



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

Appeal Number: IA/36026/2014

THE IMMIGRATION ACTS

Heard at Field House

On 13 October 2015

**Decision & Reasons
Promulgated**

On 2 November 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

MR ERIC BEDIAKO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr John Waithe (Counsel), instructed by Shan & Co
For the Respondent: Mr Steve Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant whose date of birth is 21 October 1969 is a citizen of Ghana. He appeals against a decision made by the First-tier Tribunal (Judge S Taylor) who dismissed his appeal on Article 8 grounds in a decision and reasons promulgated on 30 April 2015.
2. The appellant made an application for the issue of a residence card under EEA Regulations, but the hearing before the First-tier Tribunal proceeded on Article 8 grounds only, the appellant arguing that family life was established as between himself and his 12 year old British citizen daughter.

FtT Decision

3. In a decision and reasons the First-tier Tribunal found little evidence to support family life as claimed. Neither the mother of the child nor the child had attended for the hearing to support the appellant. The First-tier Tribunal found no independent evidence to support the appellant's account that he was closely involved in his daughter's life on at least three days a week, including swimming and other activities [13].
4. The FtT reasoned that there should be more evidence including photographs and evidence of document verification. It specifically took into account that there was no such evidence available to verify the letters produced by the appellant's daughter and her mother.

Grounds of Application

5. In the grounds applying for permission to appeal the appellant argued that
 - (1) There was documentary evidence before the Tribunal including three copies of his ex-partner's passport, together with photographs of him and his daughter produced on the day of the hearing which the Tribunal had not taken into account.
 - (2) There was no consideration as to the genuineness and subsistence of the relationship as between the appellant and his daughter by the Secretary of State.
 - (3) The Tribunal erred procedurally by making findings at [13 and 14] given that there was evidence of photographs and the passport produced at the hearing.

Permission to Appeal

6. Permission to appeal was granted by First-tier Tribunal Judge Colyer on 16 July 2015 on the basis of the grounds submitted.

Rule 24 Response

7. It was accepted that the FtT overlooked the photographs and passport and indeed placed weight on the absence of the same in reaching its findings of fact and conclusions. However the FtT took into account the lack of supporting evidence as to the appellant's activities with his daughter at school, church and other activities. Furthermore the Tribunal placed weight on the fact that the appellant's daughter and her mother had not attended the hearing which was of significance. There was no material error of law.

Error of Law Hearing

8. Mr Waithe relied on the grounds of appeal. He submitted that the documents had been before the Tribunal and which had not been taken into account by the Tribunal

had distorted the Tribunal's findings as to family life.

9. Mr Walker relied on the Rule 24 response. He accepted that the Tribunal had placed weight on the absence of photographs and verification documentation but it was clear that the decision made by the Tribunal focused on the lack of other supporting evidence to establish the relationship between the appellant and his daughter. The Tribunal found there was insufficient evidence to establish that the appellant had a relationship with his daughter. There was no evidence to show he had sole responsibility for the child and the Tribunal had considered that there were no compelling or other circumstances to justify consideration of Article 8 outside of the Rule.
10. Mr Waithe responded contending that sole responsibility was not a relevant issue. There had been no challenge by the respondent that the appellant had a relationship with his daughter. The error arose from the Tribunal's failure to take into account material that was in fact before the Tribunal which would have influenced the family life findings and the issue of proportionality. In the absence of that information the Tribunal's assessment of proportionality had not been properly carried out.

Discussion and Decision

11. Having heard the submissions and considered the decision and reasons I am satisfied that the grounds argued are made out and disclose an error of law such that the decision shall be set aside. The Tribunal's main concern was the lack of evidence about the extent of family life as between the appellant and his British citizen daughter. The Tribunal firstly did overlook relevant evidence of the photographs of the appellant and his daughter, together with a photocopy of the daughter's mother's passport and significantly placed weight on the absence of such material in reaching its decision. The photographs are capable of showing that the appellant and his daughter engaged in activities together. The passport was evidence capable of verifying that the witness statement was from the child's mother and which supported the appellant's claim that he was involved with his daughter. I am satisfied that the errors are material and which render it necessary for the matter to be remitted for a hearing de novo before the First-tier Tribunal.

Decision

12. There is a material error of law in the determination which shall be set aside.
13. **The matter is remitted for rehearing to the hearing centre at Taylor House (excluding First-tier Tribunal Judge S Taylor) on a date to be fixed.**

No anonymity direction is made.

Signed

Dated: 30.10.2015

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award in part (half of the fee) as the appellant produced the evidence at a late stage at the hearing.

Signed

Dated 30.10.2015

Deputy Upper Tribunal Judge G A Black