



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

Case No: UI-2024-000781  
UI-2024-000782

FtT No: EU/50137/2023;  
LE/00661/2023 EU/50136/2023;  
LE/00662/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 21 June 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SYMES**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**And**

**KENNETH OSEI GYASE  
PRECIOUS GYASEWAA  
(No anonymity order made)**

Respondents

**Representation:**

For the Appellant: Mr Melvin, Senior Home Office Presenting Office

For the Respondent: Ms Kogulathas, Suleman Legal Services

**Heard at Field House on 25 April 2024**

**DECISION AND REASONS**

1. The Secretary of State appeals against the decision of the First-tier Tribunal of 12 January 2024, to allow the appeals of the siblings Kenneth Osei Gyase and Precious Gyasewaa, citizens of Ghana born 26 August 2008 and 12 April 2000, those appeals brought against decisions of the Secretary of State to refuse applications for family permits on 20 December 2022.

2. The Respondents' mother is Charlotte Asieduaa, who married Mukhlar Iddrisu, a Swiss national, on 12 January 2018, thus founding their claim to be the stepchildren of and thus the family members of a relevant EEA citizen, Mr Iddrisu. The application relied on evidence of Mr Iddrisu's UK residence by way of payslips from February to October 2021, including some from Global Pay Solutions dated from 6 August 2021 to 24 September 2021. The Secretary of State conducted checks of these latter payslips, via a request sent by Liverpool Visa Section to the Verification Plus Unit, the latter then submitting the payslips to their central points of contact at the Gateway Exchange Team, HMRC and the Fraud Investigation Support Office, DWP. Based on the ensuing Document Verification Report (DVR) the Respondent concluded that there was no record of the sponsor's claimed employment and the payslips submitted were therefore false. This compelled the conclusion that the Appellants had attempted to obtain an undue advantage by providing false documents, so the Respondent did not accept the premise of their Sponsor's UK residence.
3. The appeals were determined without a hearing. The First-tier Tribunal examined the DVR and noted that
  - (a) "monthly payslips" were said to have been examined: however in fact the payslips had been issued on a weekly basis.
  - (b) Under the heading, "*Evidence submitted in support of application... Full versions available in digital version of this document*", there is an image of a PDF titled "GWF062273503 - employment evidence": but, so the Tribunal believed, the content of this PDF was in reality not included in the Respondent's bundle.
  - (c) There was no information regarding the precise checks that had been made by HMRC or the DWP units mentioned.
4. In these circumstances the inaccurate description of the payslips undermined the weight to be attached to the DVR because the Judge could not be satisfied that the correct payslips had been forwarded to the relevant verification department. The Appellants had supplied a letter of 5 January 2023 from Ronnie Carroll, Payroll Manager at GPS Payroll Ltd, confirming the veracity of the GPS payslips, and within the Sponsor's bank statements were payments from GPS Payroll on 19 November 2021 and 26 November 2021 for amounts consistent with the corresponding payslips: these considerably pre-dated the refusal, even though no bank statements corresponding to the August to September period upon which the Secretary of State had focussed had been supplied.
5. The Secretary of State appeals on the grounds that

- (1) The pdf said in the Secretary of State's bundle to have been provided with the DVR was, contrary to the First-tier Tribunal's impression, available to the Judge.
  - (2) The checks made by HMRC or and the DWP were detailed in the DVR.
  - (3) Ronnie Carroll's letter did not state the length of Mr Iddrisu's employment and there was no letter of employment or employment contract to confirm his UK residence at the date of application.
6. On 3 March 2024 the First-tier Tribunal granted permission to appeal to the Upper Tribunal because arguably material evidence had been overlooked.
  7. For the Appellant Mr Melvin submitted that relevant payslips supplied on the application showed earnings paid into the account of a subsidiary company. The DVR was perfectly clear that two payslips had been investigated and found to be false. This was sufficient to mandate the application's refusal, and the First-tier Tribunal had erred in law in finding otherwise.
  8. Ms Kogulathas submitted that the Secretary of State's case had not been a cogent one below. There was a wealth of evidence in her clients' favour and it was not irrational for the First-tier Tribunal to reject the assertion that the DVR demonstrated dishonesty. In fact it the DVR's reasoning on dishonesty was unclear, though one thing that could be said of the material therein was that some of it confirmed the reality of the Respondents' EEA Sponsor's' UK residence and income-generating self-employment.

## **Decision and reasons**

9. Central to these appeals are the payslips from 2021 dated 1 August, 8 August, 15 August, 29 August, and 19 September issued by Global Pay Solutions to Mukhlar Iddrisu. In one sense the Respondents have contributed to their own difficulties in failing to secure their Sponsor's matching bank statements showing the actual receipt of the earnings put in issue by the DVR. That would have put the matter beyond reasonable dispute. However, they are entitled to a lawful decision on their appeals based on the resolution of the strengths and weaknesses of the evidence that was available to the Judge below.
10. The Immigration Rules state within Appendix EU:  

“**EU16.** An application made under this Appendix may be refused on grounds of suitability where, at the date of decision, the Secretary of State is satisfied that:

(a) It is proportionate to refuse the application where, in relation to the application and whether or not to the applicant's knowledge, false or misleading information, representations or documents have been submitted (including false or misleading information submitted to any person to obtain a document used in support of the application); and the information, representation or documentation is material to the decision whether or not to grant the applicant indefinite leave to enter or remain or limited leave to enter or remain under this Appendix"

11. The civil standard of proof applies and is flexible in its application, taking account of the seriousness of a dishonesty allegation in immigration proceedings. Per Green LJ in *Ullah* [2024] EWCA Civ 201 §23:

"The legal burden of proving that the Appellant acted dishonestly lies upon the Secretary of State. There is a three-stage process: (i) the Secretary of State first must adduce prima facie evidence of deception ("the first stage"); (ii) the Appellant then has a burden of raising an innocent explanation which satisfies the minimum level of plausibility ("the second stage"); and (iii), if that burden is discharged, the Secretary of State must establish on a balance of probabilities that this explanation is to be rejected ("the third stage")."

12. Where there are allegations of fraud or deception, which if established will have serious consequences, a careful examination of the standard and quality of the evidence adduced is required: Green LJ in *Ullah* §23, going on to explain §28-30:

"In *Ivey*, Lord Hughes set out the test for dishonesty ... the test involves two stages: (i) What was the individual's actual state of knowledge or belief as to the facts; and (ii) was his conduct dishonest by the standards of ordinary decent people? The Court of Appeal in Northern Ireland in *LLD v Secretary of State for the Home Department* [2020] NICA 38 ("LLD") at paragraph [62] summarised the approach in the following terms:

"When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

13. As those authorities show, the Secretary of State bears the burden of proof on this issue and it is on the cogency of his evidence that his appeal rests. As summarised above, the Secretary of State's decision maker sent a request for checks on 4 November 2022, and a response came on 12 December 2022.
14. The First-tier Tribunal is certainly wrong in one respect. Whilst it believed that the Secretary of State had failed to adduce part of the DVR's supporting materials, this in reality was not correct: the pdf icon which concerned the Judge below simply linked, as Mr Melvin explained, to a copy of the payslips in issue. Those payslips were in fact available.
15. On the one hand, the First-tier Tribunal therefore erred in law in making a mistake of fact. But on the other hand, whether this was a *material* error depends on the cogency of the Secretary of State's case before it.
16. The difficulty that the Secretary of State has on this appeal is that once scrutinised, the material supporting the DVR's conclusions is extremely opaque. It has been highlighted by the use of six colours to differentiate each section. So far as I can make out, it contains the following material in relation to the Sponsor's presence and work in the UK:
  - (a) For the tax year ending April 2021, from December 2018 to April 2020 he worked as a driver for Atlas Cleaning Ltd earning £7,500 on a PAYE basis.
  - (b) For the tax year ending April 2022, to 9 February 2022, he worked for Blue Health Care Services Ltd from 24 December 2021 to 9 February 2022 (earning £3180.50), for Allied Recruitment Services Ltd from 21 April 2021 to an uncertain end date (earning £7067.69), and for Tempus Services Ltd for dates (apparently presented in the wrong order) from 8 July 2022 to 16 May 2021 (earning £1657.00).
  - (c) Information for the tax year ending April 2023, which is beyond the scope of the contested period in this appeal.
  - (d) "NINO matches" against his details confirming he had lived in Aylesbury, claimed tax credits at one time, had a registered business address.
  - (e) His listing on the electoral roll at an Aylesbury address.
  - (f) His DWP records indicating that Universal Credit might be due to him though none had so far been paid.
17. Reviewing that material, which is best described as "data" rather than "information" let alone "insight", I cannot detect anything which amounts to a negative return in relation to any search for payslips from

August to September 2021. On the contrary, in fact, positive earnings are recorded for that tax year. Furthermore several other aspects of the evidence affirmatively support the Respondents' Sponsor's UK residence at relevant times, such as the references to his Aylesbury address and his tax records relating to several temping agencies.

18. I therefore conclude that whilst the First-tier Tribunal made significant factual errors in its decision, those errors were not material: for the simple reason that the Secretary of State's evidence is so oblique that it could not reasonably be accepted as discharging the burden of proof upon him to back up the dishonesty allegation.

Decision:

The decision of the First-tier Tribunal contained no material error of law. I accordingly dismiss the appeals.

A handwritten signature in black ink, appearing to read 'M.A.S. Symes', with a long, sweeping underline that extends to the left and then curves back under the signature.

Deputy Upper Tribunal Judge Symes  
Immigration and Asylum Chamber

15 June 2024