



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003666
First-tier Tribunal No:
EA/00903/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 30 April 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

PATIENCE AFIA AHEMA ANTWI
(NO ANONYMITY ORDER MADE)

Appellant

and

AN ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Read instructed by Stillwaters Solicitors
For the Respondent: Ms Young, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 10 March 2023
(via Microsoft Teams)

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Prudham ('the Judge'), promulgated on 15 June 2022, in which the Judge dismissed the appellant's appeal against the refusal of her application for a Family Permit under the terms of the European Union Settlement Scheme (EUSS).
2. The matter was determined on the papers. The Judge sets out findings of fact from [8] of the decision under challenge.
3. The appellant had claimed in her application to be the stepdaughter of the relevant EEA citizen, her sponsor, which was not accepted by the Entry Clearance Officer (ECO) who was not satisfied the evidence submitted with the application established the claimed parentage.
4. The Judge noted the appellant had provided a birth certificate showing date of registration as 3 March 2021, and an undated Certificate of Dedication from a Pentecostal church, and a letter dated 15 May 2022 from the Birth and Death Registry in Accra confirming the appellant had produced birth and child health records when she registered.

5. The Judge was not provided with a copy of the birth and child health records which was found to reduce the weight that could be attached to the letter from the Birth and Death Registry in Accra. The Judge also noted that the letter made no reference to having sight of the appellant's passport and also noted differences in spelling of the appellant's mother's name on the Certificate of Dedication and the birth certificate together with the mother's date of birth being recorded as 01/09/1910 [13].
6. The Judge was not satisfied in light of discrepancies recorded in the determination that appropriate weight could be attached to the documents as proof of parentage leading to the finding the appellant had not discharged the burden of proof upon her to show she was entitled to the Family Permit.
7. The grounds seeking permission to appeal assert the Judge made a material error of law in attaching reduce weight to the letter from the Ghana Birth Registry which is said to be the official department of the Republic of Ghana charged with issuing Ghanaian Birth Certificates. The grounds assert it was not the Judge to demand the evidence that was before the Ghana Birth Registry when investigating and registering the appellant's birth and that the letter from the Birth Registry had not been challenged in terms of its genuineness and should have been accepted as absolute proof that the Appellant's birth was registered based on historical birth and child health records. The grounds assert it was for the Ghana Birth Registry to confirm if the Appellant's birth certificate is genuine which it is claimed they had done. The grounds assert the Judge took into account irrelevant matters when referring to the appellant's mother's date of birth; advising that a date such as 01/01/2010 is used which would tell the decision-maker that the date is unknown. It is claimed, in any event, that is irrelevant to the appellant showing she is the daughter of her father and stepdaughter of the Sponsor.
8. In a Rule 24 response dated 16 August 2022 the ECO challenges the grant of permission to appeal, asserted the Judges made findings that are properly open on the basis of the documentary evidence, and that no error of law had been made out.

Discussion

9. Mr Read submitted that if the Judge did not have all the documents that were required to determine the appeal the proceedings should have been adjourned to enable such evidence to be obtained. It was also submitted that the determinations showed some confusion in the mind of the Judge and that the Judge came to the decision in such a state of confusion, which was an incorrect way in which to determine the appeal.
10. It was further submitted that if there were concerns in the mind of the ECO she should not have maintained the position in the Rule 24 response without carrying out investigation into the issue which would merely have required her to contact the Registry in question to establish whether the birth certificate was genuine. It was argued that had such an enquiry been undertaken and the necessary document produced, as per the Judge's decision this would prove the case and that if the document could not be provided that would have been the end of the matter.
11. The first issue to note is that it is an establish principle that unless the Secretary of State/ECO makes a specific assertion, the effect of which is to transfer the burden of proof to her, it is for an appellant to prove that any fact they assert is true. Although case law identifies that there may be cases in which it is reasonable to expect the Secretary of State/ECO to undertake investigation with the relevant authorities it is not made out that this is such a case on the facts.

12. The reason the Judge had concerns about the weight that could be given to the evidence is as a result of the matters recorded at [11] of the decision under challenge in which the Judge writes:
 11. I have considered the Home Office Country Policy and Information Note, Ghana: Background information, including internal relocation. September 2020. This is a document in the public domain. At section 10.1.3 the USSD Reciprocity Schedule noted that the process for obtaining a birth certificate after 12 months from birth, was that parents must produce a child's weighing card, baptismal certificate and parents' passports. It is commented that the majority of birth registrations are not made at the time of birth and often no registration is made until an individual requires a birth certificate for immigration purposes. The note continues to say that registrations not made within one year of birth are not reliable evidence of identity or relationship as late registrations are often accomplished upon demand with little or no supporting documentation required. At 10.1.4 it is noted that Ghana's Supreme Court has unanimously upheld that a birth certificate is not a form of identification and does not establish the identity of the bearer.
13. A copy of the relevant letter dated 12 May 2022, provided at page 20 of the appellant's appeal bundle, specifically refers to the fact the appellant's birth was first registered on 3 March 2021 as accurately recorded by the Judge at [13]. The letter refers to registration using birth and child health records but not the documents specifically referred to at [11] of the determination which are required when recording a birth which occurred more than 12 months previous. Such an application must be supported by child's weighing card, baptismal certificate and parents' passports. As these documents were not provided the Judge was entitled to attach limited weight to the evidence.
14. The issue raised in the refusal was not that the letter from the Birth and Death Registry was forged but that little weight could be attached to it. The approach adopted by the Judge is in accordance with Tanveer Ahmed and has not been shown to be one not reasonably open to the Judge on the evidence.
15. I find no merit in the argument the Judge read too much into the evidence as the Judge clearly assessed the evidence in the round including that contained in the CIPU, which has not been shown to be unreliable, and the content of the letter in question. I find no confusion in the mind of the Judge in light of the content of the evidence as a whole.
16. Whilst it is accepted the appellant does not accept the Judge's findings or outcome of the appeal, and clearly would prefer a more favourable conclusion, the grounds fail to establish the Judge has erred in law in a manner material to the decision to dismiss the appeal. The Judge clearly considered the evidence, has made findings which are adequately reasoned, and which have not shown to be perverse, irrational, or outside the range of findings reasonably available to the Judge of the evidence.

Notice of Decision

17. There is no material error of law in the decision of the First-tier Tribunal. The determination shall stand.

C J Hanson

Case No: UI-2022-003666
First-tier Tribunal No: EA/00903/2022

Judge of the Upper Tribunal
Immigration and Asylum Chamber

28 March 2023