



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

Appeal Number: HU/07330/2015

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 22 March 2018**

**Decision & Reasons  
Promulgated  
On 10 April 2018**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**CYNTHIA ESHUN  
(NO ANONYMITY DIRECTION)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER - SHEFFIELD**

Respondent

**Representation:**

For the Appellant: Mr John Eshun (sponsor)

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Cynthia Eshun, was born on 19 November 1983 and is a female citizen of Ghana. She made an application for leave to enter the United Kingdom for settlement as the spouse of a person present and settled here (Mr John Eshun). Her application was refused by a decision of the ECO Sheffield on 4 September 2015. The appellant appealed to the First-tier Tribunal (Judge Hindson) which, in a decision promulgated on 25 January 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The Entry Clearance Officer was not satisfied that the appellant had produced proper evidence in respect of the sponsor's financial circumstances, that there were a number of missing bank statements together with inadequate documentary evidence in respect of the sponsor's United Kingdom employment. Before the Upper Tribunal, Mrs Pettersen accepted that both the bank statements and the employment issue had been adequately addressed by the bundle of documents which had been sent in and had been put before Judge Hindson. Judge Hindson had not considered in any detail the financial side of this application for settlement. Rather, he found [15-16] that "given the paucity of evidence about contact [between the appellant and sponsor]" he was not satisfied that the appellant and sponsor were in a genuine and subsisting relationship. He did not go on to consider whether or not the Rules had been satisfied as regards the financial requirements and, whether in turn the appeal should be allowed on human rights grounds (Article 8 ECHR). His finding as regards the relationship was determinative.
3. There is a difficulty in the judge's analysis. The judge has based his conclusion that there was little evidence about contact between the appellant and sponsor on what he found [15] to be a failure by the sponsor to provide evidence by way of his passport which might show entry/exit stamps proving that he had visited Ghana as he had claimed. The sponsor claimed to have been to Ghana six times to visit his wife but the judge was not satisfied that there was any evidence to prove that and further observed that it was evidence which "would have been easy to obtain". The difficulty for the judge is that there was evidence in the form of copies of the entries in the sponsor's two passports (the first which expired in March 2014 and a subsequent renewed passport). The papers are on the court file immediately below the appellant's bundle of documents. It is not entirely clear why the passport copies are not part of that bundle but I am satisfied that the documents were, as the appellant and sponsor claim, before Judge Hindson at the First-tier Tribunal hearing. Mrs Pettersen, for the ECO, accepted that the documents had not been submitted after the hearing (for example, in connection with the appeal to the Upper Tribunal). The entries in the copies of the passports show the visits to Ghana in accordance with the evidence given by the sponsor. It is not clear why the judge has ignored or has failed to notice these copy documents but his failure clearly constitutes an error of law which undermines his finding as to the genuineness and subsistence of the relationship. In consequence, I set aside the First-tier Tribunal decision.
4. I have remade the decision. I have considered all the evidence which is on the file including that of the passport. I accept that there is evidence which does show that the sponsor has visited the appellant in Ghana as he claims. I accept that the appellant and sponsor remain and have been in a genuine and subsisting relationship. No issue is now taken by the respondent in respect of the financial documents which had concerned the ECO at the time of refusal. In consequence, I find that this appeal should be allowed on human rights grounds.

**Notice of Decision**

5. The decision of the First-tier Tribunal which was promulgated on 25 January 2017 is set aside. I have remade the decision. The appellant's appeal against the ECO's decision of 4 September 2015 is allowed on human rights grounds (Article 8 ECHR).
6. No anonymity direction is made.

Signed

Date 1 APRIL 2018

Upper Tribunal Judge Lane