



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

Appeal Numbers: EA/13723/2016
EA/13725/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 17 December 2018**

**Determination & Reasons
Promulgated
On 08 January 2019**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

**ALEX [B]
JATTU [B]
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

ENTRY CLEARANCE OFFICER-UKVS SHEFFIELD

Respondent

Representation:

For the Appellants: Mr A. Alhadi, Legal Representative

For the Respondent: Mr N. Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This appeal comes back before me following a hearing on 3 August 2018 which resulted in my setting aside the decision of the First-tier Tribunal ("FtT") for error of law in relation to the appellants' appeals against the respondent's decisions to refuse them family permits under the Immigration (European Economic Area) Regulations 2006.

2. I quote in full from my decision made after that hearing and from which the further background to the appeal can be seen.

“DECISION AND DIRECTIONS

1. Although the appellant in these proceedings is the Entry Clearance Officer, I continue to refer to the parties as they were before the First-tier Tribunal.
2. The appellants are citizens of Sierra Leone and were born on 8 January 1999 and 3 July 2000, respectively. On 23 September 2016 they applied for family permits as extended family members of their uncle in the UK, Salia [B], a citizen of Norway. The applications were refused because, amongst other things, the respondent was not satisfied that the appellants had established that they were related to the sponsor as claimed.
3. The appellants appealed against those decisions and their appeals came before First-tier Tribunal Judge Malone (“the Ftj”) on 20 April 2018 whereby he allowed the appeals.
4. In relation to his conclusions in terms of relevant financial dependence by the appellants on the sponsor, there is no challenge on behalf of the respondent. He concluded that they are, and by inference and looking at his conclusions, were dependent on the sponsor for their essential needs.
5. The aspect of the Ftj’s decision that is challenged is his conclusion in relation to the asserted family relationship between them.
6. The respondent’s decision said in respect of the first appellant that he had provided a copy of his birth certificate showing his date of birth but it was noted that the birth was registered on 8 April 2009, 10 years after his date of birth. It was concluded that no satisfactory explanation had been given as to why the birth was not registered earlier. In addition, although he had provided the sponsor’s birth certificate, the sponsor’s birth was not registered until 15 February 2009, over 40 years after his birth. The respondent concluded that the appellant had not provided evidence that would demonstrate the parentage of his biological father or that the sponsor is the brother of the appellant’s father. In relation to the second appellant, the respondent said that that appellant had provided no documents relating to the time of her birth or any documents that would demonstrate her parentage. The same point was made in relation to the sponsor’s birth certificate.
7. In his conclusions the Ftj referred to the sponsor’s assertion that he was the appellants’ paternal uncle. He said that the sponsor was one of four siblings and he has two sisters living in Sierra Leone. His elder brother, Mohamed, the appellants’ father, was born on 20 August 1966 and died on 20 December 2004. The sponsor was said to have been born on 15 November 1968 and his brother died when the appellants were very young, aged 5 and 3 years, respectively. That was the evidence put before the Ftj.
8. At [12], very properly concluding that he needed first to decide whether the appellants had established that they were related to

the sponsor, he referred to copy birth certificates for the appellants and the sponsor, as well as for Mohamed [B], said to be their father, as well as the latter's death certificate. He said that the death certificate confirmed his date of birth and his date of death.

9. He then said as follows:

"13. Mr. [Salia B]'s birth certificate names his mother as Jattu [C] and his father as Alhji Karamoh [B]. Mohamed [B]'s birth certificate has been enlarged to such an extent that it is too large for A4 paper. Some of the document is missing. However, it shows his date of birth as 20 August 1966 and his mother as Fudie Jattu [B] and his father as Kuromoh [B]. As will be apparent, the names on Mr. [Salia B]'s birth certificate do not exactly match those of Mohamed [B]'s.

14. However, on occasion, one has to use common sense when deciding appeals of this nature. I consider, on the balance of probabilities, that the individuals named on those two birth certificates are the same. The original birth certificates would have been completed by individuals who might well have spelt the names given differently. If the birth certificates provided are forgeries, I would have expected the entries to have been matched perfectly.

15. Mr. [Salia B] stated that he instructed one of his sisters to attend the Registry to have the birth certificates re-issued. He states they were issued on the same day by the same registrar. I do not know when they were re-issued. All the birth certificates bear different dates. Mr. [Salia B]'s is dated 15 February 2009, Alex's 8 April 2009, Jattu's 4 August 2009 and Mohamed [B]'s 20 August 2009. I cannot explain why the birth certificates bear different dates. Mr. [Salia B] told me that the originals had been lost. Sierra Leoneans had to apply for their certificates to be re-issued after the war, because many buildings were badly bombed and documents were lost on a large scale.

16. As I understand it, Mr. [Salia B] asked his sister to obtain birth certificates for the purpose of the Appellants' family permit applications. The dates they bear might have been the dates when they were originally re-issued. I would have expected the sister to have obtained the copies before me in 2016. I reiterate, that if the birth certificates before me were forgeries, I would have expected them to have tallied perfectly."

10. The respondent's complaint about the Ftj's decision in this respect, and upon which permission to appeal was granted, was what the Ftj said at [14] and [16] to the effect that if the birth certificates were forgeries he would have expected the entries to have matched perfectly. Relying on *A v Secretary of State for the Home Department* (Pakistan)* [2002] UKIAT 00439, it is contended that the sponsor had not shown that the birth certificates could be relied upon and the issues in relation to those documents remained unexplained. It is argued that it was

perverse of the FtJ to accept those documents on the basis that because they do not tally they are not forged.

11. In submissions on behalf of the respondent Ms Everett relied on the grounds. She pointed out that there were various issues in relation to the birth certificates but the FtJ did not resolve those issues. It could not be a sufficient basis to accept the documents that there were discrepancies in them which meant that they could not be forgeries.
12. Mr [B], the sponsor, who appeared on behalf of the appellants, said that all the evidence he had given to the FtJ was true. He had been asked a lot of questions and he had answered all of them. He said that he was getting old and needed his children around him.

Conclusions

13. There is no doubt, and the FtJ found as much, that there were inconsistencies between the birth certificates of Mohamed [B], said to be the appellant's father, and that of the sponsor Salia [B]. The obvious inconsistency was in the names of the mother and father of Mohamed [B] and the sponsor. The FtJ said that the names do not exactly match. However, as far as one can tell from the FtJ's decision there was no obvious basis upon which he could have based his conclusion that the original birth certificates would have been completed by individuals who might well have spelt the names given differently. Furthermore, stating that he would have expected the entries to have matched perfectly if the birth certificates were forgeries, does in my view border on the perverse. There is no rational basis for the conclusion that a set of forged documents would match perfectly; they might or they might not.
14. Furthermore, at [15] it is recorded that the evidence before him, and indeed as reflected in the sponsor's witness statement, was that the re-issued certificates were issued on the same day by the same registrar. However, as the FtJ pointed out at [15], all the birth certificates bore different dates of reissue and the FtJ said that he could not explain why the birth certificates bore those different dates.
15. Whilst the FtJ accepted, and was entitled to accept, that there may have been a need for certificates to be reissued after the war because of damage to buildings and the loss of documents and so forth, he did not express any view about the inconsistency between what he was told about the dates of reissue of the certificates and the dates that in fact appear on them. He said at [16] that the dates they bear might have been the dates that they were originally reissued. But even if that is the case, and I cannot see in the evidence any support for that conclusion, that does still not explain the inconsistency. He reiterated at [16] that if the birth certificates before him were forgeries he would have expected them to have tallied perfectly. That in my judgement is an unsustainable conclusion, at least on the basis of the evidence that was before him.

16. Furthermore, the documents did not in fact have to be forgeries as such. The respondent did not need to, and as far as one can tell did not, make that assertion. All that the Ftj had to decide was whether the documents were reliable when seen in the context of the evidence overall. The reliability of the documents was plainly relevant in terms of establishing the relationship between the sponsor and the appellants. The documents need not have been forged if they were birth certificates that related to persons other than relatives and were simply put forward in an attempt to persuade the entry clearance officer that the sponsor and the appellants were relatives.
 17. I bear in mind that the Ftj found the sponsor to have given credible evidence. However, given the unsustainable reasons given by the Ftj in terms of his assessment of the documentary evidence and its direct connection to the issue of the relationship between the parties, his positive credibility assessment is no basis for concluding that his decision contains no, or no material, error of law.
 18. In the circumstances, I am satisfied that the Ftj erred in law in his assessment of the relationship between the appellants and the sponsor in the light of his reasoning in accepting the reliability of the documentary evidence.
 19. Accordingly, his decision must be set aside because the error of law is material. I do not consider that it is appropriate for the appeal to be remitted to the First-tier Tribunal in circumstances where a number of findings made by the Ftj which are not infected by the error of law, in terms of dependency, can be preserved. Accordingly, the appeal will be re-listed before the Upper Tribunal for further hearing.
 20. It is important that the appellants and the sponsor take into account what I next say about the documentary evidence. The Ftj pointed out that Mohamed [B]'s birth certificate had been enlarged to such an extent that it was too large for A4 paper and that some of that document was missing. A complete copy of that birth certificate needs to be provided for the resumed hearing before the Upper Tribunal so that all aspects of it can be seen. That document is at page A7 of the appellants' bundle. It is reasonable to conclude that the reissued birth certificate can be photocopied in a way such that all of it can be seen.
 21. At the resumed hearing, it seems to me that the only matter in issue will be the relationship between the appellants and the sponsor. All other matters appear to have been resolved in the appellants' favour. As I have indicated, there was no challenge to those other aspects of the Ftj's decision and any findings that are not infected by the error of law can stand."
3. As is apparent from my earlier decision at [21] the focus for the re-making of the decision is the relationship between the appellants and the sponsor. At the hearing today, 17 December, on behalf of the appellants DNA evidence was provided. In summary, that establishes that the first appellant, Alex, is related to the sponsor, Salia [B], as uncle and nephew or

grandfather and grandchild. However, the DNA evidence establishes that there is no close biological relationship between the second appellant, Jattu, and the sponsor. The claimed relationship as between the first appellant and the sponsor is as uncle and nephew.

4. In the circumstances, the parties were in agreement that the appropriate course was for the appeal of the first appellant to be allowed and the appeal of the second appellant to be dismissed. I agree.
5. It was confirmed on behalf of the appellants that there was no other ground of appeal before me other than that under the Immigration (European Economic Area) Regulations 2006.

Decision

6. The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision in relation to both appellants having been set aside, I re-make the decision by allowing the appeal of the first appellant and dismissing the appeal of the second appellant.
7. The appeal of the first appellant is allowed.
8. The appeal of the second appellant is dismissed.

Upper Tribunal Judge Kopieczek

17/12/18