



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

Case Nos: UI-2022-003393  
UI-2022-003396  
UI-2022-003394  
First-tier Tribunal Nos: EA/52542/2021  
EA/51871/2021  
EA/51872/2021  
IA/10272/2021 & Others

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 30 March 2023**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**  
**DEPUTY UPPER TRIBUNAL JUDGE BAGRAL**

**Between**

**Mrs Hafsatu Bella Jeng**  
**Master Abbas Mackie Jeng**  
**Master Mohamed Jeng**

Appellant

**and**

**Entry Clearance Officer**  
**(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr N O'Brien, instructed by Edmans & Co  
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**Heard at Field House on 10 February 2023**

**DECISION AND REASONS**

1. The appellants appeal against the decision of First-tier Tribunal ("FtT") Judge S J Clarke ("the judge"), who on 20<sup>th</sup> June 2022 dismissed the appellants' appeals against the decisions of the Entry Clearance Officer dated 27<sup>th</sup> April 2021 to refuse family permits with reference to regulations 7 and 12 of the Immigration (European Economic Area) Regulations 2016. The appellants are nationals of Sierra Leone. The first appellant is said to be the wife of the sponsor, a Dutch national, the second appellant the son of the sponsor and stepson of the wife, and the third appellant the son of both the sponsor and wife.

2. The ECO refused the applications as follows:

- (i)** The first appellant had submitted a copy of her marriage certificate dated 4<sup>th</sup> January 2020, but it was noted that the signature for her sponsor was different from the signature in his passport and his place of residence was also incorrect as it was stated in her application that he had resided in the United Kingdom since 1<sup>st</sup> November 2014. This was a legal document, and all information was expected to be correct.
- (ii)** The second appellant (born 16<sup>th</sup> November 2003) had submitted a birth certificate with a registration date of 7<sup>th</sup> May 2019 over 15 years after his date of birth. This was not accepted owing to the length of time between the birth event and registration, and, in the absence of other historic birth documentation or credible documentation evidencing the event and his parentage.
- (iii)** The third appellant (born 11<sup>th</sup> August 2019) had submitted a birth certificate with a registration date of 11<sup>th</sup> August 2019 but stating that the birth was registered in 2018. This was said to cast doubt on the authenticity of the document and could not be accepted as reliable evidence of his relationship to his sponsor.
- (iv)** It was not accepted that the sponsor was a qualifying person in accordance with regulation 6 but this matter was conceded prior to the hearing.

3. The appellants' grounds for permission to appeal submitted:

(i) the judge erred in rejecting the parentage of the second and third appellants. A DNA test report from a UK Government approved provider, DNA Diagnostics Centre (DDC) had been provided. The identities of the second and third appellants were confirmed in the body of the report on the 'Client Identification and Consent Form'. The judge at [20] noted that the 'sample page' did not show the signature of the writer certifying the true likeness. This was not significant and the benchmark which she considered the process not to have been 'properly followed' was not clear.

The respondent did not challenge this in cross-examination of the sponsor.

Alternatively, the judge misunderstood the evidence before her when finding 'more likely than not' that 'the second and third appellants are the children of the appellant'. They were in fact the sons of the sponsor. Only one was the son of the appellant. This created the impression of unfairness.

(ii) the judge erred in stating that she found it 'unlikely that a representative from the Home Office would give advice on the capacity to divorce for a country outside the UK' [17]. The sponsor's evidence was not challenged on this and there was no attempt to establish the full context.

(iii) the judge erred in perceiving an inconsistency between the sponsor's evidence and the first appellant's application form. The sponsor did not state that he left Sierra Leone on 4<sup>th</sup> January 2020 and in his witness statement, at paragraph 3, he said only that the flight he had booked prevented him from attending to sign the certificate. In his oral evidence he explained that after the wedding he visited his father in Kabala, spent time there and when he returned to Freetown, the Iman was not available to deal with the certificate and thus his father did so. The sponsor departed from

Sierra Leone on 19<sup>th</sup> January 2020 and consistent with a passport stamp showing a grant of entry until that date. The judge disregarded relevant evidence and or misdirected herself.

The judge misunderstood the Imam's letter dated 10<sup>th</sup> March 2022 which confirmed that his father signed on his behalf and this was accepted in Islam. The judge either misdirected herself or was confused when writing her findings.

4. Permission to appeal was granted on the basis that it was arguable that the judge had erred in her approach to the DNA certificate.
5. Mr O'Brien spent some time at the hearing taking us through the documentation. When we pointed out that the DNA report he showed us and which was before the FtT dated 2021 varied from the one on the Upper Tribunal file he explained that the appellants had sought a further report dated July 2022, following the hearing and submitted this to the Upper Tribunal. Mr O'Brien helpfully guided us to the correct report. He submitted that the judge had failed to consider the documentation properly and she should have accepted the reports. There had been proper identification.
6. In relation to the first appellant's appeal, the key feature was whether the appellant's sponsor was divorced or not, but the judge appeared to focus on the marriage itself. In terms of the advice from the Home Office, the judge had not raised this, and it was not dealt with in cross examination and difficult to know how far that advice went and in what context and not beyond the realms of imagination that someone would have given the sponsor the information.
7. In relation to ground (iii) the sponsor did not say he flew out on 4<sup>th</sup> January; he says he did not fly out immediately but first went to Kabala and then went back to Freetown when the certificate was still not available and the Iman was not around, his father had to sign. The judge's reasoning process was flawed. The judge also overlooked the second letter of the Iman, and only considered the Iman's letter of 10<sup>th</sup> March 2022. Although there were oddities with the case, the judge's assessment failed properly to reflect the evidence.
8. Mr Melvin submitted the judge had directed herself appropriately and had considered the documentation without error.

### **Analysis**

9. In relation to ground (i) The judge found at [19]-[20] as follows:

*"19. Turning now to the birth certificates of the children. The sponsor told me that in Sierra Leone the Registrar's stamp is over the date and this is usual but there is no expert evidence to show this.*

*20. I do not accept the DNA evidence provided given the sample page not showing the signature of the writer certifying the true likeness. Whilst the test centre is approved, the whole of the process must be properly followed to ensure that the results provided are related to the sample specimens of the people they are claimed to be.*

*21. I was asked to place weight upon the details in the passports, but whilst I have taken into account the dates shown, and considered all of the evidence in the round including the evidence of the sponsor, I do*

*not find it is more likely than not that the second and third Appellants are the children of the Appellant for the reasons I have given.”*

10. We established after some time the exact DNA report that was provided to the FtT. There were two submitted in all to the Tribunal. The second dated July 2022, a corrected report post-dated the hearing. In the first report with Case Numbers 3637008 and 3637007, there was no certification of the likeness of either child through the signature of the writer of the report on the photographs. There were only signatures on the client identification and consent forms. We drew to Mr O'Brien's attention the relevant Home Office DNA policy guidance dated 16<sup>th</sup> March 2020 which states at page 12 the following:

*“DNA: collection process*

*The collection of the DNA samples is observed by an independent witness (such as a representative of the testing laboratory, which includes a ‘Sampler’ who collects the samples on behalf of the laboratory and certifies the photographs of individuals who provide their DNA samples). They need to be able to confirm the identities of the participants who have chosen to provide their DNA samples to either prove or disprove a blood relationship. The independent witness cannot be a family member or the applicant’s representative.”*

11. This clearly sets out that the ‘sampler’ who collects the sample should certify the photographs of the individuals who provide their samples. This is in order to ensure the chain of custody and ensure that the identities of the participants are confirmed. This was not apparent from the documents before the judge, and she cannot be criticised for her assessment of the DNA report. It was insufficient merely to have the identities confirmed in the ‘Client Identification and Consent Form’. That the document was re-submitted post the hearing with the defects remedied underlines that the judge’s approach was not a material error of law. Although not material to our determination, and by way of observation only, we note that the signatures on the ‘remedying document’ dated 6<sup>th</sup> July 2022 and confirming the true likeness did not match the signatures within the Client Identification and Consent Form.
12. It was submitted that the sponsor might have been cross examined on this but, in our view, no response could remedy the defect in the report. Any response would need to be from the sampler from DDC him or herself.
13. That the judge referred to the children being of the appellant is clearly a typographical error, the judge meant to refer to the sponsor not appellant, and this does not undermine the finding in relation to the DNA.
14. In relation to ground (ii) it was entirely open to the judge to reject the oral evidence of the sponsor that he had been given advice by the Home Office on divorce. No document was produced to support such an assertion and in the context of the findings of the judge this deduction was entirely open to her. The fact that it was not raised in cross-examination does not undermine the point made by the judge. It was the first appellant’s sponsor who put forward the assertion that he was advised he could divorce in Sierra Leone if one of them was living in the country. The burden of proof was evidently on the appellant via the sponsor, and it is not for the judge to question every piece of evidence.

15. We note the grounds did not challenge paragraph [18] in which the judge stated that *'there is a lack of complete supporting evidence to show it is more likely than not that he was divorced before he claims to have married the first appellant'*.
16. In relation to ground (iii), it was open to the judge to find at [16] 'the first Appellant has not provided any expert evidence to show that the father of the sponsor initialling or signing the marriage certificate is acceptable in Sierra Leone'. That is correct. The letter dated 10<sup>th</sup> March 2022 made no reference to the qualifications of the Imam to expound as an expert on legal principles and indeed the details of the person who signed the letter are not even clear. The letter wholly fails to comply with Section 6 of the Senior President's Practice Direction of the Immigration and Asylum Chamber of the First-tier Tribunal dated 13<sup>th</sup> May 2022. The second letter was included in a bundle with documents post dating the hearing although Mr O'Brien assured us this had been forwarded to the Tribunal either on the day before or the day of the hearing before the First-tier Tribunal. The judge did not address this letter, but we do not find that defect is material. Not only is the letter undated but the letter merely states 'your father (Mr Mohamed Jeng ) signed the certificate on behalf of you which is acceptable in Islam as per your authorization to do the signatory for you'. This does not confirm that the practice is accepted as an official legal practice in Sierra Leone.
17. It is submitted that the judge erred in stating that the sponsor gave evidence that he flew out of Sierra Leone on 4<sup>th</sup> January 2020 and there was an inconsistency because the first appellant said she last saw him on 19<sup>th</sup> January 2020. It was asserted that in fact the sponsor stayed in Sierra Leone, and we were referred to [3] of the sponsor's witness statement. In that witness statement the sponsor merely stated that *'The marriage certificate was not signed on the date of the marriage, it is issued after the ceremony and, therefore, had to be signed after the wedding day when it is issued. I had already booked the flights to return to the UK, so I have instructed my father, Mohamed Jeng, to sign the certificate as a proxy with my initials'*. However, there was no firm evidence given as to the sponsor's departure and only a 'leave' stamp until '29/01/202' (sic). Moreover, we do not accept that the judge's assessment was flawed. The sponsor claims he could not sign the certificate because it was produced later yet the date of the marriage is recorded as 4<sup>th</sup> January 2020 and the date of the marriage certificate itself is 4<sup>th</sup> January 2020. (It was rejected by the ECO because it contained a different signature from the sponsor's and thus the explanation that the father had signed it). Even if we are wrong about that, in the light of the conclusions of the judge at [16] we do not find that the judge's approach at [14], in perceiving an inconsistency to the said exit from Sierra Leone by the sponsor, where there was claimed to be none, is material.
18. We consider that the piecemeal production of evidence in this appeal has not assisted the Tribunal either in the FtT or the Upper Tribunal. We do not criticise Mr O'Brien for this and indeed it is apparent he did his best to email documentation to the FtT and to explain to us the chronological order and the conduits of forwarding that documentation. Documentation submitted post the hearing before the FtT cannot in this instance undermine the judge's decision.

## **Notice of Decision**

We find no material error of law in the decision of the judge and the appeals of the three appellants remain dismissed.

**Helen Rimington**

Judge of the Upper Tribunal Rimington  
Immigration and Asylum Chamber

23rd February 2023