



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

Appeal Number:  
UI-2022-000626

**THE IMMIGRATION ACTS**

**Heard at: Field House  
On: 2<sup>nd</sup> February 2023**

**Decision & Reasons Promulgated  
On: 11<sup>th</sup> May 2023**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Beatrice Gyau  
(no anonymity direction made)**

Appellant

**And**

**Border Force Officer, Birmingham Airport**

Respondent

**For the Appellant: Mr Hingora, Counsel instructed by Abbott Solicitors  
For the Respondent: Mr Avery, Senior Home Office Presenting Officer**

**DECISION AND REASONS**

1. The Appellant is a national of Ghana born on the 16<sup>th</sup> November 2000.
2. On the 20<sup>th</sup> December 2021 the First-tier Tribunal (Judge Blackwell) dismissed her appeal under the Immigration (European Economic Area) Regulations 2016. By my decision dated the 20<sup>th</sup> September 2022 I set that decision aside. What follows is the 'remade' decision in the appeal, following a hearing at Field House which took place on the 2<sup>nd</sup> February 2023.

## **Background**

3. Sometime in 2019 the Appellant was issued with a family permit enabling her to enter the United Kingdom under the Immigration (European Economic Area) Regulations 2016. She arrived at Birmingham on the 6<sup>th</sup> November 2019 accompanied by her brother. They both sought entry on the basis that they were the family members, specifically the children, of Mr George Gyau Mansah, a Spanish national exercising treaty rights in the UK.
4. The Appellant was refused entry, on the basis that the birth certificate she had produced as evidence of her relationship to Mr Mansah was a forgery. Her brother was admitted. She was returned to Ghana but subsequently permitted to return, being given temporary admission to enable her to pursue this appeal. She has been in the UK since 2019.

## **The Decision of the First-tier Tribunal**

5. The matter in issue before the First-tier Tribunal was whether the evidence relied upon by the Border Force Officer (BFO) was of sufficient weight to discharge the burden of proof required to make out an allegation of forgery. The Tribunal found that it was, and dismissed the appeal.

## **The Appellant's Appeal to the Upper Tribunal**

6. The Appellant was granted permission to appeal against Judge Blackwell on the grounds that:
  - (i) It was not reasonably open to the Tribunal to conclude that the evidence adduced by the BFO, a 'Document Verification Report' (DVR), was sufficient to discharge the burden of proof; and
  - (ii) The Tribunal's conclusion that the Appellant lacked credibility was not supported by any reasoning; and
  - (iii) The Tribunal failed to consider material evidence produced which supported the contention that the Appellant is Mr Mansah's daughter, namely several properly sworn affidavits from family and friends in Ghana.

## **Findings on Error of Law**

7. In my decision of the 20<sup>th</sup> September 2022 I took these grounds in reverse order, and found as follows.
8. Ground (iii) above is made out. The Appellant produced sworn affidavits from three witnesses in Ghana who attested that in their knowledge she is the daughter of Mr Mansah: these witnesses were respectively the Appellant's claimed paternal grandmother, her claimed paternal aunt and a family friend. Each gave detailed

testimony about her family circumstances and explained why they believe her to be the daughter of Mr Mansah. There is no acknowledgment of any of this evidence in the First-tier Tribunal's decision. Furthermore the Sponsor Mr Mansah gave his own oral evidence, none of which is weighed in the balance in the final decision. It is an error of law to fail to take the evidence of witnesses, both written and oral, into account.

9. Ground (ii) is made out. At paragraph 32 of its decision the Tribunal states: "I do not find the appellant to be a credible witness. There are internal inconsistencies with her evidence". It goes on to identify just one discrepancy as follows:

"In her written witness statement, she says that her mother was hiding her from her father and she did not meet her father until her mother had vanished from her life. However, in cross examination she suggested that when she first met her father she knew he was her father because her mother told her so".

10. Having read all of the statements I struggle to see how that was a discrepancy at all. The fact that her mother told her that George Mansah was her father - an assertion reinforced by Mr Mansah's mother, sister and wider family from the time that the Appellant was 8 - was in no way inconsistent with her claim that she has not lived with her mother for some years. In fact the statements made by various family members about this matter were all wholly consistent. In the absence of any coherent reasoning to support it, the Tribunal's conclusion that the Appellant lacks credibility is set aside.

11. Before me the Respondent argued that any omissions identified by grounds (ii) and (iii) could be overlooked given the central conclusion that the Tribunal reached on the DVR. I am unable to accept that submission. The whole point was that all of the evidence had to be weighed in the round. This the Tribunal did not do. It instead accepted uncritically the evidence provided by the BFO, without considering that evidence alongside the consistent evidence of four other witnesses that this relationship is as claimed. It follows that the entire decision must be set aside.

### **The Adjournment**

12. Having set the decision of the First-tier Tribunal aside, one aspect of the case continued to trouble me. As I explain at the end of my 'error of law' decision, it was this:

"I am not in a position to make a final decision today. That is because of a quite troubling aspect of this case. When the Appellant arrived at Birmingham airport and was refused entry she told the BFO that she was unable to return to Ghana because there was no one to look after her there. She was living in a house with other women and was being made to do sexual things that she did not wish to do. She claimed

asylum. When I enquired about these matters at hearing I was told that the Appellant's asylum claim is outstanding. She has not, since the 6<sup>th</sup> November 2019, even been interviewed. The reason for that delay, I must assume, is that she was, on the basis of what she told that BFO, referred through the National Referral Mechanism to the Competent Authority on modern slavery. I am told that at some point in 2020 the Competent Authority found there to be reasonable grounds to conclude that she has been a victim of trafficking. There does not appear to have been any progress in that investigation since then. Ms Rushforth [*who appeared for the BFO at the initial hearing*] considered it possible that the Competent Authority was awaiting the judgment of this Tribunal in this appeal. If that is the case, that is unfortunate, since the Appellant has since 2019 been living with Mr Mansah, a man who is quite evidently old enough to be her father. If the Respondent did not believe that he was *in fact* her father it is very difficult to understand why she was given temporary admission to his address, given her young age and the evidence she had given of trafficking. I would therefore like to know:

- a) What the reasonable grounds decision said and when it was taken;
- b) If that decision is devoid of reasoning, what the evidence was that led the CA to its preliminary conclusion;
- c) Why there is a delay in Conclusive Grounds decision being taken".

13. On that basis the matter was adjourned. At least two further case management hearings followed but with little satisfaction as to the concerns I expressed. To date no explanation has been offered by the BFO as to why this young potential victim of trafficking was granted temporary admission in the manner she was, or whether any regard was had to safeguarding policies. No decision has been taken on her asylum claim, which at the date of the resumed hearing remained outstanding. I am told that the Competent Authority in the end found no conclusive grounds to say that the Appellant had been trafficked, but the reasons for that decision were not communicated to me.

14. Given the long delay that there had already been, the parties agreed that it was appropriate for the Tribunal to proceed to determine the Appellant's claim under the Immigration (European Economic Area) Regulations 2016. If she were to succeed consideration would be given to her withdrawing her outstanding asylum claim; should she fail then obviously it would be a matter for her whether she wished to supplement that claim with a human rights claim based on the fact that she has been living in the UK since 2019

with people whom she claims to be members of her family.

### **The Re-Made Decision**

15. At the resumed hearing I heard oral evidence from Mr Mansah, and submissions from the parties. It was determined that there was no need to call the Appellant herself.
16. The first question to be determined is whether the birth certificate relied upon by the Appellant is fraudulent. A minute sheet produced by the BFO at Birmingham Airport on the 6<sup>th</sup> November 2019 explains that at 13.55 the following note was entered into the log:

Pax approached the PCP of BFO Aldridge arriving from Brussels, flight number, SN 2037 at 13:30 (copy aside). Pax was travelling with a half brother aged 11 (BHM/5297997) and a man she claimed was her father (BHM/5298029). Pax presented a GHA PPT with an endorsed EEA FP family permit along with a birth certificate. There has been a trend of GHA nationals obtaining these permits based on counterfeit birth certificates. For that reason BFO Aldridge sat the passenger down for further checks.
17. At 14.45 hrs an entry is made that “Birth certificate was examined by forgery officer H Richards and found to be fraudulently obtained (see copy aside)”.
18. The birth certificate produced by the Appellant at Birmingham Airport is appended to the Respondent’s bundle. It states that she was born on the 16<sup>th</sup> November 2000 in the Prestea Government Hospital in Western Region and that the birth was registered by her father on the 12<sup>th</sup> December 2000.
19. A document verification report is produced. It is dated the 18<sup>th</sup> January 2021: obviously this post-dates the investigations made by forgery officer H Richards by well over a year. No direct evidence has been supplied from H Richards, or anyone else at Birmingham Airport, about what enquiries were made between 13.55 and 14.45 on the 6<sup>th</sup> November 2019 that led to the Appellant being refused entry. The report itself has been redacted so that the name of the author is not visible. It records that contact was made with the Birth and Deaths Registry in Accra, but the name and position of the person contacted is also redacted. The report states that a photograph of the birth certificate was sent to the contact in order to verify whether it was genuinely issued by the registry, and that internal checks have resulted in an assessment that the document is ‘fraudulent’. At the bottom it says “screenshots to demonstrate outcome of this official verification process is shown below”. Beneath this text is a faint and small screenshot of what looks like it could be a birth certificate. None of the text on that document is

discernible. Comparing it to the actual birth certificate it looks as if the document depicted in the screenshot is either a different, considerably shorter, document, or it could be the same document, but with the bottom half cut off and omitted from the picture. The DVR is not signed.

20. Against that is the evidence referred to in the 'error of law' decision above, namely the evidence of the Appellant, Mr Mansah and several other witnesses that they are, or believe themselves to be, father and daughter. As to how he obtained this birth certificate, Mr Mansah explained that a contact in Ghana referred to throughout proceedings as 'Uncle Charles' obtained it on his behalf from the Appellant's mother. Mr Mansah had for some time lost contact with the Appellant's mother but had "sent someone to look for her". It took a while to find her, but once he had, she produced a birth certificate as requested. He is no longer in contact with his former partner, but he understands that she has now moved to Cote D'Ivoire. The birth certificate that she had was the smaller, short version you get in hospital. She gave that to Charles, who used it to obtain the long form version that the Appellant had on her when she arrived. Mr Mansah reiterated that as far as he is concerned the certificate is real. He knows that the Appellant is his daughter, and he has no reason to believe that Charles would have obtained a fraudulent certificate in place of a genuine one.
21. I have considered all of this evidence in the round. Having done so I am unable to conclude that the Respondent has discharged the burden of proof. The DVR itself is unsigned and the author is unknown. No explanation has been given as to why it is dated over a year after the enquiries in question. The person in the registry in Accra who purportedly conducted the checks is not named. No explanation is given as to why the document is assessed as fraudulent. Most importantly it is simply not possible to say with any degree of certainty that the document sent to Accra by 'screenshot' and reproduced in the DVR is in fact the birth certificate relied upon by the Appellant, to get her family permit and later produced on arrival in the UK. All of this is balanced against the consistent evidence produced for the Appellant that she and Mr Mansah regard each other as daughter and father. As I observe above, it can also be inferred that this was a matter of which the BFO was himself satisfied back in December 2019, given that he bailed the Appellant to Mr Mansah's address. Finally I would note that the Respondent has had over three years to produce cogent evidence of forgery, and this he has failed to do. Accordingly I am satisfied that the allegation of fraud is not made out.
22. It follows that the original decision of the ECO to accept that the Appellant is a family member of Mr Mansah under Regulation 7 of the Immigration (European Economic Area) Regulations 2016 is

notionally restored, since the only ground for revoking that family permit was wrong.

23. The difficulty for the Appellant, as Mr Avery rightly observed, is that time has moved on. At the time that she obtained her family permit, and arrived at Birmingham Airport, she was a family member under Regulation 7. She was the direct descendant of an EEA national exercising treaty rights who was under the age of 21. She is no longer under the age of 21. That means that different rules now apply, and that she must demonstrate that she is dependent upon her dad:

**7.- (1) In these Regulations, “family member” means, in relation to a person (“A”)—**

...

**(b) A’s direct descendants, or the direct descendants of A’s spouse or civil partner who are either—**

(i) aged under 21; or

(ii) **dependants of A**, or of A’s spouse or civil partner;

...

24. As of the date of the appeal before me on the 2<sup>nd</sup> February, the Appellant would, submits Mr Avery, need to demonstrate dependency on her father. This she could not do, since as Mr Mansah very candidly acknowledged in his oral evidence, he is currently experiencing significant financial problems. He states that although he had always supported his daughter the stress of all of this has taken its toll on him and he has been signed off work with anxiety and depression. He has lost two jobs because of his inability to focus. At the date of the appeal Mr Mansah reports being unable to “make ends meet”. He has no source of income from employment; since July 2022 he has been in receipt of universal credit, which he uses to pay the rent and buy food for the household. He avers that he would like to be able to go back to supporting his family, but at the moment he feels too unwell.

25. In response Mr Hingora sought to draw an analogy between the position of ‘dependent’ family members such as the Appellant under Regulation 7, and extended family members under Regulation 8. He pointed out that the latter are able to evidence dependency by doing no more than pointing to their membership of a household of an EEA national. Since Mr Mansah remains the head of the household, it follows that his daughter should be able to evidence dependency with reference only to that: see Dauhoo (EEA Regulations – reg 8(2)) [2012] UKUT 79 (IAC). I am not satisfied that such an analogy can be drawn, since the language of ‘household’ comes

specifically from Regulation 8: it is not an interpretation of what the word 'dependency' means. The term 'dependency' is not defined at Regulation 2, but in the absence of such definition, it should be given its ordinary meaning. At present, the Appellant is not dependent upon her father, albeit that she remains part of his household. She no longer therefore qualifies as his 'family member'.

26. That brings me to the logical conclusion of Mr Hingora's submissions, which is that the Appellant should be considered, in the alternative, to be an extended family member under Regulation 8:

**Extended family member"**

8.- (1) In these Regulations "extended family member" means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies a condition in paragraph (2), (3), (4) or (5).

(2) The condition in this paragraph is that the person is—

(a) a relative of an EEA national; and

(b) residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of the EEA national's household; and either—

(i) is accompanying the EEA national to the United Kingdom or wants to join the EEA national in the United Kingdom; or

(ii) has joined the EEA national in the United Kingdom and continues to be dependent upon the EEA national, or to be a member of the EEA national's household.

...

(6) In these Regulations, "relevant EEA national" means, in relation to an extended family member—

(a) referred to in paragraph (2), (3) or (4), the EEA national to whom the extended family member is related;

(b) referred to in paragraph (5), the EEA national who is the durable partner of the extended family member.

27. I am satisfied that the Appellant is not a family member as defined by Regulation 7. I am however satisfied that prior to her arrival in the UK she was dependent upon her father, and that since her arrival she has been a member of his household. In those



circumstances she is now an extended family member and the appeal is allowed on that limited basis. It will be a matter for the Respondent to consider what form of leave will flow from that.

**Decision**

28. The appeal is allowed under the Immigration (European Economic Area) Regulations 2016.

Upper Tribunal Judge Bruce  
29<sup>th</sup> March 2023