



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

Appeal Number: EA/00386/2022
CE-FILE: UI-2022-002984

THE IMMIGRATION ACTS

**Heard at Field House
On: 31 October 2022**

**Decision & Reasons Promulgated
On: 6 December 2022**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

THE ENTRY CLEARANCE OFFICER

and

IBRAHIM MORO
(ANONYMITY DIRECTION NOT MADE)

Appellant

Respondent

Representation:

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer

For the Respondent: Mr H Kannangara, counsel, instructed by Abdul Qadir Ali

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Ali, promulgated on 31 May 2022. Permission to appeal was granted by First-Tier Tribunal Judge Athwal on 20 June 2022.
2. While this is the Secretary of State's appeal, I will refer to the parties according to their status before the First-tier Tribunal.

Anonymity

3. No direction has been made previously, and there is no reason for one now.

Background

4. The appellant is a national of Ghana, now aged eighteen. During 2018 he unsuccessfully applied for entry clearance to the UK as a minor. On 26 April 2021, he applied for a EUSS Family Permit as the child of an EEA national sponsor. That application was refused by way of a decision dated 18 November 2021 because the Entry Clearance Officer (ECO) decided that the appellant had provided 'false relationship documents.' Reference was made to a Document Verification Report (DVR) on a document purporting to be the appellant's handwritten birth certificate.

The decision of the First-tier Tribunal

5. The appeal before the First-tier Tribunal was considered on the papers. Judge Ali rejected the contents of the DVR and found that both the handwritten and computerised birth certificates were valid evidence of the appellant's relationship to the EEA sponsor.

The grounds of appeal

6. The grounds of appeal argue that firstly, the judge misdirected himself as to the standard of proof in a case involving an allegation of fraud. Secondly, it is argued that there were inadequate reasons provided in support of the judge's findings on the DVR. Furthermore, the judge had not appreciated that the claimed certified copy of the birth certificate had the same entry number and was also referred to as a false document in the decision letter.
7. Permission to appeal was granted on the basis sought. The judge making the following comment.

There is an arguable error of law, it was established in *Re B(Children)*[2008] UKHL 35, that there is one civil standard of proof. The "high probability" standard of proof, as considered in *R (on the application of Beckett) v SSHD* [2008] EWHC 2002 Admin, was addressed to the cogency of the evidence required to prove an allegation of this type rather than to a shift in the standard of proof itself.

8. The appellant did not file a Rule 24 response.

The error of law hearing

9. At the outset, Mr Kannangara was given time to consider the grounds of appeal and grant of permission which he had yet to have sight of.
10. I heard submissions from both representatives which I took into consideration in reaching my decision.

11. Mr Melvin emphasised that the appeal had been considered on the papers at the request of the appellant and sponsor. On the first ground, the First-tier Tribunal had employed a higher standard of proof than balance of probabilities when considering the allegation that false documents had been used. That finding had affected the findings made regarding the Ghanaian official who had made the checks as well as on the stamp on the copy of the handwritten document which was marked 'not traced.' Mr Melvin added that the reasons given by the judge for rejecting the DRV were inadequate.
12. In reply, Mr Kannangara accepted that the grant of permission mainly concerned the standard of proof. He argued that the judge applied the correct standard. On the second ground, it was open to the judge to place the weight she did on the documents and her reasons were lengthy and sufficient. The drafter of the grounds was attempting to introduce evidence as to the meaning of the term 'not traced' and this was evidence which was not before the judge. Mr Kannangara maintained that the typed birth certificate was not subject to the verification process.
13. Mr Melvin closed by referring to the decision letter, arguing that if one birth certificate was false, it follows that the other was too. He added that it would have been easy for DNA evidence to be provided and that the judge should have been wary of a paper case, with no DNA evidence in circumstances where a birth certificate was found to be fraudulent.
14. At the end of the error of law hearing, I announced that the First-tier Tribunal judge made a material error of law in referring to a higher standard of proof in relation to the issue of a false document; that the judge's reasons for rejecting the DVR were inadequate and that the decision was set aside.
15. I enquired whether the matter could be immediately remade in the Upper Tribunal. After taking instructions, Mr Kannangara stated that the sponsor preferred to proceed today before the Upper Tribunal, by way of submissions alone.

Remaking

16. As requested by the sponsor, the appeal proceeded by submissions only. Mr Melvin relied on the decision letter of 18 November 2021 as well as the DVR. The birth certificate with the reference number of 5215 was not traced by the Ghanaian authorities which equated to it being a false document. He asked me to note the name and contact details of a senior official as well as the existence of an official line of enquiry when documents are submitted.
17. Mr Melvin added that the sole reason for refusal was known many months before the First-tier Tribunal hearing and no attempt been made to obtain documentary evidence or contradictory evidence such as DNA. It was of great concern that the sponsor and appellant wished to proceed on the

basis that no evidence would be heard and no cross-examination as to why the document has been verified as fraudulent. He submitted that it would be erroneous for a first-tier judge to speculate as to what internal checks are being made by the Ghanaian authorities who have not confirmed that the document is genuine. The onus is on an appellant to show that the document is genuine once it has been put in doubt by the respondent. As for the meaning of the 'not traced' stamp, it was clear that there was no record of this document at the Ghanaian registry of births and deaths. Not traced means it does not exist, not that it was not found. Mr Melvin urged the Upper Tribunal to dismiss the appeal.

18. Mr Kannagara referred to the grounds of appeal to the First-tier Tribunal, enclosed with which was a letter from each of the appellant's parents consenting to him travelling to the United Kingdom. In addition, the grounds stated that the typed birth certificate was used to obtain the appellant's passport. He submitted that the DVR referred only to the handwritten document rather than the typed version. As for the DVR, there was no indication of the process which was taken to search for it and the term 'not traced' meant only that it could not be found. I referred Mr Kannagara to the reference to an official response that the document was fraudulent on page 6 of the DVR, however he submitted that this was an assumption on the part of the verification assistant. Mr Kannagara had no instructions as to why DNA evidence had not been obtained. He asked me to find in favour of the appellant.
19. At the end of the hearing, I reserved my decision. I give my reasons below.

Decision on error of law

20. The first ground concerns the standard of proof employed by the judge in addressing the issue of the allegation of a false document. At [14] of the decision and reasons, the judge says, "I remind myself that where the Respondent raises the issue of a false document the burden of proof is to the higher standard." As identified by the judge granting permission, that self-direction is simply wrong. The proper standard of proof in a civil matter involving an allegation of dishonesty is the civil standard, applying *Re B (Children)*. The judge's comment at [14] suggested that he or she thought a higher standard of proof than the civil standard was required. This was an error and a material error, given that ultimately the judge found at [15], that the respondent had not discharged the burden of establishing that the appellant had relied on 'a false document. '
21. Secondly, the judge's reasons for according little to no weight to the DVR are inadequate. At [15], the judge found it troubling that the verification of the document was carried out by a telephone call but does not explain why this was of concern. In any event, the verification was not carried out solely by telephone. In fact, a photograph of the handwritten birth certificate was forwarded to an official contact at the Ghanaian birth and

death registry. That contact was named, their job title provided as was their telephone and email contact details.

22. The judge was unimpressed with the job title of Mr Debrah, the senior official responsible for operations in the relevant registry, stating that he was not a 'qualified expert' and was only employed in an administrative role. The judge did not explain why they believed further expert credentials were required for a senior official to check government records to verify that the appellant's birth was registered as claimed. The judge interpreted the 'not traced' stamp on the birth certificate as not being an indication that the document was false. In doing so, the judge failed to note that in addition to the stamp, there was contact between the respondent and the Ghanaian official, as set out at page 5 of the DRV where it is stated that 'The contact has completed internal checks and has responded through official means, that the document has been assessed 'fraudulent.' The judge did not attach any weight to the detailed content of the DVR report; the reasons provided by the judge were inadequate and materially so.
23. It follows, that the decision of the First-tier Tribunal contained material errors of law. That decision is set aside for remaking before the Upper Tribunal.

Decision on remaking

24. In reaching this decision, I have considered all the evidence before me as well as the submissions of the representatives.
25. With his application for an EUSS Family Permit, the appellant submitted two birth certificates, a handwritten one as well as a typed version, both of which bore the same reference number, 5215. The respondent contacted the Ghanaian registry of birth and deaths and arranged for what is referred to in the report as the 'old' birth certificate to be verified. Below is the description of what ensued as set out in page 5 of the DVR.

*Contact has been initiated by telephone direct to the above person, to request verification of the document **

*A photograph of the document has been sent to the official contact (above) in order to verify if it is genuinely issued by Government of Ghana **

The contact has completed internal checks and has responded through official means, that the document has been assessed 'fraudulent'

**Document received via courier due to technical hitches. See scanned copy below :*

26. As alluded to above, the respondent provided the name, position, telephone and email details of the senior contact at the registry. A scanned copy of the old birth certificate was returned to the ECO with a 'not traced'

stamp as well as a signature and handwritten date of 18 October 2021. I find that the evidence contained in the DVR can be relied upon as evidence of the use of a false document. The Ghanaian official has attempted to trace the birth entry without success and has assessed the handwritten birth certificate as 'fraudulent.' The appellant and sponsor have not provided any evidence which casts doubt on the content and conclusions of the DVR. Nor has the sponsor been willing to provide oral evidence at any stage.

27. While Mr Kannangara was right to state that there was no mention of the typed birth certificate in the DVR, it is the case that this document contained the same details, as well as reference number as the handwritten document. Indeed, the decision letter states that '*the checks confirmed that the relationship documents (he had) provided are deemed to be false.*'
28. As I have found that the birth certificates relied upon by the appellant in his application under the EUSS were false, it follows that I do not accept that he is a family member of the sponsor.
29. The decision of the ECO was in accordance with the EUSS Family Permit Rules.

Conclusions

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

I set aside the decision to be re-made.

I substitute a decision dismissing the appeal on the basis that the Secretary of State's decision was in accordance with the EUSS Rules.

No application for anonymity was made and I saw no reason to make such a direction.

Signed: T Kamara

Date: 2 November 2022

Upper Tribunal Judge Kamara

TO THE RESPONDENT FEE AWARD

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

Signed: T Kamara

Date: 2 November 2022

Upper Tribunal Judge Kamara

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **"working day"** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email