IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-000940, UI-2023-000939, UI-2023-000938
First-tier Tribunal Nos: EA/08420/2022, EA/08423/2022, EA/08417/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 16 October 2023

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH
DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

(1) Isata Bah
(2) Isata Mumeni Bah
(3) Fatima Bah
(NO ANONYMITY DIRECTION MADE)

Appellants

and

The Entry Clearance Officer

Respondent

Representation:
For the Appellant: Ahmed Tejan Bah, the Sponsor (litigant in person)
For the Respondent: Ms J. Isherwood, Senior Home Office Presenting Officer

Heard at Field House on 8 September 2023

DECISION AND REASONS

1. By a decision promulgated on 13 February 2023, First-tier Tribunal Judge Young-Harry ("the judge") dismissed the appellants' linked appeals against three linked decisions of the respondent dated 2 August 2022 to refuse their applications for EU Family Permits under Appendix EU of the Immigration Rules. The appellants now appeal against the decision of the judge with the permission of First-tier Tribunal Judge Hamilton.

Factual background

2. The appellants are citizens of Sierra Leone. In their applications to the Entry Clearance Officer, the first appellant claimed to be the dependent mother of a Dutch citizen residing in the United Kingdom, ATB ("the sponsor"), and the second and third appellants claimed to be his children under the age of 21.

3. The Entry Clearance Officer refused the applications because, in the case of all three appellants, she was not satisfied that they were related as claimed to the sponsor: "there were a number of inconsistencies in the evidence." The appellants had relied on birth certificates to demonstrate their claimed relationship to the sponsor. However, the birth certificates had been registered between 14 and 30 years after the births of the appellants, who were born in 1963, 2003 and 2005 respectively. The Entry Clearance Officer said that she would have expected to see "the full, original birth certificate or an official document to explain the reasons why the birth was registered late."

4. Additionally, in the case of the first appellant, the Entry Clearance Officer was not satisfied that she was dependent upon the sponsor for her essential needs. (The requirement to demonstrate dependency did not apply to the other appellants and was not considered by the Secretary of State).

5. The appellants appealed to the First-tier Tribunal and requested a paper hearing. To address the Entry Clearance Officer's concerns about the claimed family relationships, the appellants had provided a letter from a Dr M. Charles at the Affordable Healthcare Clinic in Sierra Leone dated 1 December 2022 entitled, "Medical Report Re: Ms. Isata Bah". The letter is brief and is worth quoting in full:

> "I hereby letting you know that the above named patient is my client and has been under my supervision over the past years and I hereby confirming that Isata Bah who was born on the 15 may 1963 is the mother of Ahmed Tejan bah, Ahmed Tejan bah is the father of Isata Mumeni Bah who was born on the 24/ August 2003 and Fatima Bali who was born on the 10/ February 2005." [*sic* throughout]

6. In her admirably brief decision, the judge set out the essential procedural, legal and factual history, and summarised the evidence submitted in support of the appeals. Her operative conclusion was at para. 7:

> "Unfortunately, the letter from the doctor in isolation, is not sufficient to establish the family relationship. DNA evidence would have been much more helpful. Thus, in the absence of any other supporting evidence, I find the appellants have failed to establish they are related to the sponsor as claimed."

7. The judge dismissed the appeals.

Issues on appeal to the Upper Tribunal

8. The grounds of appeal to the Upper Tribunal were submitted by the appellants' solicitors, Fisherday Solicitors. Strikingly, they did not contain grounds of appeal anchored to the reasons given by the judge for dismissing the appeals. They simply re-attached the original grounds of appeal to the First-tier Tribunal and did not engage with the decision of the judge purported under appeal to this tribunal. That deficiency was highlighted by Judge Hamilton in his decision granting permission to appeal: see para. 3. Having identified that the grounds of appeal disclosed no arguable error of law, Judge Hamilton continued in these terms:

> "However, the decision is extremely brief and it is obviously arguable that the Judge failed to provide adequate reasons for rejecting the

> documentary evidence relied on by the appellants. It is therefore arguable that he made a material error of law and I grant permission on that basis."

9. The appellants were not professionally represented at the hearing before us, which took place remotely. We permitted the sponsor to participate on behalf of the appellants, assisting him as a litigant in person.

10. The sponsor explained that he provided evidence to his solicitors which demonstrated why the original birth certificates were not available. There had been a mudslide in Freetown. The family's documents were all lost. He sent everything that was needed to the appellants' lawyers, he said; it was their fault that insufficient documents had been provided in support of the appellants' paper appeal to the First-tier Tribunal. The sponsor did not amplify the point identified in Judge Hamilton's grant of permission to appeal concerning the brevity of the reasons for rejecting Dr Charles' letter.

No error of law

11. The sponsor is now a litigant in person. We therefore put to one side the fact that the submissions he relied upon did not feature in the grounds of appeal to the Upper Tribunal or the grant of permission to appeal.

12. As we explained at the hearing, while the sponsor – and the appellants – may well disagree with the decision of the judge, it is only if there is an error of law that this tribunal has the jurisdiction to set it aside.

13. The reasons given by the sponsor amounted, at the highest, to an allegation that his solicitors had been responsible for failing to provide the necessary evidence, which had been forwarded to them, to the First-tier Tribunal. There was no evidence of any complaint made to the Solicitors Regulation Authority. Nor was there a copy of the evidence which purportedly had been sent to the solicitors yet not provided to the judge. In our judgment, it was not an error of law for the judge not to have considered evidence that was not before her, and which has not been provided to this tribunal.

14. We therefore turn to the reasons identified by Judge Hamilton for granting permission to appeal. We accept that the reasons given by the judge were brief. In our judgment they were sufficient. While it may have been helpful for the judge to have explained with greater clarity why she did not accept the letter from Dr Charles to demonstrate the claimed family relationship, when looked at in the context of the issues in the case as a whole, and the reasons that were given by the judge, we find that she gave sufficient reasons. The judge said that DNA evidence would have been preferable. That was plainly a finding that was open to her; such evidence is frequently relied upon in cases such as this in order to establish the presence of a claimed family relationship. As we have set out above, the birth certificates that were relied on in the applications to the Entry Clearance Officer, and in the proceedings before the First-tier Tribunal, were issued between 14 and 30 years after the appellant in question was born. In the absence of other documentary or official evidence, the judge was entitled to conclude that DNA evidence would resolve the considerable ambiguities arising from the lack of other official explanation concerning the provenance of the documents. That finding alone was a sufficient basis for the judge to decline to accept the evidence relied upon by the appellants.

15. Moreover, when one reads the contents of Dr Charles' letter, it is striking that the author does not explain for how long he claims to have known the first appellant,

stating merely that she had been “under my supervision over the past years”. Nor does he detail the basis upon which he claims to know the family relationship between the first appellant and her son, who does not live in Sierra Leone. According to the grounds of appeal to the First-tier Tribunal, the sponsor has been living in the UK since 2008, having previously claimed asylum in the Netherlands before naturalising and relocating to the UK.

16. In relation to the second and third appellants, Dr Charles did not state how he knows any details concerning their claimed family relationship with the sponsor, nor any records he consulted before drafting the letter, or other source of information. The document is replete with typographical errors. It is entitled “Medical Report” but does not detail any medical conditions, addressing only the claimed family relationships.

17. It is hardly surprising that the judge did not ascribe weight to Dr Charles’ letter; in its current form, in the absence of any additional supporting evidence, it is difficult to see how it would have been open to the judge rationally to have ascribed *any* weight to it. It was therefore not an error for the judge not to give further reasons.

Notice of Decision

The appeals are dismissed.

The decision of the First-tier Tribunal did not involve the making of an error of law such that it must be set aside.

Stephen H Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 September 2023