



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/16506/2014

THE IMMIGRATION ACTS

Heard at Field House
On 21 September 2015

Determination Promulgated
On 22 September 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Mojidat Romoke Oseni
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr P Collins, instructed by David A Grand Solicitors
For the respondent: Ms E Savage, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Mojidat Romoke Oseni, date of birth 27.10.91, is a citizen of Nigeria.
2. This is her appeal against the decision of First-tier Tribunal Judge Beach promulgated 11.3.15, dismissing her appeal against the decision of the Secretary of State to refuse her application for an EEA Residence Card as the child of an EEA citizen exercising Treaty rights in the UK, pursuant to the Immigration (EEA) Regulations 2006. The Judge heard the appeal on 28.1.15.
3. First-tier Tribunal Judge Colyner granted permission to appeal on 18.5.15.

4. Thus the matter came before me on 21.9.15 as an appeal in the Upper Tribunal.

Error of Law

5. For the reasons set out herein, I find there was no error of law in the making of the decision of the First-tier Tribunal such as to require the decision of Judge Beach to be set aside.
6. On 9.1.14 the appellant and her brother applied for residence cards as confirmation of a right to reside in the UK as the children of the sponsor, named in the application as Mr Olanakanmi Oseni, a citizen of Germany, pursuant to the Immigration (EEA) Regulations 2006.
7. The applications were both refused as the Secretary of State noted the birth certificates named their father as Mr Rasheed Oseni, which the Secretary of State confirmed to be a Nigerian citizen, date of birth 25.1.68. The Secretary of State was not satisfied that the appellant and her brother were related to the EEA national named in the application.
8. At the appeal hearing before Judge Beach on 28.1.15, Mr Oseni gave evidence denying making a visit visa application in the name of Rasheed Oseni, which application names the appellant and her brother as his children. He denied that Rasheed had ever been part of his name, despite the fact that it appears as such on the children's birth certificates.
9. Judge Beach had the benefit of two different DNA analysis reports. The first, from Cellmark, confirmed that the appellant's brother is the son of the sponsor. However, this report disclosed a discrepancy in relation to the appellant. "The DNA results indicate a close family relationship but are not conclusive as to the exact nature of this relationship and the strength of the likelihood should be considered along with other available evidence." However, there is no explanation within the report, or any further evidence adduced, as to what is meant by close family relationship. It would have been helping both to Judge Beach and to myself in considering the error of law appeal to have further clarification. That the appellant and the sponsor are closely related does not mean that they are necessarily father and daughter. Close relationship must surely include uncle and niece, or cousins, or similar. Thus the Cellmark report is not, at least by itself, sufficient to demonstrate the claimed relationship, as only the parent/child relationship is sufficient for the application made.
10. An explanation for the discrepancy proffered by Cellmark is that there has been a rare genetic mutation. As such is rare it can hardly amount to a balance of probabilities likelihood. Again, some further information from Cellmark would have been of assistance and it is not unreasonable to have expected such.
11. At this point, I note that the grounds of application for permission to appeal seek to rely on regulation 8 as an extended family member. However, as Mr Collins conceded, this was not an issue raised at the First-tier Tribunal and not the basis of the application. It is not for the judge to have to hunt through the regulations to find

a route for granting a residence card. In the circumstances, Mr Collins did not pursue this issue and it does not form part of the error of law considerations.

12. However, Mr Collins submitted that in combination with the second DNA report, the judge should have accepted that it was demonstrated on the balance of probabilities that the relationship between the appellant and sponsor is as claimed. For the reasons set out below, I do not accept that submission.
13. The Anglia DNA report which was put before Judge Beach but which neither Mr Collins nor Ms Savage had seen is as problematic as the Cellmark report. Anglia DNA is a sibling test between the appellant and her brother. The conclusion of the report is that it is more likely that the two are related than unrelated. Related simply means biologically related, but the report does not conclude that they are either half or full siblings. The tests suggest that it is 956 times more likely that they are full siblings rather than unrelated, and 265 times more likely that they are half siblings than unrelated. "Therefore it is more likely that (the appellant and her brother) are related than unrelated. However we are unable to determine the nature of this relationship."
14. Being related to each other does not greatly assist. They may be cousins, or half siblings, sharing their mother but not their father. I do not accept Mr Collins submission that by adding one report to the other the probability that they are father and daughter is necessarily increased. These reports do not suggest that. I am no expert in DNA and neither, I assume, is Judge Beach. Once again, some further simple enquiry with each of the DNA companies might have assisted to determine the parameters of what could be established.
15. I find that in the circumstances, Judge Beach was right to be circumspect about these reports and to look, from §21 onwards, to see whether the other evidence adduced might assist in resolving the issue on the balance of probabilities. It was probably incorrect of the judge to refer in that paragraph to "conclusive," as that is not the test, but I am satisfied considering the decision as a whole that the judge did not lose sight of the correct burden and standard of proof.
16. In considering the further evidence, it in fact largely weighed against the appellant's case, as the sponsor denied that his name is the name of the father cited on the appellant's birth certificate, even though the name Rasheed Oseni is the same name as used in the visa application. As judge Beach noted, there is no explanation for this discrepancy.
17. In the circumstances, I find that the decision to dismiss this appellant's appeal was properly made and one which the judge was fully entitled to make, giving cogent reasons for doing so. I cannot agree that the decision was perverse or irrational, or failed to properly consider the relevant evidence. It follows, therefore, that no error of law is disclosed.
18. It remains open to the appellant to make a fresh application with better or rather more coherent evidence, or at least further clarification of the various DNA test results.

Conclusion & Decision:

19. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed.



Signed

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an anonymity order. Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal has been dismissed and thus there can be no fee award.



Signed

Deputy Upper Tribunal Judge Pickup