



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

Appeal Number: IA/00726/2014

THE IMMIGRATION ACTS

Heard at Field House

On 4th July 2014

Determination

Promulgated

On 21st July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**CHRISTOPHER WILLIAM ERIATA
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr V Ikie of Ikie Solicitors

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction and Background

1. The Appellant appeals against a determination of Judge of the First-tier Tribunal Borsada (the judge) promulgated on 14th April 2014.

2. The Appellant is a male citizen of Nigeria born 4th February 1970 who applied for a residence card as confirmation of a right to reside in the United Kingdom. The application was made on the basis that the Appellant is the extended family member of an EEA national, that being his cousin Augustine Edobor, an Italian national to whom I shall refer as the Sponsor.
3. The application was refused on 4th December 2013. In summary the Respondent did not accept that the Appellant and Sponsor are related as claimed, and did not accept the Sponsor is a qualified person as defined by regulation 6 of the Immigration (European Economic Area) Regulations 2006 (the 2006 regulations), and did not accept that the Appellant had been dependent upon the Sponsor either in Nigeria or in the United Kingdom.
4. The Appellant appealed to the First-tier Tribunal and his appeal was heard by the judge on 4th April 2014. The Appellant was legally represented, and the judge heard evidence from the Appellant and Sponsor. The judge concluded that it had been proved that the Sponsor is a qualified person, but did not find that the Sponsor and Appellant had given credible evidence, and therefore did not accept that they were related as claimed. In addition the judge did not accept that it had been proved that the Appellant was dependent upon the Sponsor either in Nigeria or in the United Kingdom. The appeal was dismissed with reference to the 2006 regulations, and also with reference to Article 8 of the 1950 European Convention on Human Rights (the 1950 Convention).
5. The Appellant applied for permission to appeal to the Upper Tribunal. In summary the Appellant relied upon four grounds which are summarised below;
 - (i) It was contended that the judge had erred in law by applying double standards in his decision making. The judge had found that the Sponsor was a qualified person based upon the objective evidence before him and therefore should have accepted the objective evidence that was before him in relation to dependency, and the relationship between the Sponsor and Appellant.
 - (ii) It was submitted that the issue of credibility should not be fatal to the appeal. If objective evidence was to be disregarded it was contended that the judge had to show that the documents are either “bogus or fake”. The judge had not done so in this case.
 - (iii) It was contended that the judge should have accepted the family tree which had been prepared to show the Appellant and Sponsor are first cousins, and should have accepted birth certificates which shows that the mothers of the Appellant and Sponsor have the same surname.

(iv) It was contended that the Appellant had not understood the questions properly because of his poor understanding of the English language “or was completely overwhelmed by the court environment”. It was contended that the discrepancy between the Sponsor and Appellant as to their relationship was insufficient for the judge to find them incredible witnesses, and the judge’s decision was therefore perverse.

6. Permission to appeal was granted by Judge of the First-tier Tribunal Levin who found it arguable that the judge had given inadequate reasons for his findings.
7. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 contending that the judge had directed himself appropriately, and was entitled to have serious concerns at the discrepancy revealed in the evidence.
8. Directions were subsequently issued making provision for there to be a hearing before the Upper Tribunal to decide whether the First-tier Tribunal determination should be set aside.

The Appellant’s Submissions

9. At the hearing before me Mr Ikie relied and expanded upon the grounds contained within the application for permission to appeal. Mr Ikie submitted that the judge should not accept some objective evidence and not other objective evidence which supported the Appellant’s case.
10. I was asked to conclude that the judge had not attached sufficient weight to birth certificates proving the relationship, and a letter from a local authority in Nigeria proving that the Sponsor and Appellant had lived in the same household.
11. In relation to the contention of perversity, I asked Mr Ikie to explain how it was contended that the judge had acted perversely. Mr Ikie by way of response indicated that his case was the judge had acted unreasonably rather than perversely.

The Respondent’s Submissions

12. Mr Whitwell relied upon the Rule 24 response and submitted that the weight to be attached to evidence was a matter for the judge who heard that evidence.
13. I was asked to note that there had been no request for an interpreter for the Appellant, and no indication given that he was having difficulties with the language, until submissions were made on that point.

14. Mr Whitwell submitted that the grounds amounted to a disagreement with the decision made by the First-tier Tribunal, and did not disclose an error of law.

My Conclusions and Reasons

15. I do not find any merit in the suggestion that because the judge accepted documentary evidence which indicated that the Sponsor is a qualified person, then he was also obliged to accept documentary evidence as to relationship and dependency. The judge was entitled to attach what weight he thought appropriate to documentary evidence. It cannot be said that because there is documentary evidence proving one aspect of a case, that all documentary evidence must be accepted.
16. In relation to documentation I reject the submission that it is for the judge to show that documents are “either bogus or fake” as is suggested in the second ground of appeal. If there is an allegation made that a document is false, then evidence must be given to prove that allegation, and if it is the Respondent contending that a document is false, the burden of proof is on the Respondent. This was not suggested by the Respondent in this appeal. If there is no allegation of forgery, then the principles in Tanveer Ahmed [2002] UKIAT 00439 apply, and it is for an individual who produces a document to show that it can be relied upon. The decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round. I do not find that the judge has erred on this issue. I note that the family tree referred to, was not independently produced. The judge considered the evidence in the round and applied the correct standard of proof. The judge found a major discrepancy between the evidence provided by the Sponsor and the Appellant. The Appellant said that his mother and the Sponsor’s mother shared the same grandfather which meant they were cousins, but the Sponsor said that their mothers were sisters.
17. This is a significant discrepancy and the judge was entitled to attach weight to it. The judge considered in paragraph 8 whether a satisfactory explanation for the discrepancy had been given. He was entitled to conclude that it had not as the only explanation put forward was that the Appellant had insufficient command of English to understand the questions. The judge was entitled to note that there had been no request for an interpreter, and there had been no complaint during evidence that the Appellant had not understood the questions. This issue had only been raised in submissions. The judge had listened to the evidence of both the Appellant and Sponsor, and was therefore in the position to make a judgment as to whether or not the Appellant had understood the questions asked of him by both representatives.
18. It is clear that the judge considered the documentary evidence that related both to relationship and dependency, as he refers not only to the family tree, but to the birth certificates, and evidence of a tenancy

agreement which had been submitted to prove that the parties had previously lived together in Nigeria.

19. Taking the determination as a whole, I conclude that the judge did not fail to take into account any material matters, and considered all the evidence put before him. Mr Ikie did not pursue the allegation that the decision was perverse, and therefore the error of law said to be inadequacy of reasoning.
20. I have taken into account the guidance in Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) and set out below the first paragraph of the head note to that decision;
 - (1) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge.
21. The judge has satisfactorily explained why he made his findings, and I conclude that the grounds contained within the application for permission to appeal express a disagreement with his decision, but disclose no error of law.

Decision

The determination of the First-tier Tribunal discloses no error of law.

I do not set aside the decision. The appeal is dismissed.

Anonymity

No order for anonymity was made by the First-tier Tribunal. There has been no request for anonymity and the Upper Tribunal makes no anonymity direction.

Signed

Date: 14th July 2014

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT **FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date: 14th July 2014

Deputy Upper Tribunal Judge M A Hall