



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers: AA/07574/2013  
AA/07575/2013  
AA/07576/2013  
AA/07577/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 2 December 2013**

**Determination  
Promulgated**

.....

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL**

**Between**

**MRS E A (FIRST APPELLANT)  
MR T Q (SECOND APPELLANT)  
D N D Q (THIRD APPELLANT)  
M J N D Q (FOURTH APPELLANT)  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr A Eaton (Counsel)

For the Respondent: Mr G Jack (Senior Home Office Presenting Officer)

**DECISION ON ERROR OF LAW**

1. The appellants are citizens of Ghana. The first and second are wife and husband and the third and fourth are their daughters, born in the United Kingdom in 2008 and 2009. On 25<sup>th</sup> July 2013, the Secretary of State decided to remove the appellants from the United Kingdom, following

rejection of an asylum claim in which the first appellant claimed to be at risk on return to Ghana, in the light of the belief of her family members that she is a witch.

2. The appeals came before First-tier Tribunal Judge Seelhoff (“the judge”) on 10<sup>th</sup> September 2013. In a determination promulgated on 26<sup>th</sup> September that year, the appeals were dismissed. The judge found that the core claims made by the first and second appellants, including the date the first appellant arrived in the United Kingdom, were not to be believed. He concluded that the first and second appellants had a history of deceiving the authorities of the United Kingdom and lacked credibility. He went on to make an assessment under Article 8 of the Human Rights Convention. He found that they could not succeed in showing that their private life ties here met the requirements of the Immigration Rules (“the rules”). He made an assessment of the best interests of the third and fourth appellants, noting that they were born in the United Kingdom and were in school and at nursery. In the light of his finding that the first and second appellants had been present here for no more than six years, rather than the considerably longer period claimed, he found that the removal of all the appellants as a family unit was a proportionate response.

### **The Application for Permission to Appeal**

3. In an application for permission to appeal, it was contended that the judge erred in law in several respects. In dismissing the appeals, he gave weight to the delay in the claim for asylum and to the evidence of Mr A, a witness, in relation to the first appellant’s claim that she arrived in the United Kingdom in December 2003.
4. So far as delay was concerned, the judge failed to take into account SM [2005] UKIAT 00116, behaviour falling within scope of section 8 of the 2004 Act being not determinative of credibility. So far as the weight given to Mr A’s evidence was concerned, the judge failed to refer to and properly take into account the first appellant’s witness statement and her oral evidence. Mr A, who claimed that he was told by the first appellant’s mother in Ghana in 2007 that she was present in that country at the time and living at home, was relating a conversation he understood he had. Too much weight was given to this evidence. Moreover, the judge failed to give due weight to a visa and entry clearance stamp which formed part of the evidence before him, showing that the first appellant arrived in the United Kingdom on 26<sup>th</sup> December 2003. The judge also failed to consider a letter from the Reverend Steven Peprah, of the Glory and Hope Ministries in Kumasi, Ghana, confirming that the first appellant took refuge when fleeing the family of her stepfather in August 2003. This evidence was also before the judge.
5. Permission to appeal was granted on 17<sup>th</sup> October 2013. In a rule 24 response from the Secretary of State made on 31<sup>st</sup> October 2013, the appeal was opposed. The respondent would submit that the judge

directed himself appropriately. The appellant's case was based on events claimed to have occurred immediately prior to her journey to the United Kingdom in 2003. The evidence of Mr A indicated that she was present in Ghana in 2007. Having accepted this evidence, the judge was entitled to conclude that the appellant's core claims were not true.

6. In directions made by the principal resident judge, the parties were advised to prepare for the forthcoming hearing on the basis that it would be confined to whether the determination of the First-tier Tribunal should be set aside for legal error and, if so, whether the decision could be remade without having to hear oral evidence; in which eventuality the Tribunal would be likely to proceed to remake the decision.

### **Submissions on Error of Law**

7. Mr Eaton said that the judge erred in failing to give proper consideration to the appellants' case. Broadly, the appeal was dismissed on the basis of adverse credibility findings. One aspect was the delay in making the asylum claim, and the appellants accepted the judge's assessment on this. The fundamental reason concerned evidence given by the first appellant's friend, Mr A. The judge found that this evidence showed that the first appellant did not leave Ghana at the time claimed. However, important parts of the evidence was not considered by the judge at all. At page 39 in the appellants' bundle was a letter from the Glory and Hope Ministries in Ghana. The account of events in 2003 corroborated the first appellant's claims. The judge appeared not to have taken this evidence into account. Another important part of the evidence was the copy visa stamp which suggested that the first appellant arrived in the United Kingdom on 26<sup>th</sup> December 2003. This was within the grant of leave shown in the visa, which was valid between December 2003 and June 2004. The Secretary of State did not assert that this document was a forgery. Taking into account SA (Kuwait), if no weight was to be given to document from an official source, on the basis that it was not reliable, what was required was evidence to show how it had been tampered with or amended. If the copy document had weight, because it genuinely reflected a grant of entry clearance or leave to enter, it was difficult to construe it as evidence not showing that the first appellant arrived on the date claimed.
8. Both pieces of evidence supported the first appellant's case but, submitted Mr Eaton, one had not been considered at all and the other was not given due weight.
9. In response, Mr Jack said that the determination was reasoned and showed the basis for the judge's dismissal of the appeals. At paragraph 14, the judge expressly referred to the bundles of documents and the documents adduced by the parties and, at paragraph 16, he recorded that the first appellant gave evidence and was cross-examined at length. Mr A was recorded as having given evidence and as adopting the letter which appeared in the appellant's bundle. It was clear that the oral evidence

was fully taken into account. There was nothing to indicate that the evidence from Mr A was confused. He gave evidence about a conversation with the first appellant's mother and it was open to the judge to give weight to that evidence.

10. It was open to the first appellant to produce the documentary evidence she sought to rely on, regarding her presence here. The judge was entitled to make the findings he did, in the light of the evidence before the Tribunal. At paragraph 22, the judge rejected the photocopy of the visa and gave reasons for accepting the evidence given by the witnesses. The judge noted that the visa was produced only in copy form and after the appellant had said that she could not find the original passport. There was no bio-data page available. The judge was entitled to give the copy visa little weight.
11. At paragraph 24 of the determination, the judge noted that the earliest undisputed evidence regarding the first appellant's presence showed that she was here in 2008 and he was entitled to conclude that it was unlikely that she arrived earlier than about mid 2007. Adverse features of the appellants' case were properly taken into account, at paragraph 25 of the determination. The second appellant had relied upon a false identity, when arrested. The judge was entitled to find that he and his wife were willing to deceive the authorities of the United Kingdom. Into the balance was put the delay in making the claim, as was clear from paragraph 26.
12. The letter from the church in Ghana was not referred to specifically but the determination showed that the judge did not accept that the first appellant was in Ghana at the time and so the account she gave of events there was not accepted. The letter had little weight, in any event. There was nothing to indicate the sources accessed by the author of it and the letter did not show which parts of the contents were within his own knowledge. There was no material error in the judge's failure to refer specifically to it.
13. In a brief response, Mr Eaton said that the judge dealt with the appeals only on the basis of the adverse credibility findings. There was, for example, no consideration of relocation. The letter from the Glory and Hope Ministries could not properly be assessed as having no relevance or weight because of the adverse credibility findings made on the judge's assessment of the oral evidence. This would be to put the cart before the horse as all the evidence should be weighed, in the round. The letter was pertinent and it was clear that the sources reflected the firsthand experience of the author. At paragraph 25, where the judge dealt with an EEA Regulations application by the first appellant, it appeared that this too was part of the assessment that she had a history of deceiving the United Kingdom authorities. However, all that happened was that the appellant made her application and it was rejected.
14. Mr A's evidence consisted only of his account of the conversation about the family, having met the first appellant's mother at a market in Ghana.

The judge gave very substantial weight to this account without taking into account documentary evidence that gave weight to the first appellant's account of her arrival here. Mr A's evidence certainly fell to be weighed in the balance but, overall, the weight to be given was slight. At the very least, it had to be set against the documentary evidence which the judge did not properly consider, although he mentioned it in paragraph 22 of the determination.

### **Conclusions on Error of Law**

15. I am grateful to the two representatives for the careful way in which they presented their cases.
16. The documentary evidence before the judge included the photocopied visa (at page 34 of the appellants' bundle) in the first appellant's name, showing the grant of leave as a visitor between 22<sup>nd</sup> December 2003 and 22<sup>nd</sup> June 2004. The visa includes a stamp apparently showing entry at Heathrow Airport on 26<sup>th</sup> December 2003, within the currency of the visa. The first appellant's name appears in the document. The bundle also included a letter from the Glory and Hope Ministries Church (at page 39), sent to the appellants in June 2013.
17. The judge summarised the evidence before him, including the damaging evidence from Mr A. This witness gave an account of travelling on an uncertain date but after he obtained a British passport in 2007 and of meeting the first appellant's mother at a market in Ghana and talking about the family with her. This relative told Mr A that the first appellant was still living at home with her and was a student. Paragraph 22 contains the judge's assessment and he noted there that the Home Office had been unable to verify the first appellant's claimed date of arrival. So far as the copy of the visa is concerned, the judge noted that the original passport was said to have been lost and continued: "I am unwilling to attach significant weight to the visa copy in all the circumstances of this case."
18. It seems clear that the judge was referring here to the conflict between the first appellant's account and Mr A's oral evidence of a conversation with her mother. With great respect to the judge, however, "all the circumstances" of the case included the letter from the Glory and Hope Ministries International. As Mr Eaton submitted, the account given in that document supported the appellant's claim regarding events in 2003 leading to her decision to leave Ghana in December that year. That evidence was not mentioned in the determination but it was before the judge and relevant.
19. So far as the copy visa is concerned, the judge again properly noted the outcome of a search made by the Home Office, revealing no trace of a visa issued in the first appellant's name at the time. However, the Secretary of State's case does not appear to have been put on the basis that the copy document was false. The judge's unwillingness to attach significant

weight to the document may have been open to him, following an assessment of all the evidence, including the letter from the Glory and Hope Ministries. That item and the visa were capable of supporting the appellant's account.

20. That the judge gave determinative weight to the evidence of Mr A, and appears not to have put the letter into the balance is also shown at paragraph 27 of the determination, where the incompatibility between the account given by the appellants and the witness's evidence leads directly to the conclusion that the first and second appellants are totally lacking in credibility. Again, the conclusion may have been open to the judge, but only after a careful assessment of all the evidence tending to support the first appellant's account of events. The letter from the Glory and Hope Ministries cannot rationally be dismissed as peripheral.
21. Notwithstanding Mr Jack's very able presentation of the Secretary of State's case, I conclude that the judge did err materially in law in failing to take into account part of the evidence adduced on the appellant's behalf which was relevant and capable of supporting her account, notwithstanding the brief mention of the bundles of documents before the Tribunal in paragraph 14, for example. The decision falls to be set aside and remade.
22. There was a brief discussion on the appropriate venue for the remaking of the decision. Mr Eaton submitted (and Mr Jack did not disagree) that the decision should be remade in the First-tier Tribunal as extensive fact-finding would be required, if an error of law were shown in relation to the adverse credibility findings. I agree with that submission, taking into account the Senior President's Practice Direction at paragraph 7.2.
23. The decision shall be remade in the First-tier Tribunal, at Hatton Cross, before a judge other than First-tier Tribunal Judge Seelhoff. It is appropriate for case management to take place at the Hatton Cross Hearing Centre and the parties are invited to submit draft directions, so that a substantive hearing may be listed in early course.

## **DECISION**

The decision of the First-tier Tribunal is set aside. The decision will be remade in the First-tier Tribunal, at Hatton Cross, before judge other than First-tier Tribunal Judge Seelhoff.

## **ANONYMITY**

As the third and fourth appellants are minor children I grant anonymity to all throughout these proceedings, unless and until this Tribunal or a court orders otherwise. No report of the proceedings shall directly or indirectly identify any of the appellants. This direction applies to both parties and failure to comply with it may amount to a contempt of court.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell