



**Upper Tribunal
(Immigration and Asylum Chamber)
Number: IA/26754/2014**

Appeal

THE IMMIGRATION ACTS

At Field House

Decision and Reasons

Promulgated

On 16th November 2015

On 4th January 2016

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY

Between

**MASTER IWB
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr S.Kotas, Home Office Presenting Officer

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all

parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

DECISION AND REASONS

Introduction

1. Although it is the respondent who is appealing I will continue to refer the parties as they were in the First-tier Tribunal for the sake of convenience.
2. Application was made on the appellant's behalf under section 10 of the Nationality, Immigration and Asylum Act 2002 for a certificate to confirm he had the right of abode in the United Kingdom. To get this he must have a parent who is either a British citizen or who was settled in the United Kingdom at the time of his birth.
3. The appellant is a national of Ghana. He was born in the United Kingdom on Christmas Day 2011. His mother is a Ghanaian .His father is originally from Ghana and holds German nationality.
4. The application was based upon his father having a permanent right of residence by reason of regulation 15 of the Immigration (EEA) Regulations 2006. This can be achieved in various ways, including his father having resided in accordance with the regulations for five years or by being a worker or self-employed person who have ceased activity.
5. A difficulty for the appellant was the fact his father is estranged from his mother and has no contact with her or the appellant. Consequently, proofs were limited. The application indicated that his father had been working at Newham General Hospital since 2005.
6. The application was refused on 10 June 2014. The basis for the refusal was that he had failed to demonstrate his father was exercising Treaty rights as required.
7. The appellant's appeal came before Designated Immigration Judge Manuell on the 26 February 2015. The appeal adjourned with Designated Immigration Judge Manuell requiring the SSHD to obtain from HMR&C all tax records relating to his father. It was known his father had been issued with residence documentation on 18 March 2013. The respondent did not have any record of his father being issued with confirmation of a right of permanent residence.
8. The appeal was relisted on 9 June 2015 before First-tier Judge Symes. Reference is made to section 55 of the Borders,

Citizenship and Immigration Act 2009 which requires decision-makers to have regard to the need to safeguard and promote the welfare of children. Reference was made to the decision of MK (section 55 -tribunal options) Sierra Leone [2015] UKUT 223 which held that where it is contended that the duties in section 55 have been breached the onus rests on the appellant and the civil standard of the balance of probabilities applies. Reference is made to the tribunal's powers of adjournment and case management.

9. First-tier Judge Symes at paragraph 8 of the decision stated that where probative evidence is in the custody of public authorities, such as tax records or national insurance contributions, steps should be taken to secure that information. At paragraph 9 the judge said that the section 55 duty had been breached and though the evidence was scant allowed the appeal. The judge referred to the respondent's lack of response to Designated Immigration Judge Manuell's Directions. Although the judge allowed the appeal a further direction was given to the respondent to produce records held relating to the appellant's father.

The Upper Tribunal.

10. Permission to appeal to the Upper Tribunal was sought on the basis the decision was wrong in law because it reversed the burden of proof. Furthermore, it was contended the judge erred in allowing appeal out right given the lack of evidence. Permission to appeal was granted on the basis the judge was arguably wrong in allowing the appeal out right.
11. At hearing, Mr Kotas questioned whether there was any section 55 issue of substance arising in the application given that there was no intent to remove the appellant. The judge had referred to ZH(Tanzania)[2011] UKSC 4 and the importance of a child's nationality when considering their best interests. However, Mr Kotas pointed out that this was dealing with a British child.
12. First-tier Judge Symes may well have been frustrated at the apparent lack of response to Designated Immigration Judge Manuell's Directions. However, in the absence of the necessary evidence the judge materially erred in law in allowing the appeal out right. The decision is also inherently contradictory in that having allowed the appeal outright the judge goes on to give Directions.
13. The decision materially errs in law and cannot stand. Ultimately, the burden of proof is upon the appellant and this has not been met. The papers would suggest that the respondent has made some searches and the only documentation found was a residence document for the appellant's father but nothing to

indicate a right of permanent residence. In the circumstance I see no merit in further adjourning the matter. Instead, I would dismiss the appeal given the lack of proofs

The Decision

14. The decision of First-tier Judge Symes allowing the appeal materially errs in law and cannot stand. I set the decision aside and remake it, dismissing the appeal.

Deputy Upper Tribunal Judge Farrelly