



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

Appeal Numbers: EA/00682/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 20 September 2017**

**Decision & Reasons Promulgated
On 14 November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

THE ENTRY CLEARANCE OFFICER - UKVS

Appellant

and

**EMMANUEL AMAECHI UDUMA
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr S Staunton, Home Office Presenting Officer

DECISION AND REASONS

Anonymity

1. The First-tier Tribunal did not make an anonymity order. I have not been asked to make one and see no reason to do so.

Background

2. The Entry Clearance Officer (ECO) appeals against the decision, promulgated on 7 December 2016, of Judge D H Clapham (hereafter

“the judge”), allowing the appeal of Mr Emmanuel Uduma against the decision of the ECO of 15 December 2015 refusing to issue An EEA Family Permit contrary to regulation 7 of the Immigration (European Economic Area) Regulations 2006 (as they then were) (hereafter “the EEA Regulations”). From herein, I shall refer to the parties as they were before the judge, Mr Uduma as the Appellant and the ECO as the Respondent.

3. The Appellant is a national of Nigeria born on 27 April 1998. On 14 November 2015 he applied for an EEA Family Permit as the family member of Rita Nwadike, his claimed mother, who is married to an EEA national Mr Elvis Ozah – a German national (the sponsor). The application was refused because the ECO was not satisfied the Appellant was related as claimed to Ms Nwadike. The ECO observed the birth certificate purporting to confirm the relationship was not contemporaneous to the time of birth and there was no satisfactory explanation for the significant delay in registration (over 17 years). In the absence of further evidence such as family photographs, health and school records relating to the Appellant’s early years, the ECO stated that she could not be satisfied of the relationship. The application was accordingly refused.
4. The Appellant duly appealed to the First-tier Tribunal (IAC). In the Notice of Appeal, the Appellant waived his right to an oral hearing and elected a paper hearing.

The hearing before the judge

5. The judge decided the appeal on the papers and had before him a bundle filed by the Appellant. The judge noted that the sole issue before him was whether the relationship is as claimed. The judge considered the birth certificate and noted the delay in registration, but stated that it was “*within judicial knowledge that this is not uncommon*”. The judge compared this with the date of birth in the Appellant’s passport and concluded that “*this together with the letter from the hospital, and all of the other documentation in the round, I am satisfied that the Appellant is related to Rita Nwadike as claimed*”. The judge further accepted the Appellant resided with his grandmother who could no longer care for him. Accordingly, the judge allowed the appeal.

The grounds of application and permission to appeal

6. In the grounds seeking permission, the ECO argued that the delay in registration could not be a matter of “judicial knowledge” and complained that the judge’s reasoning was inadequate, and that he applied the wrong standard of proof.
7. Permission was refused by the First-tier Tribunal, but subsequently granted by the Upper Tribunal on 7 August 2017 finding all grounds arguable.

The Hearing before the Upper Tribunal

8. A Notice of Hearing was effectively served on the parties and the sponsor of the date, time and venue of the hearing. At the hearing before me, the Respondent was represented by Mr Staunton. There was no appearance on behalf of the Appellant and no explanation for the sponsor's absence. Accordingly, I proceeded with the hearing.
9. Mr Staunton in reliance on the grounds submitted the judge erred in law. I indicated that there was no merit in the standard of proof ground; the judge clearly applied this correctly, but I agreed with his submissions that the judge's decision was inadequately reasoned. I thus decided to set aside the decision of the judge for the following reasons.

Decision on Error of Law

10. The grounds complain the judge erred in not giving adequate reasons for finding the Appellant was related as claimed to Ms Nwadike. I agree. Given the considerable delay between the date of the Appellant's birth and its subsequent registration with the Nigerian authorities, the ECO's concerns about the relationship were entirely legitimate. Despite being put on notice of the ECO's concerns the Appellant failed to provide an explanation for the delay, a failing which the judge did not consider, and the judge's reference to "*judicial knowledge*" was insufficient to dispose of the point without further comment. There was no elaboration for the basis of that knowledge or whether it was supported by background evidence. Further, the Decision is bereft of any reasoning as to why the hospital letter and all the other documentation was sufficient to prove the relationship.
11. Accordingly, I set aside the decision of the judge.

Re-making the Decision

12. At the hearing, Mr Staunton was content for the Tribunal to remake the decision on the evidence. As the Appellant elected a paper hearing it was appropriate to do so. In re-making the decision, I considered the evidence in the Upper Tribunal's bundle prepared for the purposes of this hearing, which contains the evidence relied upon by the Respondent, and the bundle filed on behalf of the Appellant. I have assessed the evidence as at the date of hearing and applied the civil standard of proof.
13. On 15 December 2015, the Appellant applied for an EEA family permit to join his claimed mother and stepfather in the UK.
14. In order to prove the relationship, the Appellant relies on a birth certificate issued over seventeen years after his birth. The delay raised a legitimate concern by the ECO as to why that was so in the absence of evidence of how that certificate was obtained and what information was presented to obtain it. The Appellant has failed directly to grapple with the issue and provide a reasonable explanation for the delay. He states

the ECO's approach is unfair, but I discern no unfairness or impropriety in the approach taken by the ECO. There is no evidence to indicate that delays in registration of births is a fact that is so notoriously well known that I can take judicial notice of it and I remind myself that the burden remains on the Appellant to prove that this is the case. In the circumstances, I am not satisfied that I can attach any weight to the birth certificate as evidence of the relationship.

15. As for the other documentary evidence I find as follows.
16. I consider that the hospital letter is not sufficient to prove the relationship. As noted by the ECO this is not an official document and, in my judgement, there is reason to doubt its reliability given that it contains significant spelling mistakes ("Certificate" and "certiify").
17. While I acknowledge the evidence of school reports/letter from 2014 and 2015 and a letter of attestation, these documents do not name a parent or guardian, and the evidence of the stated mother's travel to Nigeria in 2015, photographs including one of an unidentified woman holding a child and a few select money transfer receipts for 2014 and 2015, is not sufficient to prove the relationship is as claimed.
18. Weighing into the balance all the above, I find the Appellant has not proved the relationship is as claimed. Thus, I find that he is not entitled to an EEA Family Permit. Accordingly, the appeal fails under the EEA Regulations.
19. Article 8 of the ECHR is raised by the Appellant in the skeleton argument. Considering the decision in Amirteymour [2015] UKUT 00466; I cannot consider human rights matters in this appeal.

Decision

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

I set aside the decision of the First-tier Tribunal.

I re-make the decision by dismissing the appeal.

Signed

Date: 11 November 2017

Deputy Upper Tribunal Judge Bagral

TO THE RESPONDENT FEE AWARD

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

Signed

Date: 11 November 2017

Deputy Upper Tribunal Judge Bagral