IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002230
First-tier Tribunal No:
EA/12411/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 30 May 2023

Before
UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

FAUSTINA BOADU
(ANONYMITY ORDER NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Ms S Praisoodi, instructed by Gans & Co
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 26 April 2023

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge S Dyer who, in a decision promulgated on 14 February 2022, dismissed the appellant's appeal under the Immigration (Citizen's Rights Appeals) (EU Exit) Regulations 2020 against the decision of the respondent to refuse the appellant's application for a Family Permit under Appendix EU (Family Permit) of the Immigration Rules as the dependant child of the sponsor, Ernest Boadu, a national of Italy.

2. In summary the background is that the appellant is a national of Ghana who is now 20 years old. On 24 February 2021 she applied for a Family Permit under Appendix EU (FP) to join the sponsor, Ernest Boadu, a national of Italy. It is claimed that the sponsor is the appellant's father. On 26 April 2021 the Entry Clearance Officer (ECO) refused the application not being satisfied that the appellant is the family member of a relevant EEA citizen in accordance with Appendix EU (FP). The ECO noted that the Ghanaian birth certificate dated 15 December 2020 was not produced at the time of the appellant's birth and noted

the US State Department guidance that registrations not made within one year of an individual's birth are not reliable evidence of relationship since registration, including late registration, may be accomplished upon demand with little or no supporting documentation required. In the absence of any other document supporting the appellant's parentage, the ECO was not satisfied that the appellant had provided evidence that her relationship with the sponsor is as stated.

3. The First-tier Tribunal Judge dismissed the appellant's appeal concluding that there are serious doubts about the reliability and veracity of the documents submitted in support of the appellant's biometric birth certificate and that the remaining evidence does not support the appellant's case to the required standard of proof. The judge concluded that the appellant had not proved on the balance of probabilities that she is the daughter of the sponsor as claimed [31].

4. The appellant's application for permission to appeal against that decision was refused by the First-tier Tribunal. The appellant renewed the application for permission to appeal to the Upper Tribunal and permission was granted by Upper Tribunal Judge Pitt on 23 February 2023 on the basis that it is arguable that the First-tier Tribunal took an incorrect approach in failing to address potentially material evidence, in particular the original/old birth certificate, the weighing card and the baptism certificate. She indicated that the First-tier Tribunal was not obliged to accept the new evidence provided by the appellant, whether or not the respondent was present to express a view on it, but did not limit the grant of permission concluding that all grounds are arguable.

5. The hearing took place in person in Field House. We heard submissions from Ms Praisoodi and Ms Ahmed. We reserved our decision.

Discussion

6. The appeal was advanced on two main grounds which we consider in turn.

Ground 1

7. It is contended in the grounds that the judge failed to take relevant evidence into consideration.

8. It is contended at paragraphs 1-2 of the grounds that the judge made a material error in the spelling of the appellant's surname. We accept that the judge made an error in spelling the appellant's family name in recording it as Baodi rather than Baodu. However the judge referred to this matter at paragraph 13 where she recorded the appellant's representative's request to amend the spelling of the name from Baodi to Boadu. The judge noted that the appellant had signed her witness statement and the appeal form in the name of Baodi and that she was advised that this was an error on the part of the representatives. The judge further referred to the sponsor's oral evidence on this matter [14]. The grounds failed to articulate how such an error on the part of the judge or the representatives was material. Ms Praisoodi did not advance anything further on this matter at the hearing. We are satisfied that the judge did not make any material error in recording the appellant's family name.

9. At the hearing Ms Praisoodi said that the only substantive issue advanced is that put forward in paragraph 3 of the grounds. We note that at paragraph 3 it is contended that the judge materially erred in that, although she referred to the

original birth certificate at paragraphs 10 and 20 of the decision, she failed to refer to the original birth certificate at paragraph 30 and further failed to refer to the evidence in the sponsor's witness statement which gave an explanation in relation to the original birth certificate.

10. However at the hearing Ms Praisoodi accepted that the judge took the original birth certificate into account. We consider this concession was properly made. It is clear that the judge had the old/original birth certificate before her, she referred to it in the list of evidence in the appellant's bundle at paragraph 10 and at paragraph 20 where she listed the documentary evidence submitted in support of the appeal. The judge considered all of the documents in the round and found that there are serious doubts about the reliability and veracity of these documents [30]. This was a conclusion open to the judge for the reasons given.

11. Contrary to the contention in the grounds, again an issue not pursued by Ms Praisoodi at the hearing, the judge did have regard to the sponsor's witness statement. It is clear from paragraph 10 that the statement was before her. The judge recorded that the sponsor adopted his witness statement [14]. The judge recorded the appellant's representative's submission that the sponsor had provided an explanation with regards to the biometric birth certificate and the late registration [16]. The judge found that there is no background information provided in the witness statements of the sponsor or the appellant to provide context to the new evidence and noted that there is no evidence from the appellant's mother to add weight to her claim [30].

12. The sponsor addressed the lack of supporting evidence for the biometric birth certificate at paragraphs 3 and 4 of his witness statement. However there is nothing there to provide context to the new evidence submitted for the appeal, for example where and when it was obtained or held, or who sent it to the sponsor. The appellant's witness statement similarly does not address these details. There is no evidence from the appellant's mother dealing with the new evidence.

13. This is significant as the biometric birth certificate records that the informant is the appellant's mother. The judge was therefore entitled to take account of the lack of any evidence from the appellant's mother in assessing the birth certificates before her. It is clear from the decision that the judge did take account of the evidence from the sponsor but found it lacking. She was entitled to make that finding on the evidence before her.

14. In terms of paragraph 4 of the grounds, it is clear from the refusal decision that the ECO did not accept that the appellant had established that she is the daughter of the sponsor. This was the main issue in the appeal. The burden was on the appellant to establish the relationship. It was for her to provide sufficient documentary and other evidence to discharge the burden upon her. The burden was on the appellant to show that the documents submitted can be relied on and the judge should decide whether a document can be relied on after looking at all of the evidence in the round (Tanveer Ahmed [2002] Imm AR 318). This is exactly what the judge did at paragraph 31 having considered all of the evidence before her.

15. There is no material error disclosed in ground 1.

Ground 2

16. It is contended in the grounds that the judge acted as both respondent and judge, contrary to the principle of impartiality and the Surendran principles, by raising issues which were not in the respondent's refusal. In particular it is contended that the respondent did not raise an issue about the appellant's address or as to the absence of evidence from the appellant's mother. It is contended that in relying on these matters the judge took into account irrelevant factors. It is contended that, as the respondent failed to specifically challenge the original birth certificate, the weighing card and the baptism certificate, the judge should have accepted these documents. It is contended that, accordingly, the only decision open to the judge was to find it established that the sponsor is the appellant's father. It is contended that the judge failed to raise with the sponsor the issues considered at paragraphs 23-28 of the decision.

17. At the hearing Ms Praisoodi submitted that the main issue before the judge was whether the biometric birth certificate was supported by any other evidence. We disagree; the main issue before the judge was not simply the production of an original birth certificate. The issue was clearly identified in the refusal decision, the respondent was not satisfied that the appellant's relationship with the sponsor is as stated and was not therefore satisfied that the appellant is a family member of a relevant EEA citizen. Therefore the issue before the judge was whether the appellant is the sponsor's child. The burden of proof was on the appellant to establish that relationship. The judge was obliged to take into account all of the evidence before her in deciding whether the appellant had discharged that burden. That is exactly what the judge did.

18. Ms Praisoodi submitted that the judge erred in her treatment of the original birth certificate in that she did not say why she thought it was not genuine and that it was unreasonable and unfair to the appellant for the judge to make a decision as to the reliability of the original birth certificate without allowing the respondent to check the document. She submitted that it was unreasonable and unfair to the appellant for the judge to make a decision about the documents which was outside her expertise.

19. However the judge did correctly undertake an analysis of the documents before her, considering in particular the documents submitted to support the biometric birth certificate [22-26] before concluding that those documents were not reliable for the reasons given. No specific challenge is made to the judge's analysis of these documents. The judge was not acting as an expert here but was undertaking her role of assessing the documents before her. She found that they were 'unreliable' [27] and did not find them 'not genuine' as asserted by Ms Praisoodi. The judge properly undertook her role of assessing the documentary evidence before her.

20. Ms Praisoodi asserted that the judge failed to follow the Surendran guidelines in that she went beyond the issues raised in the refusal decision. This submission relates to the judge's analysis of the documents, her questions to the appellant as to where the appellant lived [15-16, 29] and the judge's findings arising from the lack of evidence from the appellant's mother [30].

21. We have considered the Surendran guidelines and Ms Ahmed referred us to the decision of the Tribunal in WN (Surendran, Credibility, New evidence) [2004] UKIAT 213 where the Tribunal said:

> "29. … The guidelines are guidelines and guidance; they are not rules of law. They are not a strait-jacket. …

> 30. The real test to be applied, however, is whether the hearing was fair or unfair and whether a fair-minded and informed observer would conclude that there was a real possibility that the Adjudicator was biased. In each case where there is non-compliance with the guidelines, it remains for the person asserting the unfairness or apparent unfairness to show that the actual or apparent unfairness was present. It is not sufficient merely to assert that the guidelines were not complied with. It is not by itself an error of law not to comply with the guidelines…
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> 31. The guidelines now need to be read in the light of the two decisions in Koca and Maheshwaran where, as here, credibility is generally at issue. The obligation is on the Appellant to deal with obvious points which relate to his credibility without necessarily being asked to comment on them by the Adjudicator. The Appellant cannot expect to be able to make tactical decisions as to whether he should deal with an issue or ignore it, later to complain successfully if an Adjudicator has not raised it with him. An Appellant cannot simply say that a question was not put and therefore it was unfair for an inference to be drawn adversely to him on that point, where his credibility has been put at issue and the issue dealt with by the Adjudicator in the determination goes to credibility. Whether it is unfair depends on the circumstances in the case.
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> …
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> 39. There is a tension, reflected in the guidelines, between fairness in enabling a party to know the points on which an Adjudicator may be minded to reach conclusions adverse to him where they have not directly otherwise been raised, and fairness in the Adjudicator not appearing to be partisan, asking questions that no-one else has thought it necessary to ask. This has proved troublesome on a number of occasions.
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> 40. The tension should be resolved, so far as practicable, by recognising the following:
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> (1) It is not necessary for obvious points on credibility to be put, where credibility is generally at issue in the light of the refusal letter or obviously at issue as a result of later evidence.
> (2) Where the point is important to the decision but not obvious or where the issue of credibility has not been raised or does not obviously arise on new material, or where an Appellant is unrepresented, it is generally better for the Adjudicator to raise the point if it is not otherwise raised. He can do so by direct questioning of a witness in an appropriate manner.
> (3) We have set out the way in which such questions should be asked.
> (4) There is no hard and fast rule embodied in (1) and (2). It is a question in each case for a judgment as to what is fair and properly perceived as fair."

22. The issue of the appellant's address was an obvious issue arising from the witness statement which gave the appellant's address as 'care of' the sponsor's address in the UK. The judge was entitled to ask the sponsor to clarify the appellant's address in Ghana. When he was unable to do so (as recorded at paragraph 15) it was open to the judge to take this into account as damaging the credibility of the evidence in relation to the central issue in the appeal, that of the relationship between the appellant and the sponsor [29]. The judge's intervention on this issue was evidently for the purpose of clarification, fair and in accordance with the Surendran guidelines and subsequent case law clarifying these guidelines.

23. In the same way the judge was entitled to take account of the lack of evidence from the appellant's mother. As set out above, the key issue was the relationship between the appellant and the sponsor. The judge's conclusions as to the lack of evidence from the appellant's mother were open to her in that context.

Other issues

24. At the hearing Ms Praisoodi argued that the judge erred in failing to grant an adjournment so that the respondent could investigate the further documents lodged in support of the appeal (principally the original birth certificate, the child health records and the baptism certificate). However this issue was not raised in the grounds. In any event the appellant, who was legally represented, did not seek an adjournment on this basis. Further, the respondent did not attend the hearing and did not seek an adjournment on this basis. Ms Praisoodi said that the appellant's bundle had been submitted at least a week before the hearing (although she was unable to be specific about the date of service) therefore the respondent had an opportunity to consider these documents and to decide whether to review the decision or to seek an adjournment to do so. The documents were not submitted late and the respondent was not prejudiced by the judge hearing the appeal. Therefore there is no error in the judge's failure to adjourn the hearing of her own motion (in the absence of an adjournment request by either party).

25. At the hearing Ms Praisoodi asserted that the judge was biased and was acting for the respondent. However no allegation of bias was made in the grounds. Ms Ahmed further highlighted the case of Elais (fairness and extended family members) [2022] UKUT 00300 (IAC) submitting that there was no evidence of unfairness or bias. In our view there was no evidence to support any allegation of bias. There was no transcript or recording of the hearing submitted to support any such allegation. We find that the appellant has not established that the judge was biased in her treatment of this appeal.

26. In her response to Ms Ahmed's submissions, Ms Praisoodi further submitted that the sponsor has three children in Ghana who made applications for entry clearance, all of which were refused on a similar basis, but that the appeals of the other two siblings had been allowed. However this was not raised before the First-tier Tribunal. These appeals were not linked. There is no evidence before us as to the circumstances of these appeals. This matter was not raised in the grounds. The judge cannot have made any error in relation to this matter.

27. For the reasons set out above we find that the appellant has not established that there is a material error of law in the decision of the First-tier Tribunal Judge.

Notice of Decision

For the foregoing reasons our decision is as follows:

- **The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law and we do not set aside the decision but order that it shall stand.**

A G Grimes
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

22 May 2023