



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

Appeal Number: OA/15235/2013

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke-on-Trent
On 5th January 2015**

**Decision & Reasons Promulgated
On 16th January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE COATES

Between

**TANAKA JAMES CHIGODORA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss C Warren instructed by Paragon Law

For the Respondent: Miss C Johnstone, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a Zimbabwean national born on 25th January 2003. The Appellant applied for entry clearance to settle with his mother under the family reunion provisions of the Immigration Rules. The Appellant was 11 years of age at the date of application and his mother, Miss Ellen Gonyora, has refugee status in the UK. The Appellant's 14 year old brother was already living in the United Kingdom with their mother.

2. The Appellant's application was refused by the Respondent on 28th May 2013. His appeal against that refusal was allowed under the Immigration Rules by Judge of the First-tier Tribunal Thomas on 27th June 2014.
3. Permission to appeal was granted by a Designated Judge on 3rd November 2014 on the basis that it was arguable that the First-tier Judge erred in law in stating that the standard of proof, which lay upon the Respondent in proving that a material document was not genuine, was higher than the balance of probabilities.
4. That is the background against which the matter came before me for an error of law hearing on 5th January 2015.
5. Representation was as mentioned above. The Sponsor was present at the hearing. I have taken into account all the documents which were before the First-tier Tribunal plus the grounds of application for permission to appeal by the Respondent's representative and a Rule 24 response drafted by Counsel who represented the Appellant before the First-tier Tribunal.
6. The submission by Miss Johnstone on behalf of the Respondent was short and succinct. She relied upon the grounds submitted in support of the application for permission to appeal. She also referred to paragraphs 2 and 12 of the First-tier Judge's determination and reasons. At paragraph 2 the judge said –

“The general burden of proof under the Immigration Rules is on the Appellant to the standard of a balance of probabilities, save for the decision under paragraph 320(7A) where the burden of proof is on the Respondent and to a higher standard”.

At paragraph 12 the First-tier Judge stated “The Respondent bears a higher burden in respect to an allegation involving false documents”. Miss Johnstone submitted that the reference to “a higher standard” or “a higher burden” was an error of law and that the determination should be set aside.

7. For the Appellant, Miss Warren adopted the Rule 24 response which had been drafted by her colleague. This argues that even if the judge fell into error in enunciating the standard of proof, that error was immaterial to the outcome of the appeal given that the judge placed no or little weight upon the Respondent's evidence of falsity and given that she found the Sponsor to be a credible witness and accepted all of her evidence as to how the first and second certified copies of the birth certificate were obtained. It is further submitted that the First-tier Judge gave detailed reasons and made clear findings that the Respondent's evidence was insufficient to show that the birth certificate was false to the standard of balance of probabilities, thus making any error immaterial.
8. It is abundantly clear from the case law that when considering false documents or false representations under the Immigration Rules there is but one civil standard, which is the balance of probabilities. However, it is also settled law that, because of the seriousness of an allegation of falsehood, cogent evidence will be required to substantiate such an allegation.
9. As I observed during the appeal hearing, the words used by the First-tier Judge are clear and unambiguous. The reference to “a higher standard” or “a higher burden” is

clearly an error of law. However, the question which has to be addressed is whether that error is material or not.

10. In this appeal the document which the Respondent considered to be not genuine was a birth certificate submitted on behalf of the Appellant. The Respondent relied on a Document Verification Report referring to an email from the Harare Register General in Zimbabwe confirming that the birth certificate referred to was not authentic. That was supported by a letter from someone named E Dube listing nine birth certificates which were found to be authentic and the Appellants which was found to be not authentic. The First-tier Judge states at paragraph 12 of her determination that there is however no explanation as to why the certificate is defective; how it differed from the other certificates listed, or upon what basis the conclusion that the Appellant's certificate is not authentic was drawn. The grounds point out that the First-tier Judge accepted that the Appellant had been issued with a Zimbabwean passport by the Registrar General against the copy birth certificate which the same authority then inexplicably later deemed to be false. A bare assertion that a document is not genuine is not sufficient to discharge the burden of proof.
11. A second Ground of Appeal relating to the Appellant's membership of the Sponsor's pre-flight family was not pursued and I do not have to deal with it.
12. For the reasons which I have given, I conclude that any error of law which there may be in misstating the correct standard of proof is not material. In the circumstances I uphold the First-tier Tribunal's determination and dismiss the Respondent's appeal.

No anonymity direction is made.

Signed

Date 9th January 2015

Deputy Upper Tribunal Judge Coates