



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006636

First-tier Tribunal Nos: HU/52356/2021
IA/08246/
2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 25 January 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

ENTRY CLEARANCE OFFICER

and

**BNOO
(ANONYMITY ORDER MADE)**

Appellant

Respondent

Representation:

For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer

For the Respondent: Mr J Plowright, Counsel; instructed by Paul John Solicitors

Heard at Field House on 2 November 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Respondent-child is granted anonymity.

No-one shall publish or reveal any information, including the name or address of that party, likely to lead members of the public to identify them. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Secretary of State appeals against the decision of First-tier Tribunal Judge Bibi (“the Judge”) dated 17th October 2022 allowing the Appellant’s appeal on the basis that the Appellant could meet paragraph 297 of the immigration rules rendering the decision disproportionate under Article 8 ECHR. For ease of comprehension, I shall refer to the parties as they were constituted before the First-tier Tribunal.
2. The Respondent applied for permission to appeal on the following basis:
 1. It is respectfully submitted that the FTTJ has failed to make a finding on the refusal point that the appellant’s mother is named as the informant on the 2019 birth certificate in contradiction to her claimed abandonment of the appellant in 2003. It is respectfully submitted that simply finding the sponsor and his wife credible does not adequately address this refusal point. It is submitted that the sponsor has not provided an adequate explanation for this at [40]. The issue of the birth certificate and who had applied for it has not been clarified. It is respectfully submitted that the FTTJ has not adequately addressed what role the appellant’s mother has or continues to play in the appellant’s life. It is respectfully submitted that this error is material under paragraph 297 (e) and the issue of sole responsibility.
 2. It is respectfully submitted that there is a lack of evidence that the appellant has no contact with his mother. It is respectfully submitted that this has not been evidenced to the balance of probabilities.
3. Permission to appeal was granted by First-tier Tribunal Judge Moon on 23rd November 2022 in following the terms:
 1. The in-time grounds assert that the Judge erred in failing to give adequate reasons in relation to the reason that the appellant’s mother was listed as an informant on the appellant’s birth certificate. The birth was registered in 2019 but the sponsor’s evidence was that the mother abandoned the appellant in 2003. The explanation put forward by the sponsor was that he was not sure why the mother was listed as the informant.
 2. This appeal concerns sole responsibility and so the role of the appellant’s mother is key. The inconsistency is material and the failure to consider this aspect or the explanation provided by the sponsor is an arguable error of law.
4. After hearing submissions, I indicated I was minded to find an error of law but that my reasons would follow. I do find that the judge materially erred in law for the following reasons.
5. There is one sole ground of appeal that raises a complaint that the judge failed to deal with one aspect of the Respondent’s refusal of entry clearance, namely the lack of an explanation as to why Appellant’s mother’s name features on the Birth certificate registered on 5 December 2019.
6. In relation to this claimed omission, I note that the judge found the sponsoring biological father and stepmother to be credible witnesses, which has not been challenged. However, the sponsor’s evidence which the judge accepted merely states as follows at paragraph 5 of his witness statement: “I am not sure why the mother was listed as the informant...the authorities seemed to have placed her

name there since they required a name. I am not sure why this was done". This evidence does not provide an answer for why the mother's name is recorded there but is merely a speculation on the Sponsor's part which is in any event unsupported by objective evidence or evidence from the registry itself. In any event, there is no evidence as to who registered the birth if it was not the mother. Nor is there a witness statement from the person that registered the birth. Surprisingly, there is no evidence put forward by the Appellant's solicitors under rule 15(2A) to address the omission or to demonstrate by way of evidence that the omission is immaterial to the outcome (despite almost a year having passed since permission to appeal was granted).

7. I accept Mr Plowright's submission that the judge was aware of the issue as it is mentioned within the decision, however despite his able submissions, I am bound to find that the issue is unresolved at §40 of the decision as even though the Sponsor's evidence is accepted, crucially that evidence fails to resolve the anomaly in the identity of the person registering the Appellant's birth beyond the Sponsor speculating as to why the mother's name appears on the document. It is regrettable that the point was not explored further in the Appellant's submitted evidence; however that opportunity now arises once more and must now be addressed as best as one can.
8. Given the far-reaching nature of the error, the remainder of the decision, although wholly unchallenged, cannot stand. Consequently, the findings of fact that the mother abandoned the Appellant after birth and that the father has held sole responsibility since 2003 cannot be retained as those findings are incomplete due to the failure to resolve why the mother's name was given as the informant when the birth was registered in 2019.
9. Before concluding, I pause to note that the grounds of appeal are misguided in arguing that "there is a lack of evidence that the appellant has no contact with his mother". This is an important point for the further determination of this appeal by the First-tier Tribunal. I note that this argument fails to take account of the fact that an appellant cannot directly establish an absence of contact by virtue of the fact that there is said to be none in the first place. In short, one cannot establish something that does not exist. Depending on the facts of each matter, it is feasible that a party can try to obtain evidence from independent sources, such as a school or a doctor or other professional with a vested interest in the child's welfare, which could speak to whether or not a parent that a sponsor claims has abandoned or abdicated responsibility for a child in fact remains a part of the child's life or not. I merely suggest this as an example of evidence that a party might try to obtain depending on the facts of their specific matter.
10. In summary, despite the otherwise comprehensive nature of the judge's decision, I am bound to find that there is a single material error of law in the decision, such that it must be set aside in its entirety.
11. As an aside, at the hearing I queried whether either party knew why it had taken almost a year for this matter to be heard however neither representative was able to assist me. For whatever part, if any, the Tribunal has played in this matter being listed for hearing, I issue an apology as the delay is egregious given that the Appellant is/was a child-applicant.
12. Given the delay already suffered, I make plain that this matter should be relisted for the first available date, in accordance with counsel's availability (an

accommodation I readily give to Mr Plowright as he has maintained conduct of this matter as counsel since its outset).

Notice of Decision

13. The Secretary of State's appeal is allowed.
14. The decision of the First-tier Tribunal involved the making of material errors of law.
15. The appeal is hereby remitted to IAC Taylor House to be heard *de novo* by any judge other than First-tier Tribunal Judge Bibi.
16. This matter is to be listed for the first available date, in accordance with Mr Plowright's availability.

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

11th November 2023