Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/08091/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5 October 2017	**On 30 November 2017**

Before

THE HONOURABLE MR JUSTICE DOVE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ABIKE FAKEMI NWAWULU
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr N Bramble, Home Office Presenting Officer
For the Respondent: Mr A Aminu, Counsel instructed by Martyns Rose Solicitors

DECISION AND REASONS

1. This is an appeal by the respondent which comes before me with the benefit of permission having been granted on 26 July 2017 by First-tier Tribunal Judge Pickup against a decision allowing the appellant's appeal by First-tier Tribunal Judge Oliver promulgated on 6 July 2017. The appeal concerned the question of whether or not the appellant was entitled to a right of abode in the UK on the basis that she had been born in the UK before 1 January 1983. It appears that prior to the application which led to

the appeal before the judge there had been an earlier application. He describes that earlier application in paragraph 2 of his decision in the following terms:-

> "2. An earlier application, made on 17 December 2008, had been refused on 9 February 2009 because she had failed to attend for interview on 5 February 2009 when invited. In her application she had stated that she did not hold a British passport but it was asserted that records showed that a passport had been issued to a person of the same name and claimed date of birth. In the application she had stated that she was born in Anhwich hospital, but the birth certificate she had submitted showed that a female child of the same name and date of birth was born at Dulwich Hospital. She had submitted no other evidence of her birth and stay in the United Kingdom. The appellant's request for another interview date was refused as the decision had already been made."

2. In his decision the judge records that in the context of the application leading to the appeal she had been interviewed again. The evidence of the interview was that she had been born in Dulwich Hospital on 9 May 1970, but then returned to Nigeria with her family in 1971 and had not returned since. She has an older brother in the UK with whom she proposed to stay upon arrival. Her brother had also returned to Nigeria in 1971 and then become resident in the UK in 2005 having successfully claimed a right of abode here. Evidence was also provided in support of the application from her father. The judge records her father's contribution in the decision as follows:-

> "4. On the same date her father, 71-year-old Fashola Onosoya Savage (born 9/10/45) was also interviewed. He had come to the United Kingdom in 1964 to study at his own expense and married his wife in Lewisham on 19 October 1968. He confirmed that they had returned to Nigeria in 1971. His profession as a computer expert was confirmed by membership of the Radio Society of Great Britain dated 12 October 1964, an educational certificate from his London college dated July 1966, his marriage certificate and by a letter from his employers dated 15 September 1971. His claimed profession accorded with the description of his occupation on the appellant's birth certificate and was consistent with him following in the footsteps of his own father as shown on the appellant's father's birth certificate."

3. It appears that as with the earlier refused application reliance was based upon the suggestion that there had been an earlier passport application made by the appellant leading to the issuing of a British passport. The judge records this contention at paragraph 5 of his decision in the following terms:-

> "5. The respondent refused the application on 9 February 2009 on the same basis as before; her evidence that she had never had a passport was inconsistent with records showing that one was issued to a person of the same name and date of birth. Mention was made of an application which was made for a British passport by somebody in her

identity in 2005, the same time period as when her brother returned to the United Kingdom."

4. Having recorded the procedures which occurred at the hearing, and correctly self-directed in relation to the burden and standard of proof, the kernel of the judge's decision was recorded in the following terms at paragraph 10 of his decision:-

> "10. The respondent has accepted that the child born in Dulwich Hospital on 9 May 1970 is entitled to a certificate but has questioned whether the appellant is that child. The respondent has asserted that the appellant in her application stated in part seven that she was born in Anhwich Hospital. No such hospital and no such place exists and on its face it would appear highly likely that a simple mistake has been made. In fact, however, there is no reference to the non-existent hospital in part seven of the appellant's application. The respondent has further asserted that the person born in Dulwich Hospital earlier made an application for a British passport, a matter denied by the appellant. The respondent has, however, produced no evidence of that application or the passport said to have been issued. Although the appellant has not helped herself by not explaining why she did not attend for interview, by producing a witness statement and by asking her brother to attend the hearing, I find that the historic family documents she has produced are sufficient to show on the balance of probabilities that she was the child born at Dulwich Hospital and is therefore entitled to the issue of the certificate."

5. In this appeal the respondent raises two bases upon which it is said the judge erred in law. The first basis is a contention that the judge's reasons in paragraph 10 for concluding that the appeal should be allowed were inadequate. It is contended on behalf of the respondent that the judge failed to provide adequate reasons which properly engaged with the nuances in the case, in particular in respect of the earlier application which had a hospital identified within it which did not exist, and in relation to the brother's lack of attendance at the hearing which was relied upon by the respondent as undermining the credibility of the appellant's case. In the grounds of appeal, although not orally developed in detail, reliance is placed upon the failure of the judge to engage with the fact that there was no evidence produced from the appellant's parents, and that also there had been an application by another person for a passport using the same details as the appellant. Ground 2 is a ground based upon unfairness. It is said that the judge ought fairly to have afforded the opportunity for the material in relation to the passport application made by a person of the same name and date of birth to be produced prior to relying upon the absence of such evidence in paragraph 10 of the decision.

6. The law in relation to the provision of reasons is definitively set out in the speech of Lord Brown in the case of **South Bucks District Council No 2 and Porter [2004] UKHL 33 [2004] 1 WLR 1953**. The principles are well-known. It is necessary for a decision maker to provide adequate

reasons so that the party which has been unsuccessful understands the basis upon which they have failed. Further, it is necessary for the reasons to deal with the principal controversial issues which arise in the case. The reasons must be adequate to understand how any future application might be addressed and how a decision maker in the light of that decision ought properly to approach any future applications. I have considered the contentions raised in relation to paragraph 10 in that light.

7. Notwithstanding the attractive way in which Mr Bramble has argued the case on behalf of the respondent, I am unable to accept that there is any illegality or deficiency in the reasons provided by the judge on this occasion. Firstly, it is a cardinal principle that the decision must be read as a whole. It is inappropriate to "cherry-pick" from certain parts of the decision without reading those parts in the wider context of the totality of the decision.

8. True it is that the judge referred in paragraph 10 to the absence of any reference to Anhwich Hospital in part 7 of the application which led to the appeal. However, the judge was fully cognisant, as he explained in paragraph 2, with the deficiency in the earlier application and that that was a matter relied upon in support of the respondent's case that the appellant was not credible. That said, he explains his response to those contentions when he observes that the reference to Anhwich Hospital "would appear highly likely" to have been a "simple mistake". That is, in my view, clear and succinct reasoning which adequately explains why he has reached the conclusion that the respondent's contention carries little forensic weight.

9. He engages with the brother failing to attend within paragraph 10, but clearly explains in his reasoning that the "historic family documents" are the centrepiece of the conclusions which he has reached as to credibility. It will be evident from the quotation above at paragraph 4 and also from the reference to the contents of the birth certificate that the phrase "historic family documents" was a reference back to what the judge had observed was produced by the appellant's father in support of the contention that there was a consistent framework of official documentation demonstrating that it was likely (and that was the test) that she was the child who was born at Dulwich Hospital and whose birth was recorded in the birth certificate relating to 9 May 1970.

10. Turning to the reliance on the absence of evidence of the passport, the judge says no more and no less than was necessary in relation to that point raised by the respondent, namely there was no evidence of either the application or the passport upon which a decision could be based. Finally, so far as the evidence from the appellant's parents is concerned in the written grounds, it is clear that the matter proceeded by way of submissions only and that there was evidence from the appellant's father produced by way of various documents as I have set out in the quotation from paragraph 4. Thus, in my judgement the judge provided perfectly

adequate reasons to explain why he had reached the decision which he did.

11. I turn then to ground 2. As I have already observed, this is a ground based upon a contention that it was unfair, if the judge was going to rely upon the absence of evidence of an application or a passport having been issued, to rely upon that without affording further opportunity for the respondent to produce such documentation. That observation needs in my view to be put in its proper context. The question of whether or not there had been this earlier application which adversely affected the credibility of the appellant had been raised in refusing the present application by the Entry Clearance Officer on 21 January 2016. It was one of the important points relied upon in that refusal. The hearing of the appeal was on 13 June 2017, that is to say nearly eighteen months after that refusal had been made. I note that it does not appear that the respondent made any application for an adjournment for that documentation to be produced but chose at the hearing to rely upon an assertion unsupported by documentary evidence. In those circumstances I do not consider that there was any unfairness to the respondent in the judge's decision. The judge had to reach a decision on the material placed before him. It was not for him to make an application for an adjournment on behalf of the respondent when the respondent had failed to assemble the necessary documentation required to prosecute the case.

Notice of Decision

12. For all of those reasons I am satisfied that there was no error as contended for in the judge's decision and this appeal must be dismissed.

13. No anonymity direction is made.

Signed Date

Mr Justice Dove

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date

Mr Justice Dove