



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-003648

First-tier Tribunal No: EA/12066/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 14 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**ELIMAR YAW AMPIAH**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**AN ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr Azmi, instructed by Sillwaters Solicitors.

For the Respondent: Mr Gazge, a Senior Home Office Presenting Officer.

**Heard at Birmingham Civil Justice Centre on 6 April 2023**

**DECISION AND REASONS**

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Loke ('the Judge'), promulgated on 6 April 2022, in which the Judge dismissed the appeal against the refusal of her application for a family permit under the European Union Settlement Scheme (EUSS).
2. The sole basis of refusal of the application was that the Entry Clearance Officer ('ECO') was not satisfied the appellant had provided sufficient evidence to show she was a family member of a relevant EEA citizen.
3. The Judge determined the merits of the appeal on the papers as requested by the appellant. An earlier direction had provided for all evidence being relied upon to be served no later than 1 April 2022. At [6] the Judge writes:
6. The Appellant had previously requested an extension of time to file and serve his bundle. This was granted by the Tribunal who directed that a bundle be filed and served by 1 April 2022. No bundle has been filed in accordance with the Tribunal's directions. No further extension of time has been sought and no explanation provided as to why no evidence has been filed.

4. The Judge considered whether it was appropriate to adjourn the case in the interests of fairness but decided to proceed to determine the matter on the papers as no application for an adjournment had been made, no explanation for the failure to serve the bundle in accordance with directions had been furnished, and the matter had been outstanding for some eight months.
5. The appellant sought permission to appeal asserting that the appeal bundle was served upon the Tribunal by email on 25 March 2022 in accordance with directions. The grounds refer to a printout of an email showing date of service of the appellant's bundle to Taylor House and to the Presenting Officers Unit on 25 March 2022 at 11:45 AM.
6. Permission to appeal was refused by another judge of the First-tier Tribunal on 20 May 2022, who wrote:

The grounds raise no discernible error of law in any aspect of the Judges decision. On the contrary, the ground simply asserts that the Judge's decision cannot stand, because *"It appears that although the Appellant's bundle was served on 25 March 2022, this was not before the IJ when considering the case at the substantive hearing on 5 April 2022"* [9]. Conspicuously, no documentary evidence has been adduced in support of this assertion. Correspondingly, after conducting internal enquiries, I received confirmation (on 20 May 2022) that appellant's bundle is recorded as incoming on the Appellant's digital file, and neither is there any record on Aria of an incoming Appellant's bundle. I am therefore obliged to find there is insufficient evidential basis for accepting that an Appellant's bundle was served on 25<sup>th</sup> March accordingly, there can be no arguable error of law arising therefrom.

7. The application for permission to appeal was renewed to the Upper Tribunal and considered by Upper Tribunal Judge Grubb on 28 September 2022. In granting permission Judge Grubb wrote:
  2. The grounds allege a procedural error in that the appellant, in accordance with the FtT's directions, served a bundle of documents on the FtT on 25 March 2022. However, in reaching a decision the judge noted that no bundle had been served on the FtT (see [6]). The grounds assert that an emailed dated 25 March 2022 is attached to the grounds which shows service on Taylor House and the POU on 25 March 2022 at 11.45am (see para 8) along with an automated response from Taylor House (see para 14). However, neither of these documents appears in the digital file to which I have access. Clearly, if a bundle was received there has been an arguable procedural error in not considering it. The assertion is very specific in the grounds and it is unfortunate that the supporting evidence does not appear in my digital file. I am concerned that there might be some oversight and on that basis I grant permission so the matter can be investigated before the UT to avoid any potential injustice.
  3. **It will be for the appellant to establish by evidence his assertion that the bundle was, indeed, served on the FtT as he claimed.**
  4. For these reasons, permission to appeal is granted. I draw the appellant's attention to para 3 above.

## **Discussion**

8. Before the Upper Tribunal Mr Gazge confirmed the Secretary of State had received the bundle that had been served in accordance with the directions. As the document was sent to the ECO's representatives at the same time it was sent to Taylor House it was accepted by Mr Gazge that the bundle had been served in accordance with directions.
9. I find through no fault of the Judge that there has been a procedural irregularity sufficient to amount to a material error of law in the failure, for whatever reason, of those responsible for placing the evidence that had been filed in

accordance with the directions before the Judge, before the Judge proceeded to determine the appeal. I find, as a result, the appellant has not had the opportunity to have her case properly considered which is unfair. I set the determination aside.

10. In a skeleton argument filed for the purposes of the appeal, by the appellant's solicitors, it is written:
  7. The relevant law in this case is paragraph FP6.(1) of Appendix EU (Family Permit).
  8. We refer to the birth certificates on pages C3-C4 of the appellant's bundle. The appellant's father's name clearly appears on the birth certificates.
  9. We point out that the ECO accepts that the appellant's hand written birth certificate and biometric birth certificates were submitted. The ECO raises no issues with the birth certificates themselves.
  10. We submit that the birth certificates are genuine and were issued by the Ghana Birth registry. The details on the birth certificates are exactly the same, the entry number and date of registration are the same on both birth certificates.
  11. The Respondent's only issue is the fact that the appellant's passport was issued before his biometric birth certificate.
  12. In response to this, we refer to paragraphs 9-11 of the sponsor's witness statement. The sponsor explains that when a child is born in Ghana, that child is first issued with a handwritten birth certificate within the first year of birth. The sponsor explains that the handwritten birth certificate can be used to obtain a passport if the passport is again issued within the first year of birth.
  13. The sponsor's explanation essentially is that the appellant's passport was issued with one year of his birth and as such the handwritten birth certificate was still acceptable evidence for his passport.
  14. We refer to the letter from the Ghana Birth Registry on page C2 of the appellant's bundle. In their letter, the Registry confirms that the appellant's birth certificates are genuine.
  15. The Ghana Birth Registry goes on to confirm that "a Ghanaian passport application is only allowed with hand written birth certificate within the first year of birth."
  16. We submit that as the appellant was born on 14th November 2019 and his passport was issued on 1st April 2020 it is clear that as explained in the Ghana Birth Registry letter, he was permitted to use his handwritten birth certificate for the passport application.
  17. The fact that the appellant's biometric birth certificate was issued later did not affect the validity of appellant's passport or birth certificates.
  18. We submit from the Ghana Birth Registry letter that there is sufficient evidence that the appellant is related to the sponsor.
  19. Given that this was the only ground of refusal, we submit that there is ample evidence to support our client's case.
  20. In the circumstances, the Respondent's decisions of 15th July 2021 was not in accordance with the law.
  21. We respectfully submit that the appellant's appeal should be allowed.
11. Mr Gazge was asked whether he had any view upon the proposal set out in the skeleton argument and whether the ECO wished to oppose the appeal in light of the documentation that was now available. He confirmed he did not and was happy for the Upper Tribunal to determine the appeal on the papers.
12. The sole issue taken by the ECO related to the issue of identity and whether the appellant had established she was a family member of a relevant EEA citizen. There is no challenge to the validity of the documents that have been provided

in the bundle which were clearly accepted by the Ghanaian authorities as evidence of the appellant's birth on the 14<sup>th</sup> of November 2019. The Ghanaian authorities clearly accepted the production of the handwritten birth certificate in connection with the passport application, resulting in the grant of a passport to the appellant on 1 April 2020. Insufficient evidence was adduced to show that the appellant's comment that a handwritten birth certificate is acceptable with a passport application, provided that application is made within the first year of birth, is not true.

13. I accept Ghana is introducing biometric birth certificates which require fingerprints, but it is not made out they do not issue paper birth certificates (or did not do so in November 2019) when the appellant was born.
14. Having considered the available evidence in the round I find that the appellant has discharged the burden of proof upon her to the required standard to show that she is a family member of the relevant EEA citizen as claimed and, accordingly, I allowed the appeal.

### **Notice of Decision**

15. Through no fault of the Judge I find there has been a procedural irregularity sufficient to amount to a material error of law and, accordingly, set the determination aside.
16. I substitute a decision to allow the appeal.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**6 April 2023**