



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

Appeal Number: HU/03514/2015

THE IMMIGRATION ACTS

Heard at Field House

**Decision &
Promulgated**

Reasons

**Oral Decision given following hearing
On 2 June 2017**

On 13 June 2017

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

**MISS FAUSTINA EGYAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not present and not represented

For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Ghana who was born on 21 May 1982. She entered the United Kingdom on 8 March 2013 with a six month multi-entry visit visa valid to 11 August 2013. Thereafter she began a relationship with a Mr Yaw, a British citizen whom she married in a proxy marriage ceremony in Accra, Ghana on 12 September 2014. On 22 March 2015 she gave birth to a son, who was accepted as a British citizen (to the extent that he was given a British passport). The appellant then made an application for leave to remain on the basis of her relationship with her partner and child on 11 April 2015 but this application was refused in a decision dated 31 July 2015.
2. The appellant appealed against this decision but her appeal was dismissed by First-tier Tribunal Judge Devittie in a decision promulgated on 25 July 2016 following a hearing some three weeks earlier, on 4 July.

3. It is not necessary for the purposes of this decision to set out the grounds of appeal or the reasons for dismissal. At a hearing before Deputy Upper Tribunal Judge Chapman, in the Upper Tribunal (permission to appeal having been granted) Judge Chapman found that there had been an error of law in Judge Devittie's decision such that it would have to be re-made and the appeal was then listed before a panel comprising of Mrs Justice McGowan and Upper Tribunal Judge Latter, following which this panel gave directions and the appeal is now before me. There was at that time an issue as to whether or not the child was in fact a British citizen because Judge Devittie had found the child was not in fact the biological child of Mr Yaw, the British citizen. Among the directions given by the panel of the Upper Tribunal which were previously seized of this appeal was that the respondent should, if so advised, file further evidence as to the validity of the appellant's marriage and the citizenship of her child.
4. In the event although the respondent does not accept that the child is the biological child of Mr Yaw, nonetheless for today's purposes it is accepted that the child is a British citizen and having considered her own guidance which is that "where a decision to refuse the application would require a parent or primary carer to return to a country outside the EU, the case must also be assessed on the basis it would be unreasonable to expect a British citizen child to leave the EU with that parent or primary carer", the respondent accepts that this appeal must succeed, outside the Rules, under Section 117B(6) of the 2002 Nationality, Immigration and Asylum Act 2002.
5. In these circumstances, I agree that it would not be proportionate to remove the appellant and therefore her appeal under Article 8 must succeed. I accordingly make the following decision:

Decision

The decision of First-tier Tribunal Judge Devittie, dismissing the appellant's appeal, is set aside and the following decision is substituted:

The appellant's appeal is allowed, under Article 8.

No anonymity direction is made.

Signed:

A handwritten signature in black ink, appearing to read 'Ken Craig', is written over a light blue grid background.

Upper Tribunal Judge Craig

Date: 9 June 2017