



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

Appeal Number: EA/01003/2021

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 3 February 2022**

**Decision & Reasons Promulgated  
On 18 March 2022**

**Before**

**UPPER TRIBUNAL JUDGE BLUNDELL**

**Between**

**ENTRY CLEARANCE OFFICER, SHEFFIELD**

Appellant

**and**

**AFIA AMOAKO  
(No Anonymity Order Made)**

Respondent

**Representation:**

For the Appellant: Ms Ahmed, Senior Presenting Officer  
For the Respondent: Mr Plowright, of counsel, instructed by A & P Solicitors

**DECISION AND REASONS**

1. The respondent Entry Clearance Officer appeals, with permission granted by the First-tier Tribunal (Judge Chohan), against First-tier Tribunal Judge Easterman's decision to allow Ms Amoako's appeal against the refusal of her application for entry clearance.
2. It is convenient to refer to the parties as they were before the First-tier Tribunal: Ms Amoako as the appellant and the Entry Clearance Officer as the respondent.

**Background**

3. The appellant is a Ghanaian national who was born on 26 December 2003. On 14 October 2020, she applied for entry clearance under

paragraph 297 of the Immigration Rules. She stated that her mother had passed away on 15 August 2017; that she had been living with an aunt in Ghana since that date; and that she wished to join her father (James Amoako) in the United Kingdom.

4. The respondent refused the application on 16 December 2020. In light of the DNA evidence which had been submitted with the application, she accepted that the appellant and her father were related as claimed. She did not accept that the appellant's mother had died in August 2017, however, because the appellant's mother was named as the Informant on the appellant's birth certificate, which was dated 29 August 2019. The appellant was therefore required to establish that her father had had sole responsibility for her upbringing and she had failed to do so.

### **The Proceedings Below**

5. The appellant appealed to the First-tier Tribunal. The appellant was represented by counsel, Mr Solomon, who produced a skeleton argument. The respondent was represented by a Presenting Officer.
6. The appellant adduced additional evidence in support of her appeal. I do not propose to set out everything that was in the 42 page bundle which was before the judge below. It suffices for present purposes to note that there was, by that stage, a formal death certificate for the appellant's mother and an exchange between the appellant and the sponsor on Whatsapp.
7. The sponsor gave evidence before the judge. The judge recorded that he was asked a significant number of questions by the Presenting Officer (not Ms Ahmed) who represented the Entry Clearance Officer at that stage. The sponsor's response to the ECO's point was simple; he stated that the appellant's mother had originally been the Informant of her birth and that this information had simply been copied into the birth certificate which was subsequently issued in 2019.
8. The judge also noted of his own motion that there was a message between the appellant and the sponsor in which the latter stated that the appellant should ask 'your mum' about something. The judge asked the sponsor some questions about that message. At the end of the evidence, the judge heard submissions from the advocates. Mr Solomon submitted that the evidence showed that it was more likely than not that the appellant's mother had died on 15 August 2017 or, in the alternative, that the sponsor had had sole responsibility for his daughter. The Presenting Officer submitted that the evidence did not show that the appellant's mother had died. Like the ECO, the Presenting Officer relied on the name of the appellant's mother appearing on the appellant's birth certificate in 2019.
9. The judge recorded the evidence and the submissions in some detail. He set out paragraph 297 of the Immigration Rules, together with section 6 of the Human Rights Act 1998 and Article 8 ECHR. Having done so, he turned to his findings at [51]. At [52], he noted that the 'real issue' was whether the appellant's mother had died on 15 August 2017, as a result of which the sponsor was the sole living parent. At

[52], he recorded that there was evidence which favoured a finding in the appellant's favour. At [53], he recorded that there was evidence which militated in favour of the opposite conclusion.

10. A [54], the judge stated that he had had 'a great deal of difficulty' in weighing the competing cases. He continued as follows:

While I am perfectly well aware that a person is unable to report the birth of their daughter in 2019 if they died in 2017, there does appear to be a paper trail suggesting that original records had been kept, and it is known that the government of Ghana has moved to what is called a biometric system for birth and death certificates, although I prefer to think of it as a computerised system, as I am unaware of what biometrics are involved in the records.

[55] Whatever it is the fact is that the old-style certificates are no longer being issued and therefore if one wants a new certificate as I understand the position to be, there will be a reregistration and a new certificate will then be issued. Inevitably that will lead to the sort of difficulties that the appellant currently faces as to whether to include in the register the original reported as the reporter or whether a subsequent reporter should be included in their place.

[56] Nobody supplied me with any background evidence to deal with this point and on balance given the paper trail and the documents from her birth, I am prepared to accept that the reference to the mother as the reporter of the birth is the manner in which these things get recorded as a result of the new system.

11. The judge then turned to the Whatsapp message and found as follows:

[57] The remaining issue which I have looked at and considered in the round with both side's submissions is whether the reference to 'your mum' on the phone messaging is necessarily a reference to the appellant's claimed deceased mother. Again I bear in mind that the burden is on the appellant and the standard is a balance of probabilities. Whilst Mr Amoako was very quick with his explanation for something which nobody appeared to have spotted before I raised it at the hearing, suggests to me that that may be a truthful explanation. While I find it does not fit well with my understanding of the use of the term, I am aware that in many households husbands refer to their wives as mum, where there have been children and similarly in many cultures older people or people in positions of authority are referred to in ways that accord them a respect, which we are not so familiar with any more in our society.

12. The judge then drew the threads of his analysis together and found as follows:

[58] Given the items that tend to prove the death and weighing them against what appears to show that the lady is not dead, on balance I am prepared to accept she died on 15<sup>th</sup> August 2017, as a result of a heart problem, which was the result of an illness, that was known about and that was being looked after.

13. The judge therefore allowed the appeal on the basis that the appellant met the requirements of paragraph 297(i)(d) (one parent in the UK and the other parent dead) and he stated that he would have found against the appellant on the alternative bases in paragraph 297(i)(e) and (f). There is no cross-appeal against the latter findings and I need not dwell on the reasons for them.

### **The Appeal to the Upper Tribunal**

14. The respondent challenges the finding in respect of the birth certificate and the Whatsapp message. The first is said to be irrational in the sense contemplated by Brooke LJ at [11] of R (Iran) & Ors v SSHD [2005] EWCA Civ 982; [2005] Imm AR 535: “a finding of fact which was wholly unsupported by the evidence”. The finding as to the Whatsapp message is said to be flawed on the same basis, and founded not on evidence but on the judge’s own understanding or knowledge.
15. First-tier Tribunal Judge Chohan considered these grounds to be arguable.
16. In her clear and precise submissions before me, Ms Ahmed developed these grounds. She submitted that there was no background evidence in support of the finding the judge had made about the birth certificate. The judge had accepted the sponsor’s evidence but he had not been to Ghana for five years. The finding had therefore been based on speculation, notwithstanding the judge’s clear difficulty in resolving the issue. As for the Whatsapp message, the judge’s observations about cultural naming conventions were wholly unsupported by any evidence. He had also expressed concerns at [36] which he had failed to resolve in his findings. The decision was erroneous and should be set aside.
17. Mr Plowright submitted that the decision resolved the factual dispute between the parties and that the judge had not erred in law in doing so. The test for irrationality was a high one and was not met. As the judge had recognised, there was no original birth certificate and it was said by the sponsor that it had been lost. There was an original death certificate which tended to suggest that the mother had indeed died in 2017. The judge had weighed all of this competing evidence and had come to a lawful conclusion. Counsel before the judge had provided a skeleton in which the background to the electronic system was considered and the judge made his decision with that in mind. Essentially the same submissions were made in respect of the WhatsApp messages. The judge had identified the point of his own motion and had grappled with it on the basis of the evidence before him. His cultural awareness of naming conventions was evidence of the specialist jurisdiction in which he operated, rather than impermissible speculation. The conclusion he had reached (that the

message more likely than not referred to the pastor's wife) was not irrational.

18. In response, Ms Ahmed submitted that the judge's error was to accept the unsupported evidence of the sponsor about the process of registering births. Although the judge had been referred to the Country Information and Policy Note *Ghana: Background information, including internal relocation, September 2020*, there had been nothing in that note which supported the sponsor's evidence.

### **Analysis**

19. Although Ms Ahmed advanced the Entry Clearance Officer's submission with clarity and elegance, I am unable to conclude that the judge erred in allowing the appellant's appeal.
20. It is timely to recall that the FtT is a specialist Tribunal, tasked with administering a complex area of law in challenging circumstances. The decision of that Tribunal should be respected unless it is quite clear that it has misdirected itself in law: SSH D v AH (Sudan) [2008] 1 AC 678.
21. As Mr Plowright acknowledged in his submissions, this case presented the judge with a challenging and unusual difficulty. There was, as the ECO had noted, a birth certificate which had been issued in 2019 and which gave the name of the informant as the appellant's mother, who was said by the appellant to have died in 2017. The ECO was clearly entitled to be suspicious about that.
22. In answer to the point, the sponsor said that the mother had been the original informant and that her details had merely been copied from the original record onto the newly issued birth certificate. As Ms Ahmed noted, that there was no background evidence in support of this assertion. In my judgment, however, there did not need to be, and it was not irrational or otherwise erroneous in law for the judge to accept what the sponsor said about this issue, supported as it was by the formal death certificate which confirmed the mother's death in 2017.
23. This was not a question of foreign law, in respect of which expert evidence was to be expected: KV (Sri Lanka) v SSH D [2018] 4 WLR 166. It was a question of administrative practice in Ghana. It would certainly have been better (as I think Mr Plowright was prepared to accept) if there had been some expert or background evidence in support of what the sponsor said about the practice of including the name of the original informant but I do not accept the submission made on behalf of the ECO that this was necessary as a matter of law or that it was irrational for the judge to accept what the sponsor said in the absence of such evidence.
24. As Lady Hale recognised in AH (Sudan), the work of the FtT is often undertaken in challenging circumstances. Those challenges often include resolving issues of fact on imperfect evidence. This

experienced judge was confronted with precisely that challenge. He resolved the issue by weighing the evidence on both sides and coming to a reasoned (and reasonable) conclusion, based on the sponsor's evidence and the death certificate. He did not err in law in so doing.

25. As for the Whatsapp message, it is necessary to recall what was said by Floyd LJ in UT (Sri Lanka) v SSHD [2019] EWCA Civ 1095. Because the FtT(IAC) is a specialist jurisdiction, its judges develop a common body of knowledge. Against that background, it was wholly reasonable and proper for the judge to take into account his experience of familial labels being given to non-family members in various cultures.
26. It is commonplace in this jurisdiction for family acquaintances to be called 'aunty' or 'cousin', or even 'cousin brother' and it was against that background that the judge came to evaluate the evidence of the sponsor that the Whatsapp message's reference to 'your mum' was a reference to the wife of the local pastor, and not to the appellant's mother. It was the judge who identified this issue and raised it with the sponsor. He was plainly troubled by it, and he recorded that he had taxed Mr Solomon on the point during his submissions.
27. Having identified and canvassed the point with the advocates in this way, the judge set about weighing the evidence for and against the appellant and he came to a reasoned conclusion upon it. I am far from satisfied that he erred in law in his resolution of it and the respondent comes nowhere near establishing a case of irrationality. Insofar as Ms Ahmed submitted that this was a case in which the judge had decided an issue without any evidence in support of his conclusion, that submission cannot be correct; there was evidence, in the form of the sponsor's evidence and the death certificate. There was clearly a proper basis for the finding of fact.
28. In my judgment, this is not a case in which permission to appeal should have been granted by the FtT. On proper analysis, the respondent's grounds amount to nothing more than a disagreement with the judge's thorough and cogently reasoned decision. The judge's decision was issued at the start of last summer and the result of the respondent's unmeritorious appeal is that this young woman has been separated from her father unnecessarily for another 7 months.

### **Notice of Decision**

The respondent's appeal to the Upper Tribunal is dismissed. The decision of the FtT allowing the appeal on Article 8 ECHR grounds shall stand.

No anonymity direction is made.

**M.J.Blundell**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**16 February 2022**