IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003332
UI-2023-003333
First-tier Tribunal No: EA/02837/2022
EA/02839/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 28th of November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE COTTON

Between

ENTRY CLEARANCE OFFICER
SHEFFIELD

Appellant

and

NANCY BOAPONG
SETH BOAPONG
(NO ANONYMITY ORDER MADE)

Respondents

Representation:
For the Appellant: Mr N Wain, Senior Home Office Presenting Officer
For the Respondent: Ms H Gore, Counsel instructed by Gans and Co Solicitors

Heard at Field House on 5 October 2023

DECISION AND REASONS

1. This appeal by the Entry Clearance Officer is against a decision of First-tier Tribunal (FtT) Judge Easterman (the Judge) promulgated on 1 November 2022. I refer to the parties as they were in the FtT. The appellants sought family permits from the respondent under the EU Settlement Scheme (EUSS) on the basis that they are family members (children) of the sponsor (their mother). The appellants, born 26 March 2001 and 24 September 2002 are nationals of Ghana. The sponsor is a national of Italy. The respondent refused their applications on 27 February 2022 and 8 March 2022 on the basis that they had not proved they are related to the sponsor. The Judge allowed both of their appeals.

In the First-tier Tribunal

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2. The sole issue in the FtT was whether the appellants were the children of the sponsor.

3. The Judge dealt first with an application to adjourn made by the respondent, who sought time for service of a full copy and/or the original of the Ghanaian biometric birth certificate of the first appellant and for the respondent to then be able to carry out "due diligence" on the document. The biometric birth certificate had been served late as part of the appellant's bundle a couple of days before the hearing. The appellants informed the Judge that the late service was due to a lack of funding.

4. The Judge noted that the late service was contrary to the Tribunal's directions and the relevant presidential practice statement of April 2022. He heard arguments from both parties on whether to grant an adjournment and considered the reasons for late service of the bundle.

5. The Judge found that the respondent had in fact had almost all of the documentary evidence well in advance of them being served as part of the bundle. The Judge went on to refuse the application for an adjournment and grant the application to allow the late service of the bundle.

6. The respondent's case was that the scanned certificates to which they had access since the application to the ECO was made were insufficient to verify. The Judge notes at [20] that the respondent explained that the intention would be to link the birth certificates in the case with the issuing of the passports of the appellants, but that it was not clear how this would help with the issue in the case. The respondent also told the judge that the late service of the relevant bundle meant that the respondent had been unable to verify the documents but was unable to explain what verification would be carried out. The Judge finds at [23] that the appellants had provided their documents to the respondent's contractor in Accra and that the contractor had done "a truly appalling job" in scanning and processing the documents.

7. The appellants conceded that they could not deal with how there was a handwritten birth certificate for the second appellant which did not name his mother [19].

8. The Judge heard oral evidence form the sponsor in addition to the written evidence and heard submissions form both parties. The Judge concluded that on the balance of probabilities and on the evidence available to him, the appellants had discharged the burden of proof on them and that the respondent had not justified the refusal under the EUSS. He allowed the appeals.

In the Upper Tribunal

9. The appellants appealed and were granted permission on the grounds that:

    a. The Judge acted in a procedurally unfair way through refusing the adjournment application; and

    b. The Judge failed to give adequate reasons for accepting the second appellant's birth certificate.

10. The appellants' Rule 24 response had not been available to the Presenting Officer and so I rose to give time for Mr Wain to read it. He confirmed that he was content to proceed thereafter. I rose a further time to allow Ms Gore additional time to prepare as it had not been clear to her that permission had been granted on both grounds of appeal. She confirmed that she was content to proceed when I returned.

11. The respondent submitted that the Home Office had been denied a chance to carry out checks on the documents. The Judge accepts, says the respondent, that checks might need to be carried out by the ECO [26] and accepts that there are differences between the first appellant's birth certificates, but does not allow for verification to take place. The respondent was not under an obligation to verify the documents if it is not an issue in the case, and that it is for the Judge to identify what the issues are. In light of the concerns about the second appellant's birth certificates, the Judge's reasons are inadequate.

12. The appellants submitted that the respondent had contracted out the receipt of documents for the initial application to the ECO and that contractor had scanned the documents badly. That failure was one that the respondent should carry and the ECO could have asked for them to be scanned again. If there is a procedure that the respondent wants to follow in verifying documents, that should be done before the ECO makes their decision. In the FtT the respondent was able to cross examine the sponsor on the sole issue in the case and the refusal to adjourn the case did not prevent this in any way. The appellants submitted that this was a straight-forward decision to make on the balance of probabilities as to whether the appellants were the children of the sponsor. In respect of the second ground of appeal, says the appellants, the Judge outlines what his concerns were and comes to a conclusion based on all the evidence.

13. I remind myself of The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I note that Rule 2 sets the overriding objective as enabling the Tribunal to deal with cases fairly and justly, which includes (amongst other things) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal, and avoiding delay, so far as compatible with proper consideration of the issues.

14. The respondent refers in the grounds of appeal to Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC) and the judicial headnote which reads:

> If a Tribunal refuses to accede to an adjournment request, such decision could, in principle, be erroneous in law in several respects: these include a failure to take into account all material considerations; permitting immaterial considerations to intrude; denying the party concerned a fair hearing; failing to apply the correct test; and acting irrationally. In practice, in most cases the question will be whether the refusal deprived the affected party of his right to a fair hearing. Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the FtT acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party's right to a fair hearing? See SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284.

15. SH (Afghanistan) contains this pithy summary of the test to be applied when the Upper Tribunal is looking at whether the FtT should have granted an adjournment at [14]:

> Where an appellant seeks to be allowed to establish by contrary evidence that the case against him is wrong, the question will always be, whatever stage the proceedings have reached, what does fairness demand?

16. It is not submitted that the Judge failed to take into account material considerations, or that he took into account immaterial considerations. It is not said that the Judge acted irrationally or failed to apply the correct test. The challenge is based squarely on whether the Judge's decision was fair.

17. There was a single issue between the parties before the FtT, that of whether the sponsor is the parent of the appellants. For the first appellant this related directly to the biometric birth certificate. This issue was clear to the respondent no later than 27 February 2022 when the ECO noted that the version scanned did not include the full date of birth (it was missing the last digit of the year of birth). It was at that point that the respondent set the issue for the appeal to the FtT. The respondent could have chosen to investigate the apparent problem with the missing digit by asking the first appellant to provide her birth certificate for scanning by the Home Office a second time. For reasons which are not apparent on the documents available to me, the decision was instead to acknowledge that "the scanned version of your Ghanaian biometric birth certificate provided is missing the full date of issue" and to refuse the application. The respondent sought to re-visit an assessment of the birth certificate about 8 months later when provided with a better scan of the certificate two days before the hearing.

18. The judge noted that the appellants claimed lack of funding prevented them preparing earlier for the hearing and understandably gives it little weight given that all the documents in the appellants' bundles had been available (and all bar 2 were in the respondent's bundle). The respondent was not denied the ability to cross-examine the sponsor on whether she is the mother of the appellants, and the respondent does not suggest that this was effectively denied.

19. It may be that the respondent routinely chooses not to investigate documents presented on an application in any real depth. That is entirely a matter for the Home Office. Where a party does not take up the opportunity to examine a document which both goes to the heart of the issue in a case (such as here) and also is offered up to them at an early stage (such as on application for entry clearance), they cannot expect the Tribunal to attribute any great weight to a submission that fairness demands an adjournment to consider the document 8 months later.

20. The single issue in the case was not complex and the respondent was unable to explain to the Judge how an adjournment to examine the biometric birth certificate would assist in resolving the issue. In relation to the first appellant, I find that fairness did not demand that an adjournment be granted (in other words, fairness demanded the Judge not adjourn).

21. The second ground of appeal, relating to the second appellant, refers to [25] in the FtT determination. The factual issue to be decided by the Judge in relation to the second appellant is not, as styled in the ground of appeal, whether the

second appellant's birth certificate could be accepted. The issue was whether the sponsor is the second appellant's mother. The Judge takes into consideration the evidence of the birth certificates and of the sponsor. He outlines the evidence available to him at [14-19]. There is not much evidence for him to draw together in relation to the second appellant. In a single, economical, paragraph at [25] he explains how the weight of the mother's evidence and the birth certificate with her name on it outweighs the doubt raised by the other birth certificate which does not have the sponsor named as the second appellant's mother.

22. Given the evidence available to the Judge, I find that his decision on this point is sufficiently reasoned – he has outlined the evidence and explained how he sees the evidence worthy of weight balancing against each other to come to a conclusion.

23. In relation to both grounds of appeal I find that the Judge made no error of law.

Notice of Decision

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

2. I do not set aside the decision.

D Cotton

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 November 2023