



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

Appeal Number:  
UI-2022-002064 [EA/08437/2021]  
UI-2022-002065 [EA/08441/2021]

**THE IMMIGRATION ACTS**

**Heard at Field House, London  
On Monday 22 August 2022**

**Decision & Reasons Promulgated  
On Tuesday 4 October 2022**

**Before**

**UPPER TRIBUNAL JUDGE SMITH**

**Between**

**ISAAC ASARE  
PATIENCE ASARE  
[NO ANONYMITY DIRECTION MADE]**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Ms E Harris, Counsel instructed by Suleman Legal Services  
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellants appeal against the decision of First-tier Tribunal Judge Juss promulgated on 28 February 2022 (“the Decision”). By the Decision, the Judge dismissed the Appellants’ appeals against the Respondent’s decisions dated 28 January 2021 refusing them a family permit under the EU Settlement Scheme (“EUSS”). The Appellants claim to be the

dependent children and therefore family members of their father, Michael Asare (“the Sponsor”), who is a German national living in the UK.

2. The Appellants are Ghanaian nationals. They were born on 18 August 2001 and 25 December 2000 respectively. Accordingly at the time of their applications, on 21 December 2020, both were aged under 21 years. If it is accepted that the Appellants are the Sponsor’s children, therefore, both should succeed. That fact was however disputed by the Respondent on the basis of lack of evidence of parentage. That then was the issue which the Judge had to resolve.
3. The Judge approached the appeals however largely on the basis that the disputed issue was one of dependency. Having set out the Respondent’s case in relation to the evidence at [9] to [11] of the Decision, he found at [13] that the Appellants were not related as claimed. It is appropriate to note at this juncture that neither the Appellants/Sponsor nor the Respondent attended the hearing. It was dealt with on the papers only. There is no witness evidence from the Appellants or Respondent. The witness statement from the Sponsor was said by the Judge to be unsigned (as the Appellants accept).
4. Before the Judge, the Appellants relied on statutory declarations from the Appellants’ respective mothers, producing documents purporting to show that the Appellants’ births were registered on 31 December 2001 and 28 December 2000 respectively and that the Sponsor is the Appellants’ father. However, the register entries are certified only on 22 September 2020 and 24 August 2020. The register entries are supported by letters said to come from the Births and Deaths Registry in Ghana signed by Kingsley Asare Addo and dated 28 January 2021 confirming that the birth certificates had been officially processed and entered in the register.
5. Having made the finding that the Appellants and Sponsor were not related as claimed, the Judge went on to consider whether the Appellants were dependent on the Sponsor. He concluded that they were not.
6. The Appellants appeal the Decision on the basis that the Judge had wrongly approached the appeals on the basis that the Appellants were claiming to be extended family members (“EFMs”) whereas both asserted that they were family members. Further, the Judge had accepted the Respondent’s position regarding the genuineness of the birth register entries (that they could not be relied upon) without supporting evidence. The Judge did not refer to the letters from the Births and Deaths Registry nor to the statutory declarations of the Appellants’ mothers.
7. Permission to appeal was granted by First-tier Tribunal Judge Grimes on 21 April 2022 in the following terms so far as relevant:

“... 2. As it appears that the two appellants were under 21 at the date of the application and claim to be children of the EEA national, it is arguable that the judge erred in considering the appeals under

regulation 8 rather than regulation 7 of the Immigration (EEA) Regulations 2016.

3. It is further arguable that the judge erred in his consideration of the birth certificates in accepting the assertions of the Secretary of State in the reasons for refusal letter.

4. The grounds are arguable.”

8. The matter comes before me to determine whether the Decision contains an error of law and, if I so conclude, to consider whether to set it aside. If the Decision is set aside, it is then necessary for the decision to be re-made either in this Tribunal or on remittal to the First-tier Tribunal.
9. I had before me a core bundle of documents relating to the appeal as well as the Appellants’ bundle before the First-tier Tribunal ([AB/xx]) and the Respondent’s bundle ([RB/xx]). As I have noted above, Judge Juss also had before him an unsigned statement from the Sponsor. This Tribunal did not have a copy of that statement. Ms Harris therefore provided me with a copy which is signed.

### **ERROR OF LAW**

10. Judge Juss proceeded on the basis that the Immigration (European Economic Area) Regulations 2016 (“the EEA Regulations”) were relevant to this appeal. As Ms Ahmed conceded, they were not. The Appellants applied for a family permit under the EUSS. The rules governing such applications are contained in Appendix EU (Family Permit) to the Immigration Rules (“Appendix EU (FP)”).
11. In any event, as Ms Ahmed also conceded, as the Appellants claim to be the children of the Sponsor, their cases would have been considered under regulation 7 of the EEA Regulations and not regulation 8 (which is concerned with EFMs and not family members). As she accepted, dependency has no relevance in these appeals. Although the Second Appellant is now aged 21 years she was not at the date of application. Ms Harris drew my attention to Appendix EU (FP) 6(1) which provides that a person must qualify as a family member at the date of application rather than date of decision. A child is defined in Annex 1 to Appendix EU (FP) as being one under the age of 21 years. The Second Appellant was under 21 years at that time, having been born on 25 December 2000 and the application having been made on 21 December 2020. The First Appellant is younger.
12. Ms Ahmed submitted that if the Judge had been entitled to find that the Appellants were not related to the Sponsor as claimed, then the errors might not be material. However, she conceded that the Judge had failed to take into account some of the evidence about that relationship and therefore there was a material error.
13. I am satisfied that this concession was properly made. First, there is an error as to the applicable law. The EEA Regulations had no relevance to

these appeals. They were concerned only with Appendix EU (FP). I agree with Ms Ahmed that if the Judge had reached a sustainable finding about the relationship between the Appellants on the one hand and the Sponsor on the other, then the error might not have been material. However, the Judge has ignored evidence put forward by the Appellants.

14. The Judge dealt with the relationship at [13] of the Decision as follows:

“First, I am not satisfied that the appellants and the sponsor are related as claimed. This is so as a matter of evidence. There is no Witness Statement from either Appellant and the one from the sponsor cannot be relied upon being unsigned. This is significant because the birth certificate was issued by ‘*Pelican Press 2019*’. As the birth certificate was issued in 2020 but the format of the birth certificate was issued in 2019 it casts doubt upon the authenticity of the document they had submitted as evidence of the relationship. Moreover, it is noted that the signature of the registrar on the birth certificate in question does not match the specimen signature for that registrar that has been provided to the SSHD by the Ghanaian competent authorities.”

15. Those findings are a recitation of the Respondent’s reasons for refusing the applications. As I will come to, Ms Harris submitted that the Judge was not entitled to reach those findings in the absence of evidence. However, in any event, at this juncture, it is sufficient to note that the Judge made no reference to the statutory declarations made by the Appellants’ respective mothers nor to the confirmation from the Births and Death Registry in Ghana that the birth register entries were genuine. That is a failure to take into account relevant evidence and amounts to an error.

16. As I have noted above, Ms Ahmed conceded that for those reasons, there was a material error. I therefore concluded that there was an error of law in the Decision and that it should be set aside.

17. The next issue is the form of the re-making. Ms Harris submitted that I could re-make without a further hearing. The appeals were dealt with on paper before Judge Juss. No further evidence had been submitted by either party. Neither party sought oral evidence and the appeals could therefore be dealt with on submissions only. Although Ms Ahmed initially submitted that the appeals should be remitted, she did not dissent from Ms Harris’ view that the appeals could be determined by way of submissions only. There would be little point in remitting the appeals for submissions to be made. Nor was there any reason to defer re-making in this Tribunal for submissions only. I therefore proceeded to hear from both parties in relation to re-making. I reserved my decision in that regard and indicated that I would provide that in writing which I now turn to do.

## **RE-MAKING**

18. Ms Ahmed relied upon the Respondent’s refusal letters. She submitted that based on the reasons there given, I could not be satisfied that the

Appellants are related to the Sponsor as claimed. She accepted that the Respondent had not produced evidence of what was said in the decisions under appeal. She also accepted that the Respondent had not made any application under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to adduce any such evidence, in spite of being on notice by the Appellant's grounds that issue was taken in relation to the existence of such evidence.

19. Ms Harris drew my attention to the case of MH (Respondent's bundle: documents not provided) Pakistan [2010] UKUT 168. The reported guidance given in that case reads as follows:

“Rule 13 of the First Tier Tribunal Rules requires an unpublished document to be supplied to the Tribunal if it is mentioned in the Notice of, or Reasons for Refusal or if the Respondent relies on it. Because the Notice of, or Reasons for Refusal form the statement of the Respondent's case, however, the Tribunal is likely to assume that a document mentioned in either, but not supplied to the Tribunal, is no longer relied on.”

20. The First-tier Tribunal Procedure Rules have since been amended. Rule 13 is however now rule 23 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 which includes the same provision in entry clearance cases or cases involving the refusal of a family permit under the EEA Regulations. Although, as I have already noted, the appeals here are concerned with refusals of family permits under the EUSS, I see no reason why the same provision should not apply with equal force.

21. The decisions under appeal here read as follows (in relation to the First Appellant – the decision being almost identical in relation to the Second Appellant):

“To evidence that you are a ‘family member’ of your EEA citizen sponsor you have submitted Ghanaian birth certificate produced on 22 September 2020. I note that your birth certificate was not produced at the time of your birth and have considered the reports available online including the US Department of State website which states that ‘registrations not made within one year of an individual's birth are not reliable evidence of relationship, since registration, including late registration, may often be accomplished upon demand, with little or no supporting documentation required. In the absence of any other document that supports your parentage, I am not satisfied that you have provided evidence that your relationship with your sponsor is as stated.

It is also noted that the birth certificate was issued by ‘Pelican Press 2019’. As your birth certificate was issued in 2020 but the format of the birth certificate was issued in 2019 it casts doubt upon the authenticity of the document you have submitted as evidence of relationship.

It is noted that the signature of the registrar on the birth certificate in question does not match the specimen signature for that registrar that has been provided to us by the Ghanaian competent authorities.”

22. The first two reasons there given do not depend on any unpublished document. I will return to those below. The final reason though does. I accept Ms Harris' submission therefore that I cannot rely on the Respondent's assertion (which is unsupported by evidence) that the signature on the certification of register entries does not match the specimen which the Respondent has been given. I can well accept that there may be very good reasons why the Respondent would not wish to simply supply the specimen signature she has been given. To do so might enable others to copy it. However, there are provisions within the Tribunal's procedure rules which enable disclosure to be circumscribed. No attempt has been made to provide a copy of the specimen for comparison or to provide witness evidence confirming that the signatures do not match.
23. I do not understand the second of the reasons given by the Respondent. Simply because the format of the certification is issued in 2019 does not mean that the same format would not be used a year later. Had the dates been the other way round, I could see the force of the point but I do not consider that it assists in relation to the reliance placed on the birth register entries.
24. The removal of those reasons however does not get the Appellants home. The first reason given by the Respondent suggests that a birth registration entry made some twenty years after the Appellants' birth cannot be relied upon for its content. That is a different submission from an assertion that the register entries are themselves false. It depends on background information which is published and not disputed. It is in any event consistent with the published information (see comments section at <https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/Ghana.html>) which is as cited in the decisions under appeal).
25. The issue therefore becomes one whether the register entries are sufficient evidence of what they purport to show, namely that the Sponsor is the father of the Appellants. I was not addressed as to burdens of proof. If it is asserted (as it may be) that the certification of register entries are themselves false, then the burden falls on the Respondent. However, if the reasons given (or at least the reason which is left) is only that the register entries are insufficient proof of what they purport to show, the position is, it seems to me, otherwise. It is for the Appellants to show that they are related. The question is whether the birth register entries demonstrate that they are.
26. I have already referred to the evidence on which the Appellants rely. In addition to the evidence of the birth registration ([AB/1-2]), the Appellants rely on letters from the Births and Deaths Registry ([RB/C37 and C43]). Those letters read as follows in relation to the First Appellant (being in similar form in relation to the Second Appellant):

"We wish to inform you that the Birth Certificate with entry number 409 in respect of ISAAC ASARE issued on 31<sup>st</sup> December 2001 has been

officially processed and entered in the Register of Births for Aboso in the Western Region”

27. There are two points to be made in that regard. The first is that it is not said that the registration of birth was made twenty years after the birth. The birth certificate was apparently issued within a few months of the birth. That is consistent with what the document confirming the registration of birth shows. Second, and following on from that, the reference to a date of 22 September 2020 (in relation to the First Appellant) is reference to when a copy of the register was obtained. The letter at [RB/C43] therefore confirms the registration of the birth certificate.
28. Again, however, that does not get the Appellants home. Assuming that the birth registration entries are genuine and do indeed show what the certification says that they show, they can only confirm what the authorities are told by the person registering the birth (in each case here the mother of the child). The Appellants’ dates of birth are not disputed. It is their parentage in terms of their father which is disputed by the Respondent.
29. It is at this point that the statutory declarations made by the Appellants’ respective mothers become relevant. The Sponsor’s two children have different mothers. That is consistent with his witness statement which attests to two very short relationships with the Appellants’ mothers. The statutory declarations also providing the birth register entries are at [RB/C42 and C36] respectively. Those declarations confirm only the “Genuineness and authentication” of the birth certificate in each instance. They do not go so far as to expressly confirm the content. I take into account however that the person providing the information to the Ghanaian authorities in each instance was the mother. I am therefore prepared to assume that by confirming the genuineness of the certificate, the makers of the declarations intended to confirm that the content of the certificates is true.
30. I do not need to deal in any detail with the Sponsor’s statement. As I have already pointed out, the Appellants are the product of very short relationships. He has not had a parental relationship with the Appellants. They have continued to live with their mothers and whilst he has had some financial input and visited them from time to time, I accept that the other evidence he would have of his relationship is quite limited. There is evidence that the Sponsor has paid school fees for the Second Appellant ([AB/21]) but little besides.
31. I did enquire of Ms Harris why the Sponsor and Appellants had not provided DNA evidence which would have put the relationship beyond doubt. She submitted that it could not be required. Whilst I accept that to be the position, it does not provide a reason why the Appellants and Sponsor would not volunteer it.

32. I have carefully considered the evidence put forward by the Appellants. Taking into account the Respondent's reasons for refusing (so far as I am able on the evidence) and the evidence produced on the Appellants' behalf, I am (just) persuaded that the Appellants have made out their case to be related to the Sponsor. As I indicated at the outset, if the Appellants were found to be the Sponsor's children and given their ages at the date of the applications, they are entitled to succeed in their appeals. I therefore allow the appeals.

### **CONCLUSION**

33. I have found there to be an error of law in the decision of First-tier Tribunal Judge Juss promulgated on 28 February 2022. I set that decision aside in consequence. Having considered all the evidence, I conclude that the Appellants have shown that they are related as claimed to the Sponsor. Accordingly, as his children under the age of 21 years at the date of their applications, the Appellants are family members of the Sponsor. Assuming that the Sponsor has been permitted to remain in the UK under the EUSS, as he is an EEA national, the Appellants are therefore entitled to succeed in their appeals. I therefore allow the appeals.

### **DECISION**

**I am satisfied that the Decision involves the making of a material error on a point of law. The Decision of First-tier Tribunal Judge Juss promulgated on 28 February 2022 is set aside.**

**I re-make the decision. I allow the appeals on the basis that the Appellants satisfy the requirements of Appendix EU (Family Permit) to the Rules as the family members of the Sponsor.**

Signed            L K Smith  
2022  
Upper Tribunal Judge Smith

Dated: 24 August