Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: OA/11507/2013**
OA/11508/2013

THE IMMIGRATION ACTS

Heard at: Field House	**Determination Promulgated**
On: 2 October 2014	**On 16 October 2014**
Prepared: 10 October 2014	

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

MASTER HUZAIF AHMED
MASTER SHURAIM AHMED
(NO ANONYMITY DIRECTION MADE)

Appellants

and

ENTRY CLEARANCE OFFICER:

Respondent

Representation

For the Appellants: Mr E Akohene, solicitor (Afrifa and Partners)
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are nationals of Ghana and are brothers. They were born on 28th October 1997 and 1st March 2007 respectively.

2. They appealed against the decisions of the respondent refusing their applications made on 6th February 2013 for entry clearance to settle in the UK as the dependent children of their mother. The applications were refused pursuant to paragraph 297 of the rules. The respondent was not satisfied that the relationship between the appellants and their sponsor had been established. Nor was it accepted that she has had sole

responsibility. Their appeals to the First-tier Tribunal were dismissed by First-tier Tribunal Judge in a determination promulgated on 7th July 2014.

3. He was not satisfied that the sponsor was the biological mother of the appellants from the evidence submitted [43].

4. Further, he found the evidence of the sponsor "exercising sole responsibility over the appellants" to be scant [44]. He was however satisfied that the requirements relating to maintenance and accommodation had been met.

5. Their appeals were dismissed under the Immigration Rules as well as on human rights grounds.

6. On 20th August 2014, Designated First-tier Tribunal Judge MacDonald granted the appellants permission to appeal, noting that the appeal had been dismissed because of the apparent inadequacy of the documents, but it is arguable that further reasoning was required before rejecting the evidence of the sponsor who supported the application and against whom there were no adverse credibility findings.

7. Nor, as noted in the grounds, had the Entry Clearance Officer, the Entry Clearance Manager or the Home Office Presenting Officer, raised any issue concerning the death certificate of the children's father, who was said to have died of heart failure in 2004.

8. Mr Akohene submitted that although the Judge accepted that the production of DNA evidence was not a mandatory requirement under the rules, he nevertheless went on to state that this is one way in which the sponsor could have "conclusively established" that she is the biological mother of the appellants.

9. He submitted that the Judge implicitly raised the requisite burden of proof to exceed the balance of probabilities. In so doing, he attached little weight to the birth certificate produced. He failed to consider cross cultural differences sufficiently. He had regard to the fact that the appellants' births were registered over a decade after they were born. He submitted that in failing to have regard to practices applicable in Ghana the Judge had accordingly failed to consider relevant cross cultural differences by implicitly applying UK standards to Ghana.

10. He submitted that there was before the First-tier Tribunal Judge proper evidence relating to the civil registration system in Ghana from the principal Assistant Registrar there. In the assessment relating to the 2000 census, there was a population in excess of 18 million. The statistics in relation to the completeness of registration between 2000 and 2008 revealed that in 2000 there were only 31% completed registrations of births. In 2002 it dropped to 17%. Although it increased to 67% in 2005, it subsequently dropped to 51% in 2008.

11. There were recommendations in the report that registration facilities should be made accessible to rural populations by expanding the community population register programme to cover more rural communities in Ghana. Further, there should be sustained public education on the importance and benefits of "vital registration."

12. The Judge furthermore "echoed the concerns raised by the respondent" in respect of the birth certificates produced [41]. The sponsor had accepted that the appellants' births had been registered on 26th April 2011 and not 2012 as alleged in the reasons for refusal [25].

13. There was accordingly no obligation imposed by law or any duty in Ghana to register the children shortly after their births.

14. Further, he submitted that the respondent had given short shrift to the documentation relied on by the sponsor in this regard. He was aware that documents of this kind could be obtained easily from sources other than the competent authorities in Ghana. The respondent was thus not satisfied that the documents offered a true reflection of the appellants' ages, identity or circumstances in Ghana. Accordingly, he was not satisfied that their birth certificates offered accurate representation of their births, ages or family circumstances showing that they were related as claimed.

15. That, Mr Akohene contended, is an unwarranted generalisation. There was no evidence by way of any document verification report relating to the validity and authenticity of the actual documents produced.

16. Further, the Judge failed properly to have regard to the sponsor's' own evidence relating to her assertions regarding the relationships. In particular, she had stated that from her personal knowledge, it was not the practice that births are registered. People in villages, even the more enlightened town people, do not see the need for registration. That is in contrast to the "culture in the UK" [15].

17. The evidence was that she spoke to the appellants at least three times a week. She claims that she gave birth to the appellants and lived with them for the first 11 and 8 years respectively of their lives. Their father died in 2004 of heart failure. She did not abandon them when she came here. Her then husband did not have sufficient accommodation for them all.

18. She continued to exert her "parental values" in respect of the appellants. She chose schools and their extra curricular activities. In addition, she had produced two photographs which she said had been taken of her and the appellants on her last trip to Ghana.

19. When the registrar attending to the registration was told that the necessary "weighing cards" were not available, the registrar actually rang her up to confirm the date of the births of the two children.

Accordingly, the dates recorded in their birth certificates are based on information which she herself provided to the registrar.

20. Mr Akohene submitted that the Judge furthermore erred in failing to apply the correct provisions of paragraph 297. Sub paragraphs (i)(a) to (f) are alternatives to each other.

21. The First-tier Judge recorded evidence from the sponsor that the children's father died in 2004. Furthermore, a copy of his death certificate was submitted as part of the applications and was contained in the respondent's bundle. However, neither the respondent, the Entry Clearance Manager or the Home Office Presenting Officer at the time raised any issue concerning the death certificate.

22. However, he made no finding relating to that certificate. If one parent is shown to be “deceased” then the requirements of sole responsibility and serious and compelling circumstances “fall by the wayside.”

23. Mr Whitwell accepted that the respondent had never challenged the certificate. He submitted however that the Judge had directed himself appropriately. He did not believe that the sponsor was the biological mother of the appellants based on shortcomings in the documentary evidence. He found the sponsor's evidence to have been vague [46]. Accordingly, the Judge would not have come to a different view even if he had found the sponsor's evidence to be credible.

24. Insofar as the death certificate of the father is concerned, he asserted that as evident in the Rule 24 response, the children have lived with their stepfather since 2004 and it cannot be said that there is no other person to care for them.

25. Mr Whitwell submitted that when regard is had to paragraph 40 of the determination, the Judge was not excluding other evidence when making comments about the lack of DNA. This had been a live issue. It is evidently so when regard is had to paragraphs 40, 43 and 46. He submitted that the Judge in fact took into account the totality of the evidence.

26. He submitted that the failure to refer to or to make any finding relating to the death of the appellants' father would only be relevant where the relationship between the appellants and the sponsor had been properly established.

27. Notwithstanding the asserted cultural differences, it is clear that there was a system of registration in place in Ghana. Accordingly there was no adequate evidence suggesting that Ghanaians do not register the births of their children in accordance with Ghanaian law. Accordingly, there was a 'mere disagreement' as to the Judge's findings which are sustainable on the evidence produced.

Assessment

28. The First-tier Tribunal Judge stated that he took into account the sponsor's testimony relating to the birth certificates. He also accepted and took into account that in some cultures, there may be a practice of delaying the registering of a birth or not registering a birth at all [41]. However, he went on to state that the appellants' births were registered over a decade after they were born. The sponsor accepted that the information in the documents came from her. He accordingly applied little weight to the birth certificate [41].

29. Having appreciated that there was no mandatory requirement within the rules for the appellants to produce DNA evidence, the production of such evidence would have been one way in which the sponsor could have conclusively established that she is the biological mother of the appellants.

30. However, having accepted that DNA evidence is not a requirement, the Judge found that there was a lack of satisfactory evidence to establish the relationship.

31. I find that the Judge has not given any proper reasons as to why the sponsor's own evidence regarding the relationship, including her evidence of contact, support and decisions made on their behalf from time to time did not result in the burden of proof in that respect being satisfied on the balance of probabilities.

32. As pointed out by Designated Judge MacDonald, there were no adverse credibility findings. Despite the apparent inadequacy of the documents, further reasoning was required before rejecting her evidence, particularly when there were no adverse credibility findings made.

33. Further, it is accepted that the Judge failed to make any finding with regard to the death of the appellants' father in 2004, but instead proceeded to consider their appeals pursuant to the need to find that their sponsor was “solely responsible for their upbringing.”

34. Mr Whitwell accepted that that was an incorrect approach in the circumstances.

35. For these reasons, I find that the First-tier Tribunal Judge made material errors of law. In the circumstances, I set aside the determination.

36. The parties accepted that in those circumstances, there would have to be a re-hearing. Mr Whitwell in particular gave notice that the respondent persists in the challenge to the claimed relationship between the sponsor and the appellants.

Directions

1. The Appellant's solicitors shall file and serve on the Tribunal and the Respondent a fully consolidated bundle, duly paginated and indexed, at least 7 days prior to the resumed hearing.

2. List for hearing on the first available date after the 30th November 2014, with a time estimate of 3 hours.

Signed Dated 10/10/2014

C R Mailer
Deputy Upper Tribunal Judge