



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

Appeal Number: VA/10770/2012

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 5 June 2013  
Prepared 5 June 2013**

**Determination  
Promulgated  
On 19 June 2013**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**MATILDA ESHUN**

Appellant

**and**

**ENTRY CLEARANCE OFFICER, ACCRA**

Respondent

**Representation:**

For the Claimant: Mrs N Richards, Sponsor  
For the Respondent: Mr T Wilding, Presenting Officer

**DETERMINATION AND REASONS**

1. The respondent appeals with permission against the determination of First-tier Tribunal Judge Herbert promulgated on 19 November 2012 in which he allowed the appeal of the claimant against the decision made on 20 February 2012 to refuse entry clearance to the United Kingdom as a child visitor.

2. The claimant was born on 17 July 1996 and is a citizen of Ghana. She wishes to come to the United Kingdom to visit her mother, Mary Cobbinah who has leave to remain here as a domestic worker in a private household. The visit is supported by the mother's employer, Mrs Nandy Richards ("the sponsor") who assisted with the application as Mrs Cobbinah is not literate and does not speak English. As at the date of decision the claimant had finished her basic secondary education and, there being a gap of several months before the next stage of her secondary education was to commence, she wished to spend an extended time with her mother. The appellant has had no contact with her father and he has not been involved in her upbringing. She is looked after by an aunt when she is not at boarding school.
3. The respondent refused the application on the basis that he was not satisfied that the appellant was genuinely seeking entry as a visitor, intended to leave the United Kingdom at the end of her visit and that also the appellant did not submit satisfactory evidence to demonstrate that her father had given written consent for her to travel.
4. The matter came before Judge Herbert on 8 November 2012. The respondent was not represented at that point. The judge found that the appellant's mother had complied with immigration control since entering the United Kingdom some three years previously as a domestic worker that there was sufficient accommodation available for the appellant for a limited three month visit so, there was realistic prospect of locating the father and that that was not a condition for her not entering. He also found that there was no reason why the appellant could not return to Ghana to complete her education. The judge also made a full fee award,
5. The respondent sought permission to appeal against that on the basis that the judge had failed to make a finding as to who the appellant's guardian is in her home country and that if she has no parent or guardian there, she did not meet the requirements of paragraph 46A(v). It is submitted also that the judge failed to make a recent finding on the appellant's intention to leave the United Kingdom at the end of her visit. Permission to appeal was granted by Judge Chohan on 27 December 2012. The matter then came before Deputy Upper Tribunal Judge Lewis on 14 March 2013 and he found that there had been an error of law, set aside the decision of Judge Herbert and directed that the appeal be re-heard on all issues [8]. The matter then came before me to remake the decision.
6. The appellant's mother did not appear before me, but Mrs Richards did attend, explaining that she had been asked to speak on behalf of the mother who, not speaking English, and not being literate, did not wish to attend. I did not however, consider that it would be appropriate to adjourn this matter for the appellant's mother to attend and give evidence. It has been made clear to the appellant and her mother in the decision of Judge Lewis that they were to decide whether she can attend and give evidence and that Mrs Richards should do so if she wished to give evidence also.

7. I heard evidence from Mrs Richards. She explained that she had known the appellant's mother her whole life as her grandmother had taken Mary in when she was a small child. She had worked first for Mrs Richards' mother then her older sister and then finally came to join her in the United Kingdom as a domestic worker. She said that the appellant had completed her basic and junior secondary and would have had up to nine months between taking the exams and starting school the following June. She said that she is now in senior secondary school and that her mother talks to her daily. She said she had seen her in Ghana in February but that her mother had been unable to travel with her as at that point the Home Office still had her passport having taken thirteen months to extend her visa. She said that there had been no permission sought from the aunt as this had not been asked for. She said that had they known this further clarification from the aunt could have been provided but it was not clear that this was required either from the application form or otherwise.
8. In cross-examination Mrs Richards confirmed that she had written the letter which had been signed by the mother, inviting the appellant to stay. She said that they had no intention of making an application for the appellant to settle and that it was unlikely that the mother would be able to apply for settlement either given that, she does not speak English and is illiterate, she is unlikely to pass the Life in the UK test. She said that the plans were for the appellant to remain in secondary school until she is aged 19 and then to go to university in Ghana. She said that the mother's intentions are to return to Ghana and to start a shop or a restaurant as she gets lonely in the United Kingdom it being difficult for her to communicate. She said that there was no way that she would permit the appellant to remain in the United Kingdom and that this was not a means of getting Matilda into the United Kingdom.
9. In immigration appeals the burden of proof lies on an appellant; the standard of proof is the balance of probabilities. In this case it is for the claimant to show that she meets the requirements of the immigration rules.
10. I found Mrs Richards to be a compelling and credible witness. I accept that she has known the appellant through her mother all of her life and that whilst the letter inviting her might have been better expressed, when she has said that she wanted the appellant to "stay" that all that was intended was a visit. I am satisfied from what she said that there was no intention either on her part or the mother's part or the appellant's part that she should remain in the United Kingdom beyond a holiday to visit her mother. I find no basis for the submission that what is intended is a means of circumventing the Rules so that the appellant should remain in the United Kingdom. As Mrs Richards submitted, that there would be little advantage to the appellant remaining here illegally as opposed to getting a good education in a boarding school in Ghana.

11. I am satisfied also by the evidence before me that there would be adequate accommodation for the appellant and that this would be provided by Mrs Richards and the appellant's mother.
12. I accept that the appellant's father has had no involvement in her life and that therefore it would not be appropriate to obtain any confirmation from him. However, I am satisfied that the appellant's aunt does act as her guardian in that she is the person who cares for her whilst she is not at boarding school. There was not, included with the application, a confirmation that she was happy for the appellant to travel to the United Kingdom. I accept that that confirmation has been provided subsequently, but it was not in place at the date of decision and therefore is not a matter which could be taken into account.
13. I accept that the appellant and Mrs Richards did not fully understand what the Immigration Rules required. In fairness to them, the Rules do not at first glance make it clear that even though one parent is present in the United Kingdom there must still be a confirmation from a guardian or other parent. This was not provided and so the requirements of the rules were not met.
14. On that sole basis, I found that the appellant did not meet the requirements of the Immigration Rules. I therefore dismiss the appeal on that basis. No other ground of appeal has been advanced, and I therefore dismiss the appeal on all grounds.
15. This does not, however, prevent the appellant from making a fresh application for entry clearance as a visitor and any such application should include this determination.

### **Summary of Conclusions**

1. The determination of the First-tier Tribunal did involve the making of an error of law and it is set aside.
2. I remake the determination by dismissing the appeal on all grounds.
3. The fee award made by the First-tier Tribunal is set aside.
4. As I have dismissed the appeal there can be no fee award.

Signed

Date

Upper Tribunal Judge Rintoul