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

Case No: UI-2022-006353

First-tier Tribunal No: EA/16144/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

**On 17th of November 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD**

**Between**

**LYDIA YAWSON**
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Mr J Holt, counsel (instructed by TMK Solicitors)
For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

**Heard at Birmingham Civil Justice Centre on 7 November 2023**

## DECISION AND REASONS

### Background

1. This matter concerns an appeal against the Respondent's decision letter of 18 November 2021, refusing the Appellant's claim initially made by application dated 3 January 2020 under the EUSS Settlement Scheme (EUSS).

2. The Appellant's claim is made on the basis that she is the family member of a relevant EEA national, her mother Linda Abena Boatemaah, an Italian national ("the Sponsor").

3. The Respondent refused the Appellant's claim on the basis that the birth certificate provided to evidence relationship was considered to be a false document. The Respondent said that a previous application by the Appellant had been refused for providing a non-genuine birth certificate of the same number issued 31 July 2019 and signed by Edward Nortye; and it was noted that the birth certificate now provided had a different signature from the one issued previously on 28 April 2021. This new document had been confirmed by the registry of births and deaths in Ghana to be false. The Appellant had also provided several other new documents but due to concerns with them as well, they also did not help to confirm relationship. As such, it was considered that the Appellant was not related to the Sponsor.

4. The Appellant appealed the refusal decision on 26 November 2021, requesting that the matter be dealt with on paper.

5. Her appeal was considered on paper by First-tier Tribunal Judge Juss ("the Judge") at Birmingham on 14 July 2022, who later dismissed it in its entirety in a decision promulgated on 18 July 2022.

6. The Appellant applied for permission to appeal to this Tribunal on three grounds, namely that:

   (a) The Judge had failed to take into account the Appellant's clinical weighing card issued at the time of birth;

   (b) The Judge had made a material misdirection of law by requiring evidence of DNA as a proof of relationship; and

   (c) The Judge had failed to take into account the Appellant's evidence of living with the Sponsor as a dependent household family member.

7. Permission to appeal was granted by First-tier Tribunal Judge Moon on 14 September 2022, stating that:

> "1. The in-time grounds assert that the Judge erred in failing to consider the appellant's weighing card issued at birth, making a material misdirection by requiring DNA evidence and by failing to take evidence that the appellant was living with the sponsor into account.
>
> 2. The judge considers the birth certificate but the failure to consider other evidence is an arguable error of law and overall the reasoning is inadequate."

8. The Respondent did not file a response to the appeal.

## The Hearing

9. The hearing came before me on 7 November 2023.

10. A preliminary discussion took place in which I stated that I was concerned the Judge's decision was problematic and that the meaning of paragraph 13 in particular, detailing one of only two reasons for dismissing the appeal, was unclear.

11. Mr Lawson confirmed his intention to oppose the appeal, considering the grounds to be mere disagreement and not disclosing any error(s) of law.

12. Mr Holt stated that the Appellant had not been well advised until only very recently and he was still in the process of taking instructions on how the case has been presented on both occasions before the First-tier Tribunal. He asked for a few further minutes in which to discuss the matter with the Appellant.

13. I permitted Mr Holt a brief adjournment to take further instructions and on return, he said the Appellant wished to continue with the hearing.

14. Mr Holt submitted that he did not wish to rely on the ground of appeal mentioning DNA as he could not see any mention of this in the Judge's decision. He continued to rely on the other two grounds and asked if I could also address any points I considered to be "Robinson obvious".

15. As regards the baby weighing card, Mr Holt was unable to take me to this document in order to demonstrate it formed part of the evidence before the Judge. It was agreed that there was no mention of this document in the Judge's decision. I took some time to attempt to access the case on CCD (I could not) and also on CE-File (the document did not feature in the Appellant's bundle said to be before the First-tier Tribunal). Mr Lawson confirmed he had not seen the document either. I noted that the Appellant's notice of appeal stated that the weighing card, an old birth certificate and a baptismal certificate were attached and yet I have not seen any of these attachments.

16. Mr Holt accepted that he could not put before me the bundle that was before the Judge, but he submitted that the weighing card was likely to have been present because when Judge Monaghan considered this case first on paper in a decision dated 28 April 2022, paragraph 8 of her decision refers to the fact that the Appellant had referred to a weighing card amongst other things. He said that decision had been appealed to the Upper Tribunal and, due to the lack of a bundle, had been remitted back to the First-tier; which was how the matter came to be before the Judge.

17. I confirmed I had not seen the decision of Judge Monaghan nor any related papers and so was not aware of any appeal prior to that before the Judge. I said there were no documents showing any such appeal in either of the party's bundles (described on CE file as being before the First-tier Tribunal) that I had seen.

18. Mr Holt said that, if the matter had been remitted due to the lack of a bundle, it was likely that a bundle would have then been produced before the Judge, but he appreciated there was no description of the evidence contained in the papers before him.

19. I asked for the party's thoughts on [1] and [11] of the Judge's decision, given [1] states "This is a 'Paper' appeal" and [11] states (my emphasis in bold):

> "I have given careful consideration to the **oral** and documentary evidence **and submissions from both sides that I have heard today**".

20. Mr Lawson submitted this was merely a typographical error which was not material because it is clear from the rest of the decision that the Judge had looked at the papers and reached his properly reasoned decision on the evidence before him.

21. Mr Holt submitted that in order for the Judge's decision to be lawful, it must be possible for a reasonable person looking at the matter to understand why the Judge reached the conclusions that he did and it is not. The Judge has not told us what evidence he has considered, which omission is worsened by saying he considered evidence that was not in fact before him; this alone is capable of being an error of law. But this is compounded in [12] when the Judge says he has decided to dismiss the appeal for two reasons, which Mr Holt submitted, were also incorrect. The first reason is that the birth certificate contained a signature that did not match a sample provided by the authorities in Ghana. Mr Holt said this had never been the Respondent's case and he did not know where this came from; even if it was part of the Respondent's case, the sample referred to had never been provided.

22. Discussion followed wherein it was agreed that mention of the sample was made in a previous refusal letter dated 26 January 2021. Mr Holt submitted that, without evidence that it continued to form part of the Respondent's case before the Judge, it appears that the Judge had taken into account something that the Appellant could not have responded to, having not been on notice that it was a current issue. He submitted there were therefore two instances of procedural unfairness; the first that the Appellant was not put on notice of something being in issue and the second being the failure by the Respondent to adduce the sample signature evidence, both of which deprived the Appellant of an opportunity to respond.

23. Mr Holt also considered the wording of [13] to be problematic as it is simply not clear what the Judge means when he says the Appellant is "even more vulnerable than with respect to (i) above". As to the ground of appeal concerning the Judge's failure to take into account evidence of the Appellant living with the Sponsor, he said this evidence was comprised of a NatWest letter addressed to the Appellant's mother, a tax coding notice addressed to the Appellant, and a water bill addressed to the Appellant, all at the same address. Again looking at the bundles on the system before me, I could not see any copy of the water bill. Mr Holt said this was (albeit possibly weak) evidence of cohabitation which should have been considered by the Judge.

24. I asked whether there was any evidence before the Judge supporting the Appellant's description in the grounds of appeal of the Ghanaian system of verifying the certificates. Mr Holt said he has seen none save for mention in the skeleton argument, although it did not address the issues raised concerning the birth certificate in any case.

25. In response, Mr Lawson said the weighing card was not an official document and so a failure to consider it would not have been fatal to the determination. Whilst there is an obvious typographical error in [11] referring to oral evidence and submissions, the references to the written evidence are correct and the Judge properly explains why the birth certificate has been rejected. He submitted that if an error is found, the matter be remitted back to the First-tier for hearing afresh by way of oral hearing given the mention of a lengthy appeal history and the

need for a structured evidence bundle including evidence which actually addresses the points made by the Respondent.

26. Mr Holt replied simply to say he had no objection to this suggested method of disposal should an error be found.

27. At the end of the hearing I said I would be reserving my decision to be put in writing to ensure clarity and with the aim of preventing any further litigation.

Discussion and findings

28. I remind myself of the important guidance handed down by the Court of Appeal that an appellate court must not interfere in a decision of a judge below without good reason. The power of the Upper Tribunal to set aside a decision of the First-tier Tribunal and to proceed to remake the decision only arises in law if it is found that the tribunal below has made a genuine error of law that is material to the decision under challenge.

29. The Judge's decision is brief, amounting to 15 paragraphs.

30. In [1] the Judge sets out the nature of the Appellant's claim. In [2] – [6] he correctly sets out the legal background, albeit he does not refer explicitly to the specific parts of the EUSS and relevant definitions applicable to the appeal.

31. In [7] – [10] the Judge sets out what he considers to be the "salient facts". The contents of [7] are accurate in referring to the date of the refusal letter as being 19 November 2021 and containing the decision which is the subject of the appeal, which I shall call the "Relevant Refusal Letter". However, as discussed at the hearing before me, [8] appears to contain a summary of a previous refusal letter dated 26 January 2021, saying:

> "The concerns raised were as follows: The birth certificate was signed by Edward Norteye on 31 July 2019. However the signature of the registrar does not match a sample provided to the Respondent's offices by the authorities in Ghana. The margin section of the Appellant's birth certificate was also entirely blank. Due to these concerns, the Secretary of State was minded to refuse the Appellant's application with reference to rule EU16(a) of Appendix EU to the Immigration Rules".

32. This is not an accurate description of the issues taken in the Relevant Refusal Letter, which can instead be summarised as follows:

(a) Checks had been conducted with the relevant authorities in Ghana who had confirmed that they have no record of the birth certificate, number 11212, registered on 30 November 2000, issued on 31 July 2019 and signed by Edward Norteye (which I shall call the "2019 birth certificate")

(b) The 2019 birth certificate contained a different signature from one previously provided issued 28 April 2021.

(c) Several new documents had been provided which did not assist because:

(i) The document headed "Verification of birth certificate" referred to "the birth certificate with entry number 11212 in respect of Lydia

Yawson issued 30th November 2000 …" however no birth certificate issued on 30 November 2000 had been supplied.

(ii) The document signed as originating from the high court of justice dated 12 July 2021 referred to the "birth certificate of Lydia Yawson dated 18th June 2021" signed by "notary public of Ghana F. Adja Codjoe", however no birth certificate issued on 18 June 2021 had been supplied, and neither of the birth certificates that had been supplied had been signed by this notary.

(iii) The document from the ministry of foreign affairs referring to a signature of Samuel Boakye-Yaidom, "covering the signature of F. Adja Codjoe esquire, appearing on the birth certificate of Lydia Yawson dated 18th June 2021" however, again, no birth certificate issued on 18 June 2021 had been supplied.

(iv) The photos purporting to be of the Appellant and Sponsor did not prove relationship.

33. Having reviewed the Respondent's bundle that was before the Judge, it contains only the previous refusal letter and not also the Relevant Refusal Letter. However, the Appellant's bundle did contain the Relevant Refusal Letter such that the Judeg had the correct one before him. I cannot see anything indicating that the Respondent continued to rely on the previous refusal letter in the appeal before the Judge. It is not clear whether the Judge had noticed there were two separate, different, refusal letters or if he did, whether he addressed his mind to the correct one. Either way, there is no clear reference to the content of the Relevant Refusal Letter, and whilst the issues in the two refusal letters were similar in raising concerns with the birth certificates produced by the Appellant, those concerns were not the same.

34. Overall, I find the Judge is referring in [8] to the contents of a previous refusal letter rather than the Relevant Refusal Letter. The Judge repeats the erroneous reference to a sample signature and blank margin section in [12], this being one of only two paragraphs in which he sets out the reasons for his refusing the appeal in [11]. It therefore appears clear to me that the Judge, in referring to the wrong refusal letter, was not addressing the correct issues in the appeal when making his findings in [11] – [13].

35. This is an error which is material because the Judge is approaching his decision using the wrong factual matrix. As there is nothing to indicate the Respondent sought to rely on the previous refusal letter, there is nothing to indicate the Appellant was put on notice that she needed, or sought, to redress the issues raised therein. Therefore, to the extent the Appellant was judged as having failed to address such issues, and to the extent that the Judge failed to address the Appellant's evidence against the correct issues, this was procedurally unfair and an error. Assessing the evidence against the correct issues goes to the heart of the appeal and so a failure to do so is material. It cannot be said with certainty that the Judge would have reached the same conclusions has he assessed the Appellant's evidence against the correct issues, as these issues were different.

36. As per paragraph 38 of the well known case of Ahmed (Documents unreliable and forged) Pakistan* [2002] UKIAT 00439 (hereafter "Tanveer Ahmed"):

> "1. It is for an individual claimant to show that a document on which he seeks to rely can be relied on.
>
> 2. The decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round.
>
> 3. Only very rarely will there be the need to make an allegation of forgery, or evidence strong enough to support it. The allegation should not be made without such evidence. Failure to establish the allegation on the balance of probabilities to the higher civil standard does not show that a document is reliable. The decision maker still needs to apply principles 1 and 2."

37. Even had the Respondent continued to rely on the previous refusal letter (in saying the signature of the registrar on the most recently provided birth certificate did not match a sample provided to the Respondent's offices by the authorities in Ghana), the Judge does not appear to have appreciated that the Respondent had not provided any evidence of the said sample or correspondence with the Ghanaian authorities. The Judge appears to find at [10] that the Respondent's reliance on the sample signature and blank margin section in the birth certificate, is not bare assertion because "It is fully substantiated with reasons given by the Respondent". This is conflating two issues; the requirement to give reasons for a decision and the requirement to provide evidence in support of one's case. It is trite that "he who asserts must prove", which is underlined by the guidance given in Tanveer Ahmed above, and so without supporting evidence to prove the assertions as to the sample signature and blank margin, those assertions remained in the nature of assertion only.

38. Aside from the Judge's comments in [12] and [13], it is hard to discern from the Judge's decision whether he has undertaken any analysis of the birth certificate itself in terms of what it looks like or the information it contains. Nor is there mention of analysis of any other evidence which may have been before him. The grounds submit that the Judge "has failed to refer to, or to consider, the Appellant's explanation made by way of her witness statement". I cannot see a document described as a witness statement but assume this is the grounds of appeal document before the Judge which contained a description of how birth certificate in Ghana are signed and verified. If it is, this document appears to have been considered by the Judge as he refers to it in [9]. I therefore do not find the Judge erred as alleged in this respect, although there is an absence of comment as to there being a lack of evidence supporting the content of that statement, as with the Respondent's comments concerning the sample signature.

39. Having said that, looking at the bundles before the Judge, there were some pieces of evidence other than the birth certificate which do not appear to have been addressed or if they were, it is not mentioned. These include a letter confirming the Appellants employment, a Natwest letter addressed to the Appellant's mother and a letter to the Appellant concerning her tax code. These all feature the same residential address, which indicate cohabitation. There were also two of the documents referred to in the Relevant Refusal Letter, being a document headed "Verification of birth certificate" and a document from the Ghanaian Ministry of Foreign Affairs.

40. I cannot see any reference to any of these documents in the decision and there is no indication that the Judge took them into account when reaching his conclusions. As his findings and reasoning appear solely to be based on the birth

certificate and (incorrect) refusal letter, I find it likely that he did not consider these other documents. Even though this evidence could be perceived, as Mr Holt candidly admitted, as 'weak', it was nevertheless evidence, and as such it fell to be assessed. Failing to assess it was an error. I find it cannot be said with certainty that, had the Judge assessed this evidence, in circumstances when the Respondent itself had failed to provide any evidence supporting its criticisms of the birth certificate assessed by the Judge, the Judge would have reached the conclusion that he did. As such, the error is again material.

41. I note the grounds of appeal before me appear to raise the issue of the Respondent needing to discharge the burden of proving dishonesty but this was not something pursued by Mr Holt. Arguably the Respondent has undertaken a verification process as the Relevant Refusal Letter says "Checks have been conducted with the relevant authorities in Ghana who have confirmed that they have no record of this birth certificate". The problem is that evidence of those (or any) checks had not been provided to the Judge. As above, the Judge did not appreciate the lack of supporting evidence from the Respondent as regards the previous refusal letter, and does not appear to have assessed the evidence as against the Relevant Refusal Letter. It is therefore difficult to make much of this aspect of the grounds of appeal and I see no need to do so in any case given I have already found material error.

42. As regards the weighing card, I cannot find the Judge was incorrect to place no weight on this (or the baptismal certificate) as it has not been sufficiently proved that these documents were in fact before the Judge. As above, there is no description of the documentary evidence and these documents do not appear in any of the bundles I have seen, nor on the Tribunal's' electronic system attached to any other documents.

43. Mr Holt was right not to rely on the ground of appeal concerning DNA evidence. There is no mention in the decision of DNA evidence and it is unclear why the grounds mention this. I note that beyond the grounds saying the Judge erred by "making a material misdirection of law, in particular by requiring evidence of DNA as a proof of relationship", the grounds do not provide any further detail. I therefore find this ground to be without foundation or merit.

44. Overall, I find the decision as a whole lacks sufficient reasoning. It is well-established that reasons for a decision must be given. As per the headnote of MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), heard by the then President of this Chamber as a member of the panel:

> "(1) It is axiomatic that a determination discloses clearly the reasons for a tribunal's decision.
>
> (2) If a tribunal finds oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it is necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight is unlikely to satisfy the requirement to give reasons."

45. There are only two reasons given for the Judge's decision to dismiss the appeal, as follows:

> "12. First, it is simply not the case as the Appellant contends in her Grounds of Appeal that 'the decision maker made wrong misinterpretation of the process of endorsing birth certificate in Ghana' because the decision-maker has given clear and concise reasons for the refusal, namely, that (i) the birth certificate was signed by Edward Norteye on 31 July 2019 but this did not match a sample provided to the Respondent's offices by the authorities in Ghana; and (ii) the margin section of the Appellant's birth certificate was entirely blank.
>
> 13. Secondly, what EU16 (a) makes clear is that an application to the Settlement Scheme may be refused '...whether or not to your knowledge, false or misleading information, representations or documents have been submitted' and here the Appellant is even more vulnerable than with respect to (i) above."

46. I have set out above why the reasoning in [12 is erroneous, referring as it does to the incorrect refusal letter and issues in dispute. As regards [13], I do not find this to be sufficiently reasoned so as to be understandable. It appears the Judge may be saying that the Appellant is vulnerable because applications can be refused due to documents being unsound without an appellant having any knowledge of this, but this is my own speculation. If it is saying this, this in turn indicates the Judge is reiterating his finding that the birth certificate is 'false' which must rely on the flawed reasoning in [12] given no other reasons are given.

47. Overall, I find the errors found infect the decision as a whole such that it cannot stand.

48. Both parties agreed that the appropriate course of action in these circumstances was for the matter to be remitted to the First-tier Tribunal for hearing afresh.

49. It will be important in advance of the remitted appeal for the parties to consider the evidence adduced to date and whether anything further is needed to properly address the issues raised in the Relevant Refusal Letter, noting my comments above as to those documents that could not be located before me, and remembering that the standard of proof is the balance of probabilities. It would also be desirable for the full history of the appeal to be summarised by either or both parties in order that the judge hearing the remittal is aware of how the appeal has come before them so as to recognise the importance of reaching a sound decision (as I am sure they would in any case) and avoid any further appeals to this Tribunal.

50. Obiter, and speaking frankly, this appeal has been poorly handled by all concerned. Given the lack of evidence from both parties, and the indication that the Appellant had adduced 'false documents' which can be taken to raise issues of credibility, it is questionable whether it was appropriate for the case to have been dealt with on paper.

51. Without the parties attending an oral hearing to confirm the issues and the evidence they are putting forward, it is perhaps important in paper cases to summarise what the evidence is, if only to refer to each side having "a bundle amounting to 'x number of' pages", as this better enables the judge in any onward appeal to ascertain what evidence was present.

## **Conclusion**

52. I am satisfied the decision of the First-tier Tribunal did involve the making of errors of law.

53. Given that the material errors identified fatally undermine the findings of fact as a whole, I set aside the decision of the Judge and preserve no findings.

54. In the light of the need for extensive judicial fact-finding, I am satisfied that the appropriate course of action is to remit the appeal to the First-tier Tribunal to be heard afresh by a judge other than Judge Juss.

**Notice of Decision**

55. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

56. I remit the appeal to the First-tier Tribunal for a fresh decision on all issues. No findings of fact are preserved.

**L. Shepherd**

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
**9 November 2023**