



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

Appeal Number: HU/05979/2016

THE IMMIGRATION ACTS

Heard at Field House

On 11 July 2018

Determination

Promulgated

On 5 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MURRAY

Between

MS NITA [O]

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Omorere, Bestway Solicitors, London

For the Respondent: Mr Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria born on 24 January 1970. She appealed the respondent's decision dated 6 January 2016 refusing her leave to remain in the United Kingdom based on her private life and the fact that she has a daughter in the United Kingdom, [MTD], who she states has a British passport. Her appeal was heard by Judge of the First-Tier Tribunal Randall on 3 July and 26 September 2017 and dismissed in a decision promulgated on 19 October 2017.

2. An application for permission to appeal was lodged and permission was granted by Judge of the First-Tier Tribunal Boyes on 3 May 2018. The permission states that the grounds are that the Judge made numerous errors in the assessment of the appellant's family members' nationality but goes on to state that outwith that argument, permission is granted because of the claim that the Judge was reading from his phone. The permission goes on to state that whether the Judge was receiving information from someone or was conducting his own research is something for the Upper Tribunal to consider.
3. There is a Rule 24 response on file which states that the Judge was looking up legislation on his phone. This ultimately had no impact on the case and the parties had the opportunity to deal appropriately with this issue. The response states that the Judge's consideration of the other issues was sound and there is no error in the decision. The response goes on to state that the British passport of the child has been revoked.

The Hearing

4. The appellant's representative submitted that the appellant has a daughter who is a British national. I pointed out that in the Rule 24 response it is stated that the child's British passport has been revoked. The representative stated that he does not believe it has been revoked. His reason for this is that the appellant would have known if it had been revoked and has heard nothing about this.
5. I put to the representative that there is no evidence that the child's father is British and he submitted that the child's father's passport was produced and his documents were accepted. I pointed out that the supposed biological father of the child, [CD] has not produced DNA evidence although he was directed to do so and apparently has now returned to Nigeria. I pointed out that there was suspicion of a fraud relating to the appellant's daughter's passport.
6. The representative said he had been reading about British nationality law at the First-Tier hearing, and that is why he was looking at his phone and he produced the British Nationality "Proof of Paternity Regulations" 2006. He submitted that Mr [D] is named as the child's father on the birth certificate so the child is British. He submitted that the 1981 British Nationality Act has been amended by the British Nationality Proof of Paternity Regulations 2006 and based on this amendment the appeal must be allowed as Mr [D] is named on the birth certificate as the father of the appellant's child.
7. The Presenting Officer made his submissions, submitting that there has been no objection to any of the findings of fact made by the First-Tier Judge. He submitted that the appellant has failed to establish that her daughter is British and the First-Tier Judge did not accept the evidence provided.

8. The Presenting Officer submitted that the Judge found that the appellant was not divorced when she had the child. She was married to a Nigerian national, [MO]. The father of the child for British Nationality purposes is the appellant's husband at the time of the child's birth. For nationality purposes therefore, Mr [D] is not her father, so the child is not British. The Judge deals with this at paragraph 58 of the decision.
9. The Presenting Officer submitted that the appellant has failed to establish that her daughter is British and I was asked to consider all the findings of fact made by the Judge, none of which have been opposed.
10. At paragraph 48 the Judge found there to be issues relating to the child's birth certificate and this has not been disputed and there has been no real challenge to paragraphs 50, 51 or 52 of the decision relating to the DNA tests which were not produced in spite of the appeal hearing being adjourned for these results to be obtained. The Presenting Officer submitted that the Judge was entitled to draw the conclusions that he did and the Judge refers to significant credibility issues in the decision.
11. The Judge at paragraphs 57 and 58 deals with the appellant's customary marriage to [MO], her supposed customary divorce in 2010 and the fact that there is no documentary evidence of this. The Judge notes that there is a lack of evidence about customary marriages in Nigeria and customary divorces. The Judge finds the appellant to lack credibility, and does not accept her evidence about this and finds that the customary marriage, on the balance of probabilities did not end in 2010.
12. The Presenting Officer submitted that in March 2016 the British passport of the child was revoked and this was made clear in a letter to the appellant dated 21 March 2016. This letter was sent to the appellant's correct address. He submitted that the respondent was not told that the appellant was still disputing the revocation of her child's passport but based on the letter from the Passport Office and the British Nationality Proof of Paternity Regulations 2006, the appellant has not established that the child is British.
13. The appellant's representative submitted that the Judge did not take into account the amendment dated 2006 to the British Nationality Act but the Presenting Officer submitted that there has been no statutory challenge put forward for the appellant to argue that the Passport Office has got it wrong. This would require a judicial review in the High Court. He submitted that the child's passport has been taken and is being withheld by the Passport Office at the date of this hearing. He submitted that the appellant knew where the passport was and the burden of proof is on the appellant to show that her daughter is British and that having a passport does not prove her nationality. He submitted that in any case the British passport has now been revoked and although the 2006 amendment to the British Nationality Act refers to DNA test reports there are no DNA test reports. The Presenting Officer submitted that there has been no real challenge to the credibility findings in the First-Tier Judge's decision.

14. With regard to the grant of permission the Presenting Officer submitted that the fact that the appellant's representative was looking at his phone during the hearing was not a good reason for permission being granted as he did this before the parties and he made clear what he was looking up.
15. I was directed to paragraph 57 of the decision which deals with Section 50(9A) of the British Nationality Act 1981 and the Presenting Officer submitted that the Judge was entitled to make the decision he did based on what was before him. It is clear that the child's father was not the appellant's husband at the child's date of birth and the appellant was married to someone else at that date.
16. The appellant's representative submitted that only the pertinent issue requiring to be dealt with is that the Judge considered the 1981 Act without the amendment thereto. He submitted that the appellant's evidence is that her dowry to her husband [MO] was returned and that was the end of the customary marriage in 2010. I pointed out that there is no evidence, apart from the appellant's verbal evidence, about this and that when the appellant came to the United Kingdom she said she was married to [MO] on her visit visa application. The representative submitted that the appellant's oral evidence is sufficient and he submitted that the Presenting Officer has made reference to the findings of fact by the First-Tier Judge and they are irrelevant. What has to be considered is the law. I pointed out that the findings of fact were not challenged by the appellant and the representative submitted that the 2006 amendment to the British Nationality Act is sufficient. DNA evidence is not required. This is clearly an alternative and the respondent has not properly interpreted the law.
17. He submitted that the letter from the Passport Office to the appellant dated 21 March 2016 has no postcode thereon and the appellant states that she did not receive it. He submitted that the British Nationality Act considered by the Judge has been overtaken by the 2006 amendment which he did not take into account and it is clear that the appellant's child is British.
18. I asked the representative if what he is saying is that paragraph 3 of the Passport Office's letter is incorrect and he said that is correct and he asked me to allow the appeal.

Decision and Reasons

19. I am not concerned with the permission referring to the appellant's representative looking at his mobile phone in court at the First-Tier Hearing, as this was done with the knowledge of the parties at the hearing and has been adequately explained.
20. The letter from the Passport Office dated 21 March 2016 was sent to the appellant and there are credibility issues raised in the First-Tier Judge's decision. The letter states that the claim about the British citizenship of the child was determined on the basis that [CD] is a British citizen and was named on the child's birth certificate as her father within 12 months of her

birth. This is dealt with in the British Nationality Proof of Paternity Regulations 2006. There were however issues raised about the birth certificate, which were dealt with by the Judge in his decision. At paragraph 48 the Judge refers to the mistakes in the birth certificate. Mr [D] had to attend the Registry Office in 2012 to give his personal information for the child's second birth certificate as the father's name had been omitted in the first birth certificate. Mr [D] supposedly attended to give his details and gave the wrong country of his birth and gave his mother's maiden name rather than his own surname. The Judge was therefore not satisfied with the process, when Mr [D]'s name was added to the birth certificate. It was this birth certificate that established that the child had a British father. The 2006 amendment to the Act states that (a) the person must be named as the father of the child on a birth certificate issued within one year of the date of the child's birth, or (b) the person must satisfy the Secretary of State that he is the father of the child. As there were issues with the father's particulars on the birth certificate he had to satisfy the Secretary of State that he is the father of the child. He was to produce DNA evidence but did not do so. The Judge finds that the DNA evidence may have been obtained but not produced. The Secretary of State clearly was not satisfied that Mr [D] is the father of the child but there were other issues. The appellant's representative stated that he does not believe the third paragraph of the letter from the Passport Office dated 21 March 2016:-

"It has since come to light from information provided by UKVI that you are married to [MO]. Section 50(9A) of the British Nationality Act 1981 states that the father of a child is the mother's husband at the time of the birth irrespective of any other evidence. Therefore for the purposes of British Nationality law [MO] is [M]'s father. This means that [M] did not automatically acquire British citizenship from her birth as claimed as neither parent was settled in the UK at the time of the birth."

21. The letter goes on to state that the passport of [M] has been revoked as she has no entitlement to that document and the passport was returned to HM Passport Office by UKVI. The letter goes on to state that British citizenship is a matter of law and not one which HM Passport Office has any discretion about and the law is that the appellant's husband, at the date of the birth of the child, is the child's father according to law.
22. The Judge in his decision refers to credibility issues. None of his findings of fact were disputed. He was not satisfied with the birth certificate and he states that the appellant has not discharged the burden of proof relating to the appellant's child's nationality. He also points out that the child is very young, that the appellant is an overstayer and has always been here in a precarious situation.
23. The Judge has given clear findings of fact and based on what was before him he has dismissed the appeal. I find that he was entitled to reach this decision.

Notice of Decision

24. The First-Tier Tribunal Judge's decision promulgated on 18 October 2017 contains no material error of law and must stand. The appellant's appeal is therefore dismissed.
25. Anonymity has not been directed.

Signed

Deputy Upper Tribunal Judge Murray

Date 30 August 2018

A handwritten signature in cursive script, appearing to read "Judge Murray".