



IAC-TH-LW-V1

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

Appeal Number: IA/49299/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 17 September 2015**

**Decision & Reasons Promulgated
On 23 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE APLEYARD

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MISS CHRISTELLE TECLAIRE NGUETI LOKO
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms. A. Holmes, Home Office Presenting Officer.

For the Respondent: Mr. J. Trussler, Counsel.

DECISION AND REASONS

1. This is a respondent appeal but I shall henceforth refer to the parties in the original terms detailed in the decision of Judge of the First-tier Tribunal Row following a consideration by him of this appeal on papers.
2. The appellant is a national of Cameroon who appealed against a decision of the respondent to refuse to issue her with a residence card as the extended family member of an EEA national under Regulation 8(2) and Regulation 17(4) of the Immigration (European Economic Area)

Regulations 2006 (“the EEA Regulations”) for reasons set out in a refusal letter of 26 November 2014.

3. Following consideration of the appeal Judge Row allowed it under the EEA Regulations.
4. The respondent sought permission to appeal which was granted by First-tier Tribunal Judge Colyer on 6 May 2015. Paragraph 7 of his written reasons for granting permission identifies the nub of the appeal before me. It states:-

“7. I have considered the decision and reasons; I have considered the respondent’s submissions. I find that the respondent has established that there is an arguable error of law in the judge’s decision for the first reason outlined in the respondent’s application with regard to the acceptance of challenged photocopies of significant evidential documents. Permission to appeal to the Upper Tribunal is granted on that point.”

5. Ms. Holmes relied on the grounds seeking permission to appeal. She referred me to the respondent’s refusal letter where it states:-

“Additionally this department cannot be satisfied of your relationship with the EEA national. You have provided your original birth certificate and the EEA national’s original birth certificate. You have then provided photocopies of two birth certificates, one belonging to the EEA national’s parent and the other belonging to your parent. This department cannot accept photocopies of valuable documents such as birth certificates as evidence of a relationship. Therefore your application is also refused with reference to Regulation 17(1)(b) of the Immigration (EEA) Regulations 2006 which states ...”.

Ms Holmes carefully checked the respondent’s file as in the course of the hearing it was suggested that the originals of the two documents in question had been lodged with the respondent at the time of the making of the application. However, although her file showed that the originals of the appellant and her EEA national partner’s birth certificates had been so filed and returned to them, there was no evidence to suggest that this was the position in relation to the two certificates in question. Ms. Holmes argued that the judge had failed to deal with this issue raised within the respondent’s refusal letter and accordingly should not have attached the weight that he did to photocopied birth certificates resulting in him finding that the burden of proof had been met to the required standard and thereby allowing the appeal.

6. Mr. Trussler pointed to the fact that the originals, on his instructions, had been filed with the application but, unlike the birth certificates of the appellant and her EEA national partner there appeared to be no evidence to suggest that they had been returned to the appellant’s representatives. He was unable to produce the original certificates today and acknowledged that on careful consideration at what was before Judge Row, the respondent’s anxieties as expressed within the Reasons for Refusal Letter had not been met.

7. I find that to be the position. It was incumbent upon the appellant to prove her case to the required standard. An anxiety had been raised within the refusal letter which had not been met. Her response to that refusal letter should have been to provide the original documentation to Judge Row, thereby meeting the expressed anxiety. Having failed to do so at that juncture the judge was only able to decide the appeal on the documentation before him. He has materially erred in failing to deal with this issue as raised by the respondent and in the absence of original documentation, as asserted by the respondent, the judge has materially erred in allowing the appeal. The appellant did not prove her case to the required standard and accordingly the appeal should have been dismissed.

Decision

8. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remake the decision in the appeal by dismissing it.

No anonymity direction is made.

Signed

Date 22 September 2015.

Deputy Upper Tribunal Judge Appleyard

TO THE RESPONDENT **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 22 September 2015.

Deputy Upper Tribunal Judge Appleyard