



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

Appeal Numbers: HU/18867/2019  
HU/00042/2020

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 4 April 2022**

**Decision & Reasons Promulgated  
On 05 May 2022**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**HUZAIF IBRAHIM  
HUZAIFA IBRAHIM**

(anonymity direction not made)

Appellants

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr P Richardson, Counsel instructed by Bhogal & Co Solicitors

For the Respondent: Ms A Everett, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by two appellants, I assume they are twins, who are close to their 18<sup>th</sup> birthdays. They are citizens of Ghana and they applied for entry clearance to the United Kingdom on the basis that their father in the United Kingdom had exercised sole parental responsibility. They failed to satisfy the Entry Clearance Officer on that point and in due course similarly failed to satisfy the First-tier Tribunal, although the hearing before the First-tier Tribunal was understood correctly to be an appeal on human rights grounds.

- 2.** I had the benefit of a Rule 24 notice from the respondent drawn by Mr Tony Melvin, a Senior Presenting Officer. I mean him no discourtesy by paraphrasing his arguments as recognising that the Decision and Reasons was not especially clear but asserting that it was obvious the judge did not believe the evidence and the judge gave proper reasons for disbelieving the evidence.
- 3.** That, I find, is probably right as far as it goes but it does not deal with the grounds of appeal or at least the main point taken by Mr Richardson, which is that a very strong ingredient in the mix that led to the adverse credibility finding was a point that had not been raised in the refusal letter, had not been put to the witness and, we now know with the benefit of hindsight, may have been answered if it had been put.
- 4.** The point is typified at paragraph 35 of the Decision and Reasons where the judge says:

“If the sponsor was as concerned for their wellbeing as he indicates, then surely it would not be unreasonable to have expected him to go to Ghana as a matter of urgency, given that all this occurred before COVID-19 brought the world to a standstill and made arrangements in person for the appellants’ wellbeing, while the appeal made its way through the Tribunal.”
- 5.** It cannot be denied that this adverse finding featured strongly in the judge’s reasoning although it is also right to say there are other points taken.
- 6.** The appellants were not on notice that the judge was going to find, in the absence of documentary evidence, that the sponsor had not gone to Ghana as the judge said he should have done. However, documents were provided to the Tribunal including extracts from the sponsor’s passport but they did not include pages in the passport showing entry or exit stamps which could have cast light on the sponsor’s whereabouts.
- 7.** I find it important that there was nothing to suggest that the point that interested the judge was ever put to the sponsor and so he had no opportunity at the hearing to comment on the absence of supporting evidence.
- 8.** It is disappointing to find cases where things that ought to have been put were not put. Failing to put a point does not necessarily mean that decisions are unsustainable. Sometimes the point is obvious and so should have been addressed. Sometimes there is no reason to suspect that there is an answer but it is always undesirable to give a lot of weight to matters that were not directly raised with the witness and this has happened here.
- 9.** An additional bundle was served at the hearing. It shows complete extracts from the passport and without making any findings, it certainly looks to me from a reasonably considered glance that there are stamps in the passport that show that the appellants’ sponsor did indeed go to Ghana as he claims to have done.
- 10.** It follows from this that the adverse credibility finding includes weight being given to a point that really does not work.
- 11.** Ms Everett helpfully and realistically interrupted Mr Richardson’s arguments to say that she felt the weight of that point and could not sensibly argue that it was not material.

- 12.** I respectfully agree. This decision is not reasoned properly and it has to go back.
- 13.** I make it plain that I have made no findings today beyond saying that the decision is unsound. I have made no findings about the passport and the stamps; I have only indicated how they appear on a quick glance. No findings have been preserved or no other criticisms have been made of the decision.
- 14.** It is for the First-tier Tribunal to decide the case again on its own merits without reference to the Decision that has already been made and which I now set aside.
- 15.** It is appropriate that the appeal goes to the First-tier Tribunal because it may well be that this case turns on credibility and the appellants obvious desire to keep all their options open with a view to a possible appeal is a weighty point in a case such as this.

### **Notice of Decision**

The First-tier Tribunal erred in law. I set aside its decision and I direct that the appeal be heard again in the First-tier Tribunal.

Jonathan Perkins

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal

Dated 28 April 2022