



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001777
UI-2021-001778
First-tier Tribunal No: EA/00671/2021
EA/00672/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 17th of July 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**ROBERT APPIAH SUNKWA
ADUSEI ANNAN OPOKU
(NO ANONYMITY ORDER MADE)**

Appellants

and

AN ENTRY CLEARANCE OFFICER - UK LPA

Respondent

Representation:

For the Appellant: The Sponsor in person

For the Respondent: Mr Thompson - a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 5 July 2024

DECISION AND REASONS

1. The appellants' appeal with permission a decision of First-tier Tribunal Judge Row ('the Judge'), promulgated on 21 September 2021, in which he dismissed their appeals against the refusals by an Entry Clearance Officer (ECO) as their applications for family permits to enter the United Kingdom as the extended family members of their aunt, Matilda Agypomaa ('the Sponsor') an Austrian national exercising treaty rights in the UK. Both applications were refused on 21 December 2020.
2. The appellants are citizens of Ghana, the first appellant having been born on 16 April 1996 and the second appellant on 28 February 1991. Their application for a Family Permit were made on 10 November 2020.
3. The ECO refused the applications as he or she was not satisfied that either appellant was related to the Sponsor as claimed and neither had provided evidence of their financial position in Ghana without which their dependency could not be determined. The ECO was not satisfied that the Sponsor was able to

support the appellants as she claimed she earned £243 per week net, had her own home and family to support, and had already sponsored several other Ghanaian nationals who she said were dependent on her as well.

4. The Judge notes at [5] that the appeal was determined without a hearing as there had been no objection from either party to the matter being disposed of in that manner.
5. The Judge's findings are set out from [7] of the determination under consideration.
6. In relation to the relationship issues, the Judge notes that additional documents had been provided with the notice of appeal and subsequently which included documents which were said to be birth certificates. The Judge did not find it made out how the appellants intended to establish their relationship to the Sponsor from the birth certificates as they have different parents, are not brothers, and had not provided a statement setting out how their relationship was established [8].
7. The Judge also notes further issues with the birth certificates, noting that all were in electronic form with the originals not being produced, and that the ECO had not commented upon whether it is accepted that they are and what they purport to be [10].
8. The ECO notes the first appellant was born on 16 April 1996 but that his birth was registered on 12 June 2019 some 23 years later. The second appellant was born on 28 February 1991, and registered 22 years after his birth, and that those documents could not be taken as reliable evidence of identity or relationship [12].
9. The Judge also finds there is evidence of money transfers from the sponsor to Ghana which may indicate financial dependency, but may also indicate other things, and do not in themselves establish a family relationship [14].
10. The Judge refers to other evidence of the relationship in the form of a statutory declaration by the second appellant but finds that is self-serving and puts little weight on it for that reason [15].
11. The Judge states he is not satisfied on the evidence that the appellants had demonstrated they are related to the Sponsor as claimed and that they are therefore not extended family members under regulation 8 of the Immigration (EEA) Regulations 2016. As a result, it was not necessary to go into the issue of whether they had established that they are dependent on the Sponsor [16].
12. The appellants sought permission to appeal arguing there is a family link between them and the Sponsor and that the reasons given by the Judge cannot be sustained. The grounds argue the birth certificates produced show clear evidence of the relationship. There is included with the grounds of appeal a handwritten family tree which does not appear to have been before the Judge.
13. Ground 2 asserts the Judge erred in relation to the evidence of money transfers claiming it was not up to the Judge to assume various ways in which the money transfers could have been used which was against the principle of a fair hearing. The grounds refer to the decision in Reyes v Sweden in which it was found there was no requirement for a national court to consider the reasons for the dependency upon the Union citizen, although I note that is not the point taken by the Judge.
14. Ground 3 challenges the Judges rejection of the statutory declaration by the second appellant as being self-serving and the finding that the appellants had not demonstrated they were related to the Sponsor as claimed, stating this declaration was a supporting document to the substantive documents and was meant to declare that the submissions in the documents attached to it were true.

15. Permission to appeal was granted by another judge of the First-tier Tribunal on 9 November 2021, the operative part of the grant being the following terms:
1. The in time grounds assert that the Judge erred in failing to properly consider birth certificates provided to establish the family relationship and in speculating on the reasons for money transfers being sent from the sponsor to Ghana.
 2. The Judge did not consider the birth certificates because he decided that it was not for the Tribunal to deduce the relationship by sifting through the documents. The application and decision confirm that the sponsor was the appellant's aunt, detail on the birth certificates was not considered. The decision also does not discuss the evidence that was provided in respect of dependency. It is clear that an appellants bundle was filed but the only documents referred to are receipts for money transfers, it is not clear whether any additional evidence was provided and if so whether that evidence was considered.
 3. The Decision and Reasons contains arguable errors of law because the Judge has not adequately engaged with the evidence that was before the Tribunal and insufficient reasons for the decision have been provided.
16. The ECO opposes the appeal in a Rule 24 response dated 10 December 2021, the operative part of which is in the following terms:
2. The respondent opposes the appellant's appeal. In summary, the respondent will submit inter alia that the judge of the First-tier Tribunal directed himself appropriately.
 3. The Respondent does not have any of the documents referred to, nor does she have a copy of the alleged family tree.
 4. Even if, which is not accepted, there was some documentary evidence that they were related as claimed, the grounds do not challenge the findings of the FTTJ at 10-12 that the birth certificates of the Appellants were unreliable due to the fact that the births were registered 23 and 22 years respectively after the births of the Appellants. As such the issue of the existence of the birth certificates is immaterial if the unchallenged finding is that they are unreliable.
 5. The grounds do not challenge the findings that the sponsor is on an extremely modest income and has also sponsored several other family members who she claims are dependent on her. It was therefore open for the FTTJ to conclude that the sponsor does not have the means to support the Appellant's in the manner claimed. The fact there may be some money transfers does not establish dependency.

Discussion and analysis

17. The document purporting to be the family tree is attached to the last page of the grounds seeking permission to appeal.
18. The document purports to show that Mary Agyapomaah was the mother to three children, Matilda Agyapomma, Owuraku Asamoah and Ama Boahemaa. Matilda is the Sponsor in this appeal. It is claimed that Owuraku Asamoah is the parent of Robert, the First Appellant and Ama the parent of Annan, the Second Appellant.
19. The difficulty for the appellants in relation to placing reliance upon this document is that there is no evidence that that document was before the Judge.
20. During the course of the hearing the Sponsor made comments challenging the finding of the Judge that there was insufficient evidence to prove the relationship. The Sponsor was adamant throughout that evidence had been provided to the Tribunal to which there is no reference by the Judge in the decision.

21. The Sponsor was asked whether there was evidence provided to establish the relationship between the family members that I have referred to at [18] and [19] above. She claimed it was.
22. The Sponsor and her partner produced some evidence that was stored on her mobile phone but indicated that other evidence exists to prove the claim. The matter was therefore put back to enable that evidence to be produced.
23. When the Sponsor and a partner return to court they were able to provide the evidence they were referring to which was shown to Mr Thomson. That showed that on 1 September 2021 the Sponsor sent to the First-tier Tribunal, in accordance with directions, a bundle containing all the documents to be relied on in support of the appeal to be heard on 7 September 2021.
24. As Mr Thompson had not seen those documents, he asked for them to be sent to him, but the email sending those documents was rejected by the Home Office IT system on the basis that the attachments were too big. The email had three attachments. The evidence of the Sponsor is that the bundles were resubmitted separately. On the 9 September 2021 a 12-page bundle which resubmitted containing the documents relating to the family relationship.
25. Although the bundle was resubmitted after the 7 September 2021 the determination is dated the 14 September 2021 and was promulgated on 21 September 2021. There is no reference in the determination to these documents which are specifically relevant to the issue of the relationship.
26. Even if those documents were not before the First-tier Tribunal on 7 September 2021 they were at the date the determination appears to have been signed off by the Judge and when it was promulgated. A determination speaks from the date of promulgation. It is not known why Judge Row was not made aware of the existence of the other documents or, if he was, why they were not incorporated into the decision-making process.
27. I find for reasons that may not be attributable to an error made by the Judge, that in light of what appears to be a failure of the Judge to consider all the evidence relied upon by the appellants, there has been a procedural error resulting in unfairness, sufficient to amount to a material error of law.
28. I note there is no challenge the Judge's finding that the Sponsor has an extremely modest income and has also sponsored several other family members who she claimed to be dependent upon her. It was not unreasonable for the ECO to highlight this issue as the public interest requires those entering the United Kingdom not to become a burden upon the public purse. If the Sponsor is unable to afford to fund the appellants when they enter the UK is likely that will increase the burden upon the public purse, especially if the Sponsor herself is in receipt of public funds.
29. The Court of Appeal have made it clear that if there is a procedural unfairness all the findings must be set aside and the matter heard afresh. I find in this case the relationship issue was material and that the extent of the unfairness warrants the matter being remitted to the First-tier Tribunal to be heard de novo with no preserved findings.
30. During the hearing, the Sponsor stated that the appeal was now only being pursued by one of the appellants, namely Robert Appia Sunkwa. The Sponsor will need to confirm that with the First-tier Tribunal and also ensure that any documentary evidence being relied upon in relation to both relationship and the financial issues highlighted by the ECO is filed with the First-tier Tribunal in time to enable the same to be considered by the judge hearing the appeal.
31. Although the matter was originally considered by Judge Row on the papers at Birmingham, it is clear that the next hearing should be listed for a face-to-face

hearing in which the Sponsor will need to give oral evidence. It is therefore appropriate for the matter to be remitted to the First-tier Tribunal sitting at Bradford. The Sponsor must not assume that evidence previously filed for the hearing at Birmingham remains available to the Tribunal sitting at Bradford.

Notice of Decision

32. The First-tier Tribunal has been found to have materially erred in law as a result of a procedural unfairness for which Judge Row may not be responsible. That decision is set aside with no preserved findings.
33. The appeal shall be remitted to the First-tier Tribunal sitting at Bradford to be heard de novo by a judge other than Judge Row.
34. A Twi interpreter shall be required for the purposes of the next hearing.
35. The First-tier Tribunal shall issue further case management directions upon receipt of this decision.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 July 2024