



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000658

First-tier Tribunal No: EA/51529/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 15th of May 2024

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

Bettina Asamoah
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr J Greer of Counsel, instructed by Global House Solicitors
For the Respondent: Ms E Blackburn, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 10 May 2024

DECISION AND REASONS

1. For convenience and to avoid confusion, the parties are referred to herein as they were before the First-tier Tribunal.
2. By the decision of the First-tier Tribunal (Judge Elliott) dated 27.4.24, the respondent has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Symes) promulgated 25.9.23 allowing the appellant's appeal against the respondent's decision of 4.10.22 to refuse her application made on 14.4.22 for Entry Clearance to the UK as the dependent child of her EEA sponsoring father, EA, an Italian national.
3. Until yesterday, the appellant was unrepresented but for the sponsor, EA. However, overnight Mr Greer had been instructed and an appeal bundle submitted to the Upper Tribunal, which I have seen and taken into account.
4. At the outset of the hearing, Mr Greer explained that there had been some discussion yesterday with the respondent's representative, Ms Blackburn, to the

extent that as the DNA report establishing the relationship between the appellant and the sponsor has now been produced in full and verified directly by the respondent, the underlying

5. I gave a short ex tempore judgement in court allowing the respondent's appeal, setting aside the decision of the First-tier Tribunal, and remaking the appeal by allowing it on the evidence (DNA) now available to the Tribunal and accepted by the respondent. I now set out my full reasoning.
6. In summary, the grounds assert that the First-tier Tribunal made a material misdirection in law in allowing the appellant under the proportionality provisions of article 18 of the Withdrawal Agreement (WA) when there was no finding that the claimed daughter-father relationship with the sponsor had been established.
7. In granting permission, Juge Elliott considered it arguable that the grounds disclosed an arguable error of law, stating: *"The Judge having found that the appellant had failed to provide DNA evidence that complied with required minimum standard and therefore had failed to establish her relationship to a relevant EEA national, it is arguable that the appellant had not established that she came within the personal scope of the Withdrawal Agreement contained in Article 10 of the Agreement to engage Article 18 of the Agreement, which was the basis on which the Judge allowed the appeal."*
8. The only grounds of appeal open to the appellant arose under Regulation 8 of the 2020 Regulations that either the respondent's decision was not in accordance with Appendix EU, or that the decision breached her rights under the WA.
9. There was no finding by the First-tier Tribunal in relation to Appendix EU, only under the WA. However, the judge did not make any finding supporting the claimed daughter-father relationship. It follows that there is no basis upon which the appellant could be said to come within the scope of the WA. As the decision of the Court of Appeal in *Celik* [2023] EWCA Civ 921 made clear, the principle of proportionality enshrined in Article 18 of the WA is not intended to confer residence status on those who otherwise would have no right to reside. Only a person who falls within the scope of the WA is entitled to the protections therein set out.
10. As the judge stated at [8] of the decision, the claimed relationship turned entirely on the DNA evidence, as the appellant's own evidence was inadequate and insufficient, described by the judge as *"very sparse."* At [4] of the decision the judge stated, *"the DNA report appeared to be incomplete - only one page was provided, and it did not include, for example, the collection statements and the tested parties' identity documents to prove that those tested were truly the Appellant and sponsor."*
11. At [5] of the decision, the judge cited the respondent's DNA policy guidance (Version 4.0; 16 March 2020), which provides that *"Where you have concerns about the DNA sample collection process or the accuracy of the test report, you must verify the results of a DNA test with the testing laboratory by sending a copy of the DNA evidence to the DNA testing laboratory and asking it to confirm whether it issued the report and whether the information contained within the report is accurate."* The judge allowed the appeal on the basis that the respondent's purported failure to comply with his own guidance rendered the decision disproportionate under the WA.
12. Whether or not the respondent should have followed its guidance in relation to inadequate DNA evidence, the judge could not properly have allowed the appeal on the basis of rights under the WA when there was no reliable evidence to

support the claimed relationship so as to bring the appellant within the scope of the WA.

13. In light of the clear error of law, the decision of the First-tier Tribunal is flawed and cannot stand but must be set aside to be remade.
14. However, Ms Blackburn explained that in the intervening period the respondent has verified the DNA report with the authoring company, which she confirmed was on the approved list of providers. Given that evidence is now accepted, there was no remaining opposition to the underlying appeal, as the sole issue in contention was the relationship between appellant and sponsor. In those circumstances, I am able to remake the decision in the appeal by allowing it.

Notice of Decision

The respondent's appeal to the Upper Tribunal is allowed.

The decision of the First-tier Tribunal is set aside.

The decision in the underlying appeal is remade by allowing it.

I make no order as to costs.

DMW Pickup

DMW Pickup

Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 May 2024