph 5.1, thereafter, the judge focuses on a "wife" and "her child" which bears no relationship to the facts here. This is cleared at paragraph 5.2 where the judge begins by stating, "The Sponsor was asked if he intended for his wife to live with him permanently in the United Kingdom ...". It is also clear at paragraph 6.3 where the judge states that, "The Respondent's representative asked if it was the Appellant's intention to leave her child in the United Kingdom when she returned to Ghana ...". The confusion continues at paragraph 6.4 where the judge records, "He said that his wife has a better life in Ghana where she is actively involved in women's rights and in encouraging girls to go to school". None of this relates to the facts here.

### **Grounds of Application**

4. The grounds of application state that the reasons given by the judge at paragraph 5.2 to 7.3 "Have nothing to do with what was discussed on 26<sup>th</sup> March 2014".
5. On 8<sup>th</sup> May 2014, permission to appeal was granted on this basis. On 5<sup>th</sup> June 2014, a clear and proper Rule 24 response was given by the Respondent Secretary of State. This makes it clear that, "The Respondent is entirely in agreement with the permission" and that "Under the circumstances it is suggested that the error in law matter to be decided on the papers and the appeal remitted back to the First-tier Tribunal for a de novo hearing".
6. Despite this very helpful Rule 24 response from the Secretary of State, the matter has nonetheless ended up in an oral hearing before this Tribunal, for no particular good reason.

### **Hearing**

7. At the hearing before me, Mr Nigel Bramble, appearing on behalf of the Respondent Secretary of State, simply repeated what was said in the Rule 24 response. Mr Alfred Opuku was in attendance and expressed frustration at having to return back to the First-tier Tribunal for this hearing. However, it seems to me that this is the only proper course of action in that the Appellant has been deprived of a hearing before the First-tier Tribunal in accordance with Practice Statement 7.2.

### **Error of Law**

8. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside this decision for the reasons that I have given above.

### **Decision**

9. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. In accordance with paragraph 7.2 of the Practice Statement, I direct that this matter be returned to the First-tier Tribunal to be heard again by a judge other than Judge Herlihy on a completely de novo basis.
10. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

8<sup>th</sup> July 2014