



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005124
First-tier Tribunal No:
EA/01963/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued
On the 19 July 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

SHPRESA BOGDANI
(ANONYMITY ORDER NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ricca-Richardson
For the Respondent: Ms Amira

Heard at Field House on 19 June 2023

DECISION AND REASONS

1. This is the appeal of Shpresa Bogdani against the decision of the First-tier Tribunal (of 31 August 2022) to dismiss her appeal, brought originally against the Respondent's refusal (on 24 October 2021) of her application for a Family permit under the EU Settlement Scheme on 25 May 2021.

Background to appeal

2. The application was made on the basis that the Appellant was the dependant parent of her daughter, the EEA Sponsor. The First-tier Tribunal dismissed the appeal because the evidence presented was, in its estimation, too confusing to discharge the burden of proof in the Appellant's favour, noting that the simplest way to prove the asserted relationship between mother and daughter would have been to produce the birth certificate or undertake DNA testing.

Permission to appeal

3. The grounds of appeal materially argue that the decision was legally flawed because a birth certificate was in fact handed in on the day of the hearing. The First-tier Tribunal granted permission to appeal (Judge Curtis) on 26 October 2022 on the basis that it was arguable that a birth certificate was before the First-tier Tribunal, contrary to the impression given by its decision, the Judge having agreed to admit it into evidence and it appearing that an email attaching such a document had indeed been received by the First-tier Tribunal in the course of the hearing.

Upper Tribunal hearing

4. Before me the parties were agreed that there had been procedural unfairness here given that the birth certificate had indeed been provided to the Tribunal below. The skeleton argument before the First-tier Tribunal contended that the relationship between the Appellant and her daughter was established based on the available evidence and quite specifically refers to a birth certificate from Albania naming the former as the birth mother of the latter as potentially probative evidence.

Decision on error of law

5. In the light of that agreed position, and given that the skeleton argument referring to a birth certificate being in evidence was expressly referred to by the Judge, I accept that the First-tier Tribunal materially erred in law in failing to take account of evidence that was potentially decisive of the appeal. In those circumstances the decision must be set aside.
6. Mr Ricca-Richardson made the rather optimistic submission that given that the First-tier Tribunal had identified a birth certificate as one of the best ways of proving the Appellant's case, it was open to me to allow the appeal outright. Ms Amira opposed that course of action. I do not consider that it would be fair to the Respondent to take the course urged on me by Mr Ricca-Richardson as, given the birth certificate was filed and served only on the day of the hearing, the Respondent had not had a reasonable opportunity to consider her position with regard to it at the first instance level of appeal.
7. As the error of the First-tier Tribunal was central to the facts it ultimately found, the appeal will have to be re-heard. The nature and extent of the fact-finding is such that the First-tier Tribunal is the more appropriate forum and so the appeal is remitted for that purpose.

Decision:

- (1) The decision of the First-tier Tribunal involved the making of an error on a point of law.
- (2) I set aside the decision.
- (3) I remit the appeal for hearing afresh before the First-tier Tribunal.

A handwritten signature in black ink, appearing to read 'M.A. Symes', with a long, sweeping underline that extends to the left.

Deputy Upper Tribunal Judge Symes
Immigration and Asylum Chamber

17 July 2023