



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006380
First-tier Tribunal No:
EA/04490/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 17 May 20223

Before

UPPER TRIBUNAL JUDGE OWENS

Between

SALSABILA ABDALLAH
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Unrepresented
For the Respondent: Mr Basra, Senior Home Office Presenting Officer

Heard at Field House on 26 April 2023

ERROR OF LAW DECISION AND RE-MAKING

1. The Entry Clearance Officer appeals against the decision of First-tier Tribunal Judge Boyes sent on 14 September 2022 allowing Ms Abdallah's appeal against the refusal of her application for a family residence permit as the dependent daughter of an EEA national.

Background

2. The appellant is a citizen of Ghana who claims to be the daughter of her sponsor, Mr Takpa in the United Kingdom. The appellant made the application on 18 November 2021 under the EU Settlement Scheme EUSS Appendix EU (Family Permit) on the basis that she is the "family member" of a relevant EEA citizen.
3. On 1 April 2022 the application was refused on the basis that Ms Abdallah had not provided any evidence that she was dependent on a relevant EEA citizen, nor

that she could not meet her essential living needs without the financial or other material support from the relevant EEA citizen. It was said that she therefore did not meet the requirements for an EUSS family permit.

4. Accompanying the application was a DNA test result from AngliaDNA Drug, Alcohol and DNA Testing dated 18 November 2021. On page 1 out of 3 of this document it was stated that the putative father Mr Takpa is the biological father of the child Salsabila Abdallah. The Entry Clearance Officer did not refuse the application on the basis that Ms Abdallah and her sponsor were not related as claimed.

First-tier Decision

5. In a very brief decision the judge noted that there is no dispute over the relationship. The judge made a finding at [9] that Ms Abdallah and Mr Tapka are father and daughter. The remainder of the decision dealt with those documents which had been adduced in support of the issue of dependency. The judge found that Ms Abdallah was dependent on her father and allowed the appeal on the basis that she had demonstrated that she was a child of the EEA national and dependent upon him and therefore a “family member of a relevant national”.

Grounds of Appeal

Ground 1 - Error of fact leading to unfairness

6. There has been an error of fact leading to unfairness. The judge made a material error of law in the determination, either unwittingly or by a failure to fully consider the evidence provided by Ms Abdallah. There was prima facie evidence of deception in that Ms Abdallah submitted an altered DNA result in support of the application. Even in the version provided by Ms Abdallah there was a clear indication that the German national sponsor is not Ms Abdallah’s father as claimed. This is an abuse of the EU Settlement Scheme.

Permission to Appeal

7. Permission to appeal was given by Upper Tribunal Judge Lindsley on 21 February 2023. She considered that it was arguable that there had been an error of fact amounting to an error of law and that in the context of fraud the decision should be set aside as a matter of fairness. She made directions for the sponsor to attend the hearing before the First-tier Tribunal with the complete original DNA report and to file and serve a statement of truth explaining the discrepancy within the DNA report, attaching a complete copy of the unaltered DNA report.

Discussion and Conclusion

8. The sponsor did not reply to directions. On 21 March 2023 the Entry Clearance Officer made a Rule 15(2A) application in order to adduce further evidence. That evidence included two copies of the AngliaDNA report and confirmation by way of a document verification report from AngliaDNA as to which version was the correct version.

Hearing in the Absence of a party

9. On the day of the hearing the sponsor failed to attend on behalf of Ms Abdallah. The hearing was listed for 10 a.m. and by 11am there had been no appearance

by the sponsor despite the directions attached to the permission decision. I confirmed that the Notice of the Hearing had been sent by post to the sponsor's address, and further that the Notice of Hearing had been emailed to the email address set out in the original application for entry clearance. I was therefore satisfied that the sponsor and Ms Abdallah had been notified of the time and date of the hearing. I further took into consideration that neither the sponsor nor Ms Abdallah had responded to directions nor provided a statement of truth. There was no record of any communication from Ms Abdallah or the sponsor by the Tribunal to explain the sponsor's non-appearance. In these circumstances, I decided that it was fair and in the interests of justice to proceed in the absence of the sponsor.

Ground 1 -Mistake of Fact

10. I was satisfied on the evidence before me that there was a mistake of fact in the decision of the judge. The judge made a finding that Ms Abdallah was the biological daughter of the sponsor. This is most certainly not correct. Even on the evidence before the judge there was evidence that Ms Abdallah was not in fact the daughter of the sponsor and that the DNA results had been doctored.

11. Page 1 of the DNA report submitted stated:

“Based on the DNA analysis, the Putative Father (Ali Adam Takpa) IS THE BIOLOGICAL FATHER of the Child (Salsabila Abdallah) with a likelihood ratio of 182131993. When comparing this likelihood ratio to the scale of conclusions set out in the ENFSI Guidelines, this provides extremely strong support for the proposition that they are related as Parent/Child rather than the alternative proposition that they are unrelated. For an explanation of the paternity test and detailed test results please refer to the Appendix”.

12. At page 2 however at the bottom under the heading “Statement of Results “it states:

“The DNA profile of the Putative Father (Ali Adam Takpa) was compared with the DNA profile of the Child (Salsabila Abdallah) and **6 inconsistencies** were identified. Based on these inconsistencies the Putative Father is excluded as the biological father of the Child”. I am satisfied that this on its own would have been enough to undermine the finding of the relationship.

13. It seems that the judge's attention was not drawn to this inconsistency which was not surprising as it was not raised in the refusal letter and the decision was determined on the papers with no hearing.

Application to adduce further evidence

14. I considered whether it is appropriate to admit further evidence post the hearing in order to demonstrate the mistake of fact. I firstly had regard to the principles in Ladd and Marshall [1954] EWCA Civ 1 as clarified in Akter(appellate jurisdiction; E and R challenges) [2021] UKUT 272 (IAC) which confirms that it is (in limited circumstances) possible to admit evidence which was not placed before the First-tier Tribunal before reaching its decision to demonstrate that there has been an error of law in that there has been a mistake of fact or that the Tribunal failed to take into account a material factor. This power will be exercised rarely because of the principal of finality.

15. The new evidence consists of a verification report from AngliaDNA confirming that the version of the report provided by Ms Abdallah with her application was not the correct version and providing the correct report which on page 1 confirms that the sponsor is not the biological father of Ms Abdallah. It is manifest from this the page 1 confirming the relationship submitted as well as the references to inconsistencies on page 2 which were submitted with the application have accordingly been fraudulently altered. This is credible, interconvertible and unambiguous evidence that the document submitted by Ms Abdallah has been altered. The evidence is probative because it would have made a difference to the outcome of the appeal. I am also satisfied that the Entry Clearance Officer acted with reasonable diligence. The fraud was referred to in the grounds of appeal and the Entry Clearance Officer acted promptly to obtain the evidence after permission was granted and directions made. I am therefore satisfied that the three aspects of the Ladd and Marshall test have been met and I also find that it is in the interests of justice to admit the evidence to avoid abuses of EEA rights and to uphold the system of immigration control.
16. On this basis, I find that there has been a material error of law. The judge made an error of fact when he found that Ms Abdallah was the biological daughter of the sponsor. This is a material error of law because Ms Abdallah could not succeed in her appeal if she were not related to the sponsor as claimed.
17. I therefore set aside the decision in its entirety.

Re-making

18. Ms Abdallah cannot meet requirements of Appendix EU (Family Permit). This is because she has not adduced evidence to demonstrate that she is the “family member of a relevant EEA sponsor”. The grounds of appeal to the First-tier Tribunal did not raise any arguments under the Withdrawal Agreement and in my view there is nothing in the Withdrawal Agreement to assist Ms Abdallah because she does not fall under the scope of the Agreement in any event because she has not demonstrated that she is a family member of the sponsor.

Notice of Decision

19. The decision of First-tier Tribunal Judge Boyes is set aside in its entirety.
20. The decision is re-made dismissing the appeal.

R J Owens

Judge of the Upper Tribunal
Immigration and Asylum Chamber

16 May 2023