IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001577
UI-2023-001578

First-tier Tribunal No: EA/01254/2022
EA/01256/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

23rd November 2023

Before

UPPER TRIBUNAL JUDGE REEDS

Between

THE ENTRY CLEARANCE OFFICER

Appellant

and

ISAAC QUANIN
ELVIS COFFIE
(NO ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr Diwnycz, Senior Presenting Officer
For the Respondent : Mr Simo, instructed on behalf of the respondent.

Heard at (IAC) on 13 November 2023

DECISION AND REASONS

1. The Entry Clearance Officer ("ECO") appeals, with permission, against the determination of the First-tier Tribunal(Judge Farrelly) promulgated on 22 March 2023. By its decision, the Tribunal allowed both appellants' appeal against the ECO's decisions dated 4 October 2021 and 29 July 2021 to refuse their applications made for family permits under the EU Settlement Scheme.

2. Although the appellant in these proceedings is the ECO, for convenience I will refer to the ECO as the respondent and to the appellants before the FtT as "the appellants," thus reflecting their positions before the First-tier Tribunal.

3. The First-tier Tribunal did not make an anonymity order and no grounds have been advanced on behalf of the appellants to make such an order.

4. The background to the appeals are set out in the written decision of First-tier Tribunal Judge Farrelly. The appellants are nationals of Ghana and are said to be brothers. Their mother, the sponsor is said to be Gloria Kotei. On 28th of May 2021 and 24th of May 2021, applications were made by both appellants under the EU Settlement Scheme for family permits on the basis that they wished to join their mother, an Italian national residing in the United Kingdom. In support of the applications the appellants provided evidence of the relationship to the sponsor, said to be their mother by the provision of documentation, in the form of birth certificates and other associated documents. The FtTJ set out the documents between paragraphs 3 – 5. The first appellant provided a handwritten birth certificate issued on 22 June 2005, 9 days after his birth. The second appellant had a handwritten birth certificate contained a reference number 2 for 80 stating was born on 24 April 2002 with the birth registered on 10 May 2002. It also had a reference number in the top right corner. The second appellant also had a more modern biometric certificate dated 20 April 2021 stating the details recorded reflect the original birth certificate reference 2480.

5. The first appellant's application was refused on 4 October 2021 and the second appellant's application refused on 29 July 2021. The applications were refused on the same basis namely that there were false or misleading representations in support of the application and that was they stated their sponsor was their mother and they provided birth certificates, having been examined by the competent Ghanaian authority it has been determined that the birth certificates were not genuine. As a result the issue was not satisfied that the relationship of the sponsor was as claimed. The applications were therefore refused.

6. The appellant's appealed the decisions reached, and the appeals came before First-tier Tribunal Judge Farrelly on 17 February 2023. It is not clear on the face of the written decision how the appeal was conducted however both advocates have stated that this was an appeal that was heard " and the papers" as requested by the appellants and was agreed by the respondent. It was suggested that there may have been a review on behalf of the respondent, but Mr Diwnycz was not able to find any further documentation that indicated there had been a review.

7. FtTJ Farrelly identified the relevant issue at paragraph 15 of his decision namely whether the sponsor was the mother of the appellants. He stated that "the starting point is that it is for the appellants to show they meet the requirement of the rules which include showing that they are family members of the sponsor." The FtTJ went on to address that issue by reference to the evidence that both parties had provided, including the document verification reports referred to in the decision letters alongside other evidence provided on behalf of the appellants . Having considered that evidence he set out his reasons between paragraphs 16 – 25 of his decision and concluded at paragraph 26 that he was satisfied on the evidence produced that the appellants were the children of the sponsor. In reaching that conclusion, the FtTJ stated that he considered "all the evidence available to me" and reached the conclusion that it was unsafe to rely on the respondent's verification reports in the light of his assessment of those documents which he had addressed at paragraphs 16, 17, 18, 19 and 23. He therefore allowed the appeals.

8. The respondent sought permission to appeal on two grounds and permission was granted by a Judge of the First-tier Tribunal on 26 April 2023.

9. At the hearing before the Upper Tribunal, Mr Diwnycz appeared on behalf of the ECO and Mr Simo on behalf of the appellants. Mr Diwnycz stated that he relied on the written grounds of challenge and did not seek to expand on the grounds in any oral submissions.

10. Mr Simo, who appeared on behalf of the appellants, confirmed that there was no rule 24 response but made oral submissions which can be summarised as follows. He submitted that between paragraphs 1 – 14 the FtTJ considered the facts in dispute and the evidence which was provided in support of the appeals and gave his reasons for reaching the conclusion he did. As to ground one, he submitted the judge had addressed why the contents of the DVR's could not be relied upon given the issues that he identified, the type of contact which had been made by way of WhatsApp, the person contacted were described as an "administrator" rather than a senior officer and there was no description as to what checks had been undertaken . He submitted that if this was a senior official the checks that were undertaken had not been set out. The reference "not traced" was not explained either. Mr Simo submitted that the judge had been careful in his analysis and that paragraphs 16 – 19 showed that the judge when coming to his conclusions carefully addressed the DVR's.

11. He further submitted that nowhere in the decision did the FtTJ say he preferred one document over another, and that paragraph 23 was a conclusion that was open to him and the evidence. When the FtTJ stated that it was unsafe to rely on the DVR's, the FtTJ considered the contents of the documents and that they contained very little information and details of the checks carried out.

12. He submitted that in support of the analysis he cited the decision in Tanveer Ahmed at paragraph 20 and had considered all the documents and he was guided as to whether the allegations had been proved on the balance of probabilities but that he did not find the documents provided by the respondent to be reliable.

13. As to ground 2 Mr Simo submitted that the judge did not misdirect himself but considered the test and the same test were cited at paragraph 6 of the grounds. The judge at paragraph 23 considered that there was sufficient detail in the report. At paragraph 24 the FtTJ considered the evidence of the passports as support for the appellants and also the immunisation cards.

14. In summary Mr Simo submitted that the judge found that the appellants were the children of the sponsor and that he reasoned his decision and addressed the documents by properly directing himself and that there was no error of law demonstrated by the grounds.

15. Mr Diwnycz, by way of reply submitted that the FtTJ did prefer the appellants' documents. He submitted that it was open to the ECO to make enquiries about the documents and that it was not known what documents the Ghanian authorities had. Where they noted "no trace" that must mean there was "no trace."

Discussion:

16. The challenge to the decision of FtT Judge Farrelly advanced on behalf of the ECO is limited to the two grounds in the written grounds of appeal. Mr Diwnycz relied upon the written grounds of challenge and did not seek to expand further on those grounds.

17. Dealing with the grounds, it is submitted that the FtTJ directed himself in law to the 2 decisions of *Tanveer Ahmed* [2002] UKIAT 00439 at paragraphs 20 – 21 of his decision and to *QC (verification of document: Mibanga duty) China* [2021] UKUT 00033 at paragraph 22 of his decision (see paragraphs 3 -4 of the grounds). It is submitted that the relevant legal principles from those cases have not been properly followed. Firstly, the FtTJ failed to reach any reasoned conclusions whether the document purporting to be a DVR submitted by the appellants was reliable (by reference to paragraph 23), and secondly that the FtTJ discounted the respondent's DVR's on the basis that further enquiries could have been carried out. It is submitted that in the circumstances where a DVR has been obtained it is not necessary to make any further enquiries. However the finding implies that the ECO could have sought to verify the appellant's purported DVR but that was not consistent with the guidance in QC.

18. The 2nd point made is that the FtTJ failed to follow the guidance given in *Tanveer Ahmed* which he cited at paragraph 21, must "shake off any preconception that official documents are genuine, based on experience of documents in the United Kingdom." It is asserted that the assessment made by the immunisation cards was contrary to that principle.

19. Neither advocate addressed the tribunal upon those 2 decisions cited in the respondent's grounds save in general terms. It does not seem to be disputed by the respondent in the grounds that the FtTJ properly directed himself to the relevant legal authorities for this appeal but that the point made in the grounds is that the FtTJ failed to reach any reasoned conclusions as to why the appellants documents were reliable or conversely as paragraph 2 of the grounds (Ground 1) sets out, no basis had been identified for placing material weight on the appellants evidence while rejecting the ECO's evidence.

20. The FtTJ set out the relevant paragraphs of *Tanveer Ahmed* between paragraphs 20 – 21. At paragraph 21, the FtTJ expressly cited paragraph 31 of *Tanveer Ahmed* which was approved by the Upper Tribunal in the decision of *QC* (as cited) and as noted in the respondent's grounds.

21. At paragraph 31, the Tribunal said:-

> "31. It is trite immigration and asylum law that we must not judge what is or is not likely to happen in other countries by reference to our perception of what is normal within the United Kingdom. The principle applies as much to documents as to any other form of evidence. We know from experience and country information that there are countries where it is easy and often relatively inexpensive to obtain "forged" documents. Some of them are false in that they are not made by whoever purports to be the author and the information they contain is wholly or partially untrue. Some are "genuine" to the extent that they emanate from a proper source, in the proper form, on the proper paper, with the proper seals, but the information they contain is wholly or partially untrue. Examples are birth, death and marriage certificates from certain countries, which can be obtained from the proper source for a "fee" but contain information which is wholly or partially untrue. The permutations of truth, untruth, validity and "genuineness" are enormous. At its simplest we need to differentiate between form and content; that is whether a document is properly issued by the purported author and whether the contents are true. They are separate questions. It is a dangerous oversimplification merely to ask whether a

document is "forged" or even "not genuine". It is necessary to shake off any preconception that official looking documents are genuine, based on experience of documents in the United Kingdom, and to approach them with an open mind."

22. The respondent's grounds at paragraph 4 also cite the decision in *QC* as follows:

"the overarching question for the judicial factfinder will be whether the document in question could be regarded as reliable. An obligation on the respondent to take steps to verify the authenticity of the document relied on by an appellant will arise only exceptionally" (para 22 of FtTJ's decision).

23. Whilst the grounds seek to argue that the FtTJ failed to reach reasoned conclusions upon the documents, both the documents provided by the appellant and the respondent, that is not demonstrated by the decision of FtTJ Farrelly. The issue identified by the FtTJ was whether the appellants' sponsor was related to them as their mother (see paragraph 15 of his decision) and when addressing that issue the FtTJ, in accordance with the decision of *Tanveer Ahmed* which the respondent submits the FtTJ should have considered, went on to assess the evidence relevant to that central issue "in the round" as set out at paragraph 23 where the FtTJ stated "before reaching a conclusion I have considered all the evidence available to me." The FtTJ considered and took into account the contents of the DVR's in relation to the birth certificates of each appellant. That evidence is summarised at paragraph 9 and when assessing the evidence the FtTJ reached the conclusions set out between paragraphs 17 – 19. Firstly, he identified that the information in the DVR's was "very limited." In respect of the 2nd appellant that the contact was made to an "administrator". The inference made from that finding is that the FtTJ did not find that was consistent with being a "senior official." The FtTJ found that the reports reference to the contact having completed "internal checks" failed to specify what they were and that the only information the report was a date stamp on the handwritten birth certificate stating, "not traced." Whilst Mr Diwnycz submitted that it meant what it said, the FtTJ made the point that what "not traced" meant precisely had not been explained in the DVR's. Therefore the FtTJ did identify and provide reasoning as to what he considered to be the deficiencies in the DVR's. It was open to the FtTJ to consider the evidence in accordance with the principles of *Tanveer Ahmed.*

24. As to the evidence relied upon by the appellants, the FtTJ considered that evidence and addressed it in his decision. He took into account the evidence of the sponsor concerning how the birth certificates were obtained and the biometric birth certificates were obtained (see paragraph 11). The FtTJ considered the other evidence in support of the reliability of the original documents including what was described as the verification letter dated 25th of October 2021 which the FtTJ found was on "headed notepaper containing a telephone number and purported to be issued by the central registry office in Accra". The FtTJ set out the document was signed by the registrar and the birth certificate for the 1st appellant had an entry of 2481 was entered on the registry of births (see paragraph 12). In conjunction with this (paragraph 14) the FtTJ took into account who had signed the document and that the 2 specimen signatures were also identified in the documents (which appears to be a reference to P6 and p12 and the signatures attested by the document at p15AB).

25. It is not the case that the FtTJ considered the evidence of the appellants uncritically. He addressed the point relied upon in relation to the passports which had been issued to both appellants in 2021 as verified by the birth certificates as set out at paragraph 10 of his decision but properly weighed in the balance at

paragraph 24 that whilst they had been issued by the authorities in Ghana it was of limited probative value. However the FtTJ considered that it was worthy of some weight in the overall assessment.

26. The FtTJ also considered the immunisation cards at paragraph 25 which he considered contained sufficient detail to lend weight to the credibility of the overall claim made by the appellants.

27. The FtTJ therefore identified the evidence before him and having set out the legal test which he went on to apply, he adequately reasoned that when weighing up the evidence and "having considered all the evidence" available to him, that is "in the round" that he was satisfied on the evidence that the appellants were the children of the sponsor.

28. In reaching that conclusion the FtTJ relied the decision in *Tanveer Ahmed* by addressing the form and content of the DVR's relied upon by the respondent but set out in his analysis of that evidence between paragraphs 17 – 19 and paragraph 23 why he reached the conclusion that the DVR evidence was not reliable evidence. As Mr Simo submitted the FtTJ did not refer one piece of evidence over another but considered the evidence "in the round."

29. Thus in relation to ground one where it is argued that the FtTJ did not identify any proper basis for placing weight on the appellant's evidence and rejecting the DVR's, the FtTJ did not discount the DVR's solely on the basis that there was a "possibility of human error" as paragraph 2 of the grounds set out but did so by considering the documents "in the round" by reference to their contents and their reliability.

30. The grounds are paragraph 6 also seeks to challenge the finding made at paragraph 25 upon the immunisation cards. They are set out at pages 7 onwards in the bundle, setting out the place of birth and the first immunisations giving the name of both mother and father which are consistent with the names given for their parents.

31. Contrary to the grounds at paragraph 25, all the FtTJ stated was that he took into account the contents of the immunisation cards which contained sufficient detail such that it was consistent with the sponsor as the mother of the appellant and that this was worthy of some weight in terms of assessing reliability of the evidence generally.

32. Whilst the grounds submit that the FtTJ implied that the ECO could have verified the appellants' evidence and that this was not consistent with the guidance in *QC* (as cited), that is based on paragraph 23 of the FtTJ's decision. However that is taken out of context and the FtTJ had set out at paragraph 23 the conclusions reached on the reliability of the respondent's evidence. Whilst there was reference to the evidence from the appellants and that there was sufficient details on that report (the letter) and sufficient details and time for the respondent to carry out further enquiries, the FtTJ was not stating that there was an obligation to do so. Had that been the view the FtTJ had taken he would have followed the other part of the guidance referred to in *QC* and reached the view that it was not open to the respondent to challenge the authenticity or reliability of the appellants' documents. The FtTJ was plainly aware that the respondent did provide evidence in the form of DVR evidence and therefore the respondent had discharged that obligation but for the reasons given by the FtTJ when concerning the issue of the reliability of the documents in the context of the evidence he did

not find the DVR's in terms of their content and their form to be reliable documents. In other words, the FtTJ in light of the limited information contained in the DVR's and in the absence of any further argument from the respondent gave adequate reasons for concluding that the respondent had not discharged the burden of proof that the documents were false.

33. As recognised in HA (Iraq) at paragraph 72, it is well established that judicial caution and restraint is required when considering whether to set aside a decision of a specialist fact finding tribunal and in this appeal the decision of FtT Judge Farrelly. In particular:

> (i) They alone are the judges of the facts. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. It is probable that in understanding and applying the law in their specialised field the tribunal will have got it right. Appellate courts should not rush to find misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently - see *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49; [2008] AC 678 per Baroness Hale of Richmond at para 30.
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> (ii) Where a relevant point is not expressly mentioned by the tribunal, the court should be slow to infer that it has not been taken into account - see *MA (Somalia) v Secretary of State for the Home Department* [2010] UKSC 49; [2011] 2 All ER 65 at para 45 per Sir John Dyson.
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> (iii) When it comes to the reasons given by the tribunal, the court should exercise judicial restraint and should not assume that the tribunal misdirected itself just because not every step in its reasoning is fully set out - see *R (Jones) v First-tier Tribunal (Social Entitlement Chamber)* [2013] UKSC 19; [2013] 2 AC 48 at para 25 per Lord Hope.

34. It is not the role of this Tribunal, or any appellate Tribunal to allow an appeal merely because a different conclusion might have been reached or the reasoning might have been expressed differently. It is well established that tribunals may reach different conclusions on the same case without illegality or irrationality. As Carnwath LJ said in Mukarkar v SSHD [2006] EWCA Civ 1045 at [40], "The mere fact that one tribunal has reached what may seem an unusually generous view of a particular case does not mean that it has made an error of law."

35. In relation to "reasons challenges" appellate judicial restraint is also justified. It should not be assumed too readily that the tribunal misdirected itself just because not every step in its reason is fully set out: Jones v First-tier Tribunal [2013] UKSC 19, [2013] 2 AC 48 at [25] (Lord Hope). A judge's reasons should be read, unless he has demonstrated to the contrary, on the assumption that he knew how he should perform his functions and which matters he should take into account: Piglowska v Piglowski [1999] UKHL 27, [1999] 1 WLR 1360 (HL), 1372 (Lord Hoffmann).

36. This was an appeal considered "on the papers" as both parties had agreed. A detailed skeleton argument was produced on behalf of the appellants and no skeleton argument was produced on behalf of the respondent. The FtTJ was required to address the evidence that was before him to decide the issue which he set out at paragraph 15. He gave reasons for reaching the overall decision at paragraph 26 that he was satisfied on the evidence produced that the appellants are the children of the sponsor. In reaching that conclusion he did not ignore the contents of the DVR's but considered them in the light of the evidence "in the

round." Whilst the decision could have been set out in greater detail, the FtTJ addressed the evidence before him and gave adequate reasons as to why he reached the decision he came to.

37. The grounds as they are amount to no more than a disagreement with the decision. As often observed, it might be said that a different judge may have reached a different conclusion on the particular facts however, it is not an error of law to make findings of fact which the appellate tribunal might not make or reach a conclusion with which the Upper Tribunal may disagree. The temptation to repackage disagreement as a finding that there has been an error of law should be resisted as Baroness Hale set out in The Secretary of State for the Home Department v AH (Sudan) UKHL 49 at paragraph 30:

"appellate courts should not rush to find such misdirection simply because they might have reached a different conclusion on the facts or express themselves differently."

38. This is an error of law jurisdiction and as Floyd LJ set out in UT (Sri Lanka) v SSHD [2019] EWCA Civ 1095 at paragraph 19, " .. Although "error of law" is widely defined, it is not the case that the Upper Tribunal is entitled to remake the decision of the FtT simply because it does not agree with it, or because it thinks it can produce a better one. Thus, the reasons given for considering there to be an error of law really matter."

39. Consequently for those reasons the respondent has not established that the FtTJ's decision involved the making of an error on a point of law therefore the decision shall stand.

Notice of Decision:

40. The decision of the FtTJ did not involve the making of a material error of law and the decision of the FtT shall stand.

Upper Tribunal Judge Reeds
Upper Tribunal Judge Reeds

16 November 2023