



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

Case No: UI-2022-006475  
UI-2022-006476

First-tier Tribunal No: EA/07206/2022  
EA/07209/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

19<sup>th</sup> September 2023

**Before**

**UPPER TRIBUNAL JUDGE HANSON**  
**DEPUTY UPPER TRIBUNAL JUDGE ROBERTSON**

**Between**

**ENTRY CLEARANCE OFFICER**

Appellant

**and**

**CLIFF FONDEH TAKU**  
**KATE ARREYNGANG TAKU**  
**(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr Lawson, a Senior Home Office Presenting Officer.  
For the Respondent: No appearance.

**Heard at Birmingham Civil Justice Centre on 10 October 2023**

**DECISION AND REASONS**

1. The appellant seek permission to appeal a decision of First-tier Tribunal Judge C Chapman ("the Judge") promulgated on 14 December 2022, in which the Judge allowed the appeals of the above named respondents against the decision refusing the applications for Family Permits as family members of their mother, Bridget Taku Achangha ('the Sponsor'), a German national exercising treaty rights in the UK, under Appendix EU (Family Permit) of the Immigration Rules.
2. The Sponsor has lived in the UK since 2009. The above respondents are a brother and sister, both nationals of Cameroon, born on 6 March 2003 and 2 October 2000 respectively.
3. The applications were refused by an Entry Clearance Officer (ECO) based in Liverpool on 20 July 2022 for identical reasons namely that as evidence of their relationship with the Sponsor they provided Cameroon Birth Certificates and translations. The ECO writes "*It is noted that the documents you have provided*

*as proof of your relationship to your EEA sponsor are copies rather than the original documents. We would expect to see the original documents in order to determine your relationship. I am not satisfied, based on the evidence you have provided in isolation, that you are a 'family member of a relevant EEA Citizen'.*

4. The Judge was asked to determine the appeal on the papers. The Judge noted the reasons for appeal which are set out at [10] of the decision under challenge. The Judge's findings are set out from [12] which can be summarised in the following terms:
  - a. In the refusal letter the ECO did not dispute the claim relationship, merely that it was not evidenced sufficiently because 'copies' and not originals were supplied. Neither in the refusal letter nor response to the appeal has the ECO explained why the scanned and uploaded birth certificates are not acceptable, nor where the requirement for the original birth certificates comes from [14].
  - b. The ECO guidance suggests that in reaching a decision about applications had the ECO had any real concerns about the authenticity of the birth certificates, the above respondents or their mother should have been contacted so the originals could have been provided [19].
  - c. In the circumstances the Judge was not satisfied that the reasons for refusal were good grounds for refusing the application, particularly since no real doubt about the authenticity of the uploaded documents was expressed and because the uploading of scanned documents appears to be an acceptable method of providing the required evidence of relationship [20].
  - d. In the absence of any other evidence or information that the above respondents are not in a relationship as claimed, the Judge was satisfied on the balance of probabilities that they are and that since that was the only reason for refusing the applications it was found they are family members of a relevant EEA Citizen entitled to the family permits they seek [21].
5. The ECO sought permission to appeal asserting the Judge that failed to correctly consider the requirements of Appendix EU (Family Permit) when allowing the appeals. The grounds specifically refer to the requirements of the definition of the "required evidence of family relationship" contained within Annex 1 Appendix EU (Family Permit) of the Immigration Rules which is said to include: "*(a) where in order to meet the requirements of this entry, the applicant submits a copy (and not the original) of a document, including by uploading this as part of the required application process, the entry clearance officer can require the applicant to submit the original document where the entry clearance officer has reasonable doubt as to the authenticity of the copy submitted*". The grounds assert it is implied in the refusal notice there was reasonable doubt in relation to the authenticity of the copy birth certificates provided by both applicants. The grounds also assert the Judge reversed the burden of proof at [21] by requiring the ECO to disprove the claimed family relationship when the burden is upon the applicants to prove they meet the requirements of the Immigration Rules.
6. Permission to appeal was granted by another judge of the First-tier Tribunal on 27 February 2023 in the following terms:
  1. The in-time application for permission has been made stating that the judge has materially misdirected himself in respect of law in a material matter by finding that the appellants satisfied the evidence requirements regarding original documents. The judge should have found that it is implied in the refusal notice that there was a reasonable doubt regarding the authenticity of the copy birth certificates. Further,

the judge applied the incorrect burden of proof against the respondent regarding evidence of the relationships claimed.

2. It is arguable that the Judge has erred by concluding that the respondent has failed to demonstrate that they requested original documents. It is arguable that it is implied in the refusal notice that the copies were insufficient, and originals would be required.
3. The ground is arguable and requires further consideration .

### Discussion and analysis

7. Although nobody attended on behalf of the above respondents we are satisfied that there has been valid service of the notice of hearing setting out the date, venue, and time which has been served upon the above respondents or their representative. There was no application to adjourn or vacate the hearing and we consider it is appropriate in all the circumstances to proceed with the appeal in the absence of the respondent's representatives. This is in accordance with the interests of justice and the overriding objective.
8. It is not disputed before us by Mr Lawson that the guidance states, as noted by the Judge, that evidential flexibility guidance provides that if a copy document is not accepted the decision maker should, prior to making a decision, advise the applicant and seek the filing of the original document. That did not occur in this case.
9. There is no evidence that the decision maker sought any further evidence from the above respondents before refusing the applications.
10. The applications were refused on one point only, namely that relating to the documentation.
11. We do not accept it is made out the Judge's findings are outside the range of those reasonably open to the Judge on the evidence. The Judge sets out clear findings supported by adequate reasons for why the failure of the decision-maker to act in accordance with published policy is material to the outcome of the appeal.
12. The Court of Appeal have made it abundantly clear that appellate courts, including themselves, should not interfere in a decision of the court below unless there is a clear, genuine, legal error, material to the decision under challenge. It is not made out before us that such exists and, accordingly, we must dismiss the appeal.

### **Notice of Decision**

13. Appeal dismissed.

**C J Hanson**  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**10 October 2023**