



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-001908

First-tier Tribunal No: EA/13409/2021

THE IMMIGRATION ACTS

Decision & Reasons Promulgated
On 19 March 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

OBED OPOKU KWAO
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Dakpoe of Currington & Co Legal Services
For the Respondent: Mr A McVeety, a Senior Home Office Presenting Officer

Heard at Phoenix House (Bradford) on 20 February 2023

DECISION AND REASONS

1. In a decision promulgated on 1 November 2022 Upper Tribunal Judge Plimmer set aside a decision of the First-tier Tribunal which dismissed the appellant's appeal on human rights grounds. The First-tier Tribunal did not accept that the appellant had provided sufficient cogent evidence to establish he is the son of his Dutch citizen mother, and therefore that the Entry Clearance Officer was entitled to refuse him an EU Settlement Scheme (Family Permit) to enter the UK.
2. The Judge Plimmer in her finding of an error of law wrote:
 3. I note the appellant was over the age of 21 when he made his application. This is not a point that was taken by the respondent

in her decision dated 25 August 2021, who was solely concerned with the regularities in the birth certificate relied upon by the appellant. I note that there is also a decision dated 20 August 2021 but both decisions include the same contents. The appellant prepared for the appeal on the basis that the single point of dispute was whether he was related is claimed to the sponsor - see the grounds of appeal dated 3 September 2021. It therefore appears that the respondent has not disputed dependency (and indeed the FTT appears to have accepted dependency but not the claimant relationship - see [20] of the FTT decision).

3. It was also noted that the First-tier Tribunal appeared to have accepted the genuineness of the appellant's passport and the details contained therein at [13] yet rejected the genuineness of the 2019 birth certificate which the appellant claimed was the very document he used to obtain that passport. In the absence of any further explanation this was found to be a material error of law.
4. Judge Plimmer at [10] noted that the case would benefit from further evidence and that DNA testing of the appellant and sponsor would swiftly and proportionately resolve the sole issue in dispute. Directions were given for the filing of additional evidence which should, if possible, include DNA evidence.
5. Enquiries made by Mr McVeety of the Sponsor ascertained that there is no DNA evidence.
6. The relevant section of the refusal of the application for entry clearance is in the following terms:

On 16 May 2021 you made an application for an EU Settlement Scheme (EUSS) Family Permit and the Appendix EU (Family Permit) to the Immigration Rules on the basis that you are the family member of a relevant EEA citizen.

I have considered whether you meet the eligibility requirements set out in Appendix EU (Family Permit)...

It is noted that you have provided a birth certificate issued on 23 March 2000. According to information provided by the Ghanaian competent authorities that certain security features were added to the Ghanaian birth certificate in 2009. As your birth certificate was issued on 23 March 2000 and include some of these features casts doubt upon the authenticity of the document you have submitted as evidence of relationship.

Therefore, I am not satisfied that you are a family member of a relative EEA citizen or their spouse or civil partner in accordance with Appendix EU (Family Permit) of the Immigration Rules and your application has been refused.

7. The appellant's evidence is that his birth was registered at the time he was born following which a handwritten birth certificate was issued. Registration of the birth was therefore contemporaneous with the time he was born and registered in accordance with the laws of Ghana. The appellant later obtained a computerised birth certificate, which replaced the handwritten birth certificate, which he used to obtain the passport.

8. The First-tier Tribunal referred to there being two birth certificates registered on different occasions for which no explanation had been provided, but as Mr McVeety accepted in his submissions the details set out in those certificates actually show they relate to the same person. As the certificate was accepted by the Ghanaian authorities in connection with the passport application it must have been accepted it was a genuine certificate accurately relating to the birth of the appellant.
9. Mr McVeety also accepted on the balance of probabilities that the evidence as a whole supported the appellant's claim. I agree. As noted in the error of law decision the disputed issue is very narrow. I accept that on the evidence the appellant has discharged the burden of proof upon him to the required standard to show he is related to the Sponsor as claimed and is therefore entitled to the remedy sought. On that basis I allow the appeal.

Notice of Decision

10. I allow the appeal.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 February 2023