IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004213
First-tier Tribunal No: EA/06203/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 04 July 2023

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MR ERIC ASANTE
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr E Waheed, instructed by Abinelle Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard at Field House on 2 June 2023

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Kudhail promulgated on 26 November 2021 dismissing his appeal under the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations").

2. The appellant's case is that he is entitled to a family permit to enter the United Kingdom as an extended family member of a person settled and exercising treaty rights here. The appellant states that he is the nephew of Rosemary Yeboah ("the sponsor"), an Irish national who lives and works in the United Kingdom. The respondent refused the application on the basis that she was not satisfied that the appellant was related to the sponsor as claimed, given that the birth certificates produced as evidence showed that the births of the appellant and his father (the sponsor's brother) were registered 22 and 58 years after their respective births. She concluded that these were not reliable evidence of parentage in the

absence of other documentation; and, was not satisfied in light of the sporadic money transfers that the appellant was financially dependent on the sponsor given a lack of evidence the respondent expecting (as noted in the decision at [5(d)] setting out the details of the appellant's family circumstances including income, expenditure and evidence of his financial position.

3. She noted also that the sponsor appeared to earn £610.40 a month yet pays £1,920 per month for rent.

4. The appeal was heard remotely using CVP. The sponsor gave evidence and was cross-examined. Having heard submissions, the judge concluded that:

(i) the appellant and sponsor were not related as claimed [18] and;

(ii) the appellant was not dependent on the sponsor as, although there were sporadic remittances, she was unable to assess what the appellant's essential living needs are, the appellant's representatives failing to provide to her a schedule mentioned within the letter nor had she been provided with bank statements from the appellant or sufficient documentation relating to his outgoings.

5. The appellant sought permission to appeal on the basis that the judge had erred:-

(i) in failing to take account of the explanations why the appellant and sponsor were unable to find the original birth certificates, wrongly referring to the fact that no reference was made within the birth certificates that they were a certified copy when that was clear on the face; and

(ii) in failing properly to assess whether the appellant was dependent on the sponsor or not; and, failing to give reasons for concluding that the appellant and sponsor's accounts were not credible and that the sponsor had sought to exaggerate her role.

6. I deal with the grounds in turn. In doing so, I recall that in **HA (Iraq)** v SSHD [2022] UKSC 22, the Supreme Court held:

> 72. It is well established that judicial caution and restraint is required when considering whether to set aside a decision of a specialist fact finding tribunal. In particular:
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> > (i) They alone are the judges of the facts. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. It is probable that in understanding and applying the law in their specialised field the tribunal will have got it right. Appellate courts should not rush to find misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently - see *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49; [2008] AC 678 per Baroness Hale of Richmond at para 30.

(ii) Where a relevant point is not expressly mentioned by the tribunal, the court should be slow to infer that it has not been taken into account - see *MA (Somalia) v Secretary of State for the Home Department* [2010] UKSC 49; [2011] 2 All ER 65 at para 45 per Sir John Dyson.

(iii) When it comes to the reasons given by the tribunal, the court should exercise judicial restraint and should not assume that the tribunal misdirected itself just because not every step in its reasoning is fully set out - see *R (Jones) v First-tier Tribunal (Social Entitlement Chamber)* [2013] UKSC 19; [2013] 2 AC 48 at para 25 per Lord Hope.

Ground 1

7. It was for the appellant to show that he is related to the sponsor as claimed. It was open to the judge not to be satisfied by the birth certificates provided as evidence of that relationship given the admitted lapse of 22 years between the appellant's birth and it being registered, and 58 years between his father's birth and it being registered.

8. That said, there is a degree of confusion in how the documents produced to the First-tier Tribunal have been described. On their face they state "Certified Copy of Entry in Register of Births" and in each case are accompanied by a letter from the Births and Deaths Registry in Accra, Ghana confirming that the birth certificate in question had been officially processed and entered in the Register of Births. The appellant's explanation in his witness statement is that all the documents were legally obtained [11] and that the certificates were certified copies of the originals which have been misplaced. Reference is also made to the letters from the registrar confirming authenticity. It is submitted [13] that the fact that the birth certificates were registered or issued years after the birth should form the basis to conclude without any evidence that the appellant and sponsor are not related.

9. There is an apparent confusion on the part of the judge when, in her decision [18] she says:-

> "Therefore I do not accept the appellants account that the reasons why the birth certificates are registered many years after the birth is because these are certified copies of the register. In any case the birth certificates make clear what the date of registration is and no reference is made within them that they are certified copies, as one might expect".

10. It is however clear from the copies that they are headed certified copies.

11. The judge's observation must, however, be seen in the context that there were differences in the oral evidence. The sponsor said that the births were registered later and that was the practice in Ghana; the appellant says that the originals were "misplaced", as did the sponsor in her statement.

12. Looking at the evidence in question, I note that the colour photocopies of the birth certificate for the appellant states that the appellant was born on 16 October 1992; that the registration took place on 22 October 2014 and the certificate that this is a true copy of the entry is stated to have been given under seal on 23 October 2014, that is a day later. Similarly, the birth certificate for the father states that he was born on 12 December 1961; that it was registered on 18 November 2019 and the certificate is said to have been issued under seal on 19 November 2019. The birth certificate for the sponsor records that her birth was registered on 26 May 2004 and the certificate is issued on 31 May 2004.

13. Given the dates on which the certified copies are said to have been issued, if they had been misplaced and had to be obtained again from the Registry, one would expect some indication of that production at a later date. These appear on their face to have been issued a matter of days later. It is not unreasonable to expect that there would be something on the face of a later copy that had to been obtained as a substitute that it was a certified copy or a certified copy of the original, and to give a date, which would have been consistent with the appellant's evidence that the original certificates had been lost.

14. In the circumstances, although the decision could have been more elegantly expressed, properly understood the reference to a lack of certification – that is an indicator on the face of the document that it had been produced as a substitute for a decision made some years earlier – makes sense.

15. Further, at paragraphs 21 and 22 the judge noted that there was a lack of other confirmatory evidence and that the screenshots of chat messages is sporadic and it was unclear if the appellant's phone messages were sent to the aunt as claimed.

16. It was not unreasonable for the judge to refer to the absence of a DNA report, photographs or witness statements from family or friends, and she expressly says that she considered the evidence as a whole and found that the appellant had not discharged the burden of proof on balance. It is also sufficiently clear that her findings as to credibility were in respect solely of the observation that it was unlikely that the three birth certificates would be misplaced as claimed but she does not state that she disregarded the remainder of the appellant's evidence or that of the sponsor, observing that the burden was on the appellant to show that he is related as claimed on the balance of probabilities.

17. Accordingly, I find that the decision not to accept that the appellant and sponsor were related as claimed was not vitiated by legal error. The judge's conclusions on that issue are adequate and sustainable.

18. Further, and in any event I find no merit in ground 2. It was for the appellant to demonstrate that he is dependent on the sponsor in order to meet his basic needs and that if a family member could support herself

there was no dependency even though she was given financial support from the EU citizen.

19. The judge accepted the documentary evidence of sporadic remittances but stated this:-

> "30. However, I am unable to assess what the appellant's essential living needs are. In the statement there is mention of a schedule within the representatives letter, yet I have not been provided with this. I have also not been provided with any bank statements from the appellant. It is claimed the appellant is not working, yet I have been given no explanation as to why this is the case as the appellant is an educated young man, who left education 2 years ago.
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> 31. The appellant has provided his tenancy agreements and education fee receipts, but these do not indicate that the money used by the appellant is from the aunt. These indicate that the appellant is making payments for education and housing. The only evidence I have is the account of the appellant and the sponsor which I do not find credible".

20. Whilst there is some merit in the submission that the judge had not explained why she had not found the evidence credible prior to that, she does observe [34] that the witness statement of the appellant and the sponsor are almost identical, even down to criticisms of the respondent which detracts from the account and, importantly at [35] that she has no further evidence from the sponsor and appellant as to what the appellant's essential living needs are or that the appellant is in need of the assistance he claims he receives, nor did she have evidence of his income, expenditure or his own financial position. That led her to conclude that there was insufficient evidence on which the burden of proof can be discharged on the point.

21. Although the judge uses the word "credible" to describe the account of the appellant and sponsor, reading the determination as a whole it is clear that she accepted some of the evidence as regarding the remittances and that some of the documents show that the appellant was incurring education fees and was paying for tenancies in Ghana but, it was open to her to find that there was simply insufficient evidence of what the appellant's actual income and expenditure was. In that context the judge cannot be faulted for observing that she was unable to assess the issue of dependency.

22. Further, there is a lack of detail in the evidence. The appellant did not set out his monthly or weekly expenditure, nor his monthly or weekly income from his aunt. Even taking the appellant's and his aunt's oral evidence at its highest, and even accepting that they were credible, the assertion of dependency is simply one of assertion; it is not adequately supported by documentation which could and should have been provided. And, the absence of which had been noted by the Secretary of State.

23. While a schedule of payments was not provided to the judge, as noted above, it has now been provided to me as part of a Rule 15(2A)

application. It is simply a list of money transferred from the sponsor to the appellant. Beyond that it is of little assistance as it y fails to set out what the appellant's necessary expenditure was to allow anybody to calculate what his essential needs are and whether they were substantially met by the sponsor.

24. Accordingly, even had I not found no error in the observation that the appellant and sponsor were not related as claimed, the judge was manifestly entitled to conclude that there was insufficient evidence to show that the appellant was dependent on the sponsor. She gave adequate and sustainable reasons for doing so.

25. In so finding I reject the submission that the improper credibility findings made in respect of the certificates infected the further findings by the judge.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and uphold it.

Signed Date: 27 June 2023

Jeremy K H Rintoul
Judge of the Upper Tribunal
Immigration and Asylum Chamber