



2015 under the partner route and under paragraph 276 ADE of the Immigration Rules. She appealed against that decision under section 82 (1) of the Nationality, Immigration and Asylum Act 2002 (NIAA). Her appeal was allowed by First-tier Tribunal Judge Richards-Clarke in a decision promulgated on 27 June 2016.

2. The Secretary of State sought permission to appeal to the Upper Tribunal on the grounds that the First-tier Tribunal had failed to give adequate reasons for findings on material matters. Permission was granted by First-tier Tribunal Judge Easterman on 18 October 2016 on the basis that it was arguable that the findings made by the Judge leading her to the conclusion that there would be insurmountable obstacles or very serious hardship for the Claimant or her partner in Ghana could not reach the threshold required.

### **The Hearing**

3. The matter therefore comes before the Upper Tribunal to determine whether there is a material error of law in the decision of the First-tier Tribunal. At the hearing Mr Davies conceded that the First-tier Tribunal had failed adequately to consider the evidence with regard to the availability of fertility treatment in Ghana and consequently her finding that the Claimant would not be able to continue fertility treatment in Ghana was not adequately reasoned. Both representatives agreed that there was no inadequacy of reasoning in relation to the First-tier Tribunal's finding that the Claimant's partner could not speak Ga.

### **Discussion**

4. The First-tier Tribunal Judge found that the Claimant met the requirements of EX1 of Appendix FM of the Immigration Rules because there were insurmountable obstacles to family life continuing in Ghana. The factual findings which led her to this conclusion were that the Claimant's partner's home, work and family were in the United Kingdom and he would have language difficulties in Ghana. She also found that the Claimant and her partner would be unable to continue fertility treatment outside Ghana. The Secretary of State's grounds of appeal challenge both of these findings. The Secretary of State contends the First-tier Tribunal failed to make a finding that fertility treatment was unavailable in Ghana and that Ghana is a multilingual country in which eighty languages are spoken and English is the official language and lingua franca.
5. I find that the decision of the First-tier Tribunal is inadequately reasoned. The Secretary of State's case as set out in the reasons for refusal letter (RFRL) at page 4 was that fertility treatment was available in Ghana and a web link to that evidence was provided in the letter. The First-tier Tribunal failed to address this in coming to her conclusions and therefore that finding cannot stand. Mr Diwnycz accepted that there was no challenge to the Judge's finding that the Claimant's partner could not speak Ga. The Secretary of State was not represented at the appeal and the point in

relation to English being the lingua franca in Ghana is not in the RFRL. However, in concluding that his inability to speak the language would amount to an insurmountable obstacle or serious hardship, the First-tier Tribunal failed to have regard any relevant case law and in particular the decision of the Court of Appeal in **R(on the application of Agyarko) [2015] EWCA Civ 440**.

6. In all the circumstances therefore I find that there was a material error of law in the decision of the First-tier Tribunal. I preserve the finding of fact that the Claimant's partner cannot speak Ga.

### **Notice of decision**

The First-tier Tribunal's decision to allow the Claimant's appeal involved the making of a material error of law.

I set the decision aside and the appeal will be determined *de novo* having regard to paragraph 7.2 of the Senior President's Practice Statements due to the nature and extent of fact finding required by a Judge other than Judge Richards-Clarke.

No anonymity direction is made.

Signed

Dated 31 May 2017

Deputy Upper Tribunal Judge L J Murray