



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: OA/11202/2012
OA/11204/2012
OA/11206/2012

THE IMMIGRATION ACTS

**Heard at Field House
On 23 October 2013**

**Determination Sent
On 29 October 2013**

Before

UPPER TRIBUNAL JUDGE PINKERTON

Between

**MR JONATHAN BOATENG DANQUAH (FIRST APPELLANT)
MR EMMANUEL KWAME GYMFI DANQUAH (SECOND APPELLANT)
MR BLESSING KWAKU APPIAH DANQUAH (THIRD APPELLANT)
(NO ANONYMITY DIRECTION MADE)**

Appellants

and

ENTRY CLEARANCE OFFICER - ACCRA

Respondent

Representation:

For the Appellants: Ms S Akinbolu of Counsel
For the Respondent: Mr S Walker - Presenting Officer

DETERMINATION AND REASONS

1. The appellants applied for admission to the United Kingdom as family members of an EEA national who is exercising rights of free movement in the United Kingdom. The applications were refused in decisions dated 24 April 2012. The Entry Clearance Officer was not satisfied that the

appellants were related as claimed. Their mother stated in an application that she made in 2009 that she had no children and that she lived with her niece in Ghana and no one else.

2. The appeal came before a Judge of the First-tier Tribunal. The appeals were dismissed but upon application and for reasons set out in my decision dated 24 May 2013 the First-tier Tribunal Judge's determination was set aside under Rule 43 of the Tribunal Procedure (Upper Tribunal) Rules 2008. I directed a complete rehearing and that took place before me on 23 October 2013.

Documentation

3. The documentation that I have before me is far more than that before the First-tier Tribunal. I checked carefully that the representatives and myself had the same documentation before proceeding.
4. Apart from the refusal bundles for each appellant I was provided with the Entry Clearance Manager's review, which was not in the original file bundle, a witness statement from the appellants' purported mother Victoria Anning dated 13 August 2013, a bundle headed "Evidence of Cohabitation"; correspondence relating to DNA testing, a skeleton argument dated 14 August 2012 (this must have meant 2013), a GCID case record sheet and appendices, and two pay slips for Mr J Boateng. In addition there is a report from Priority Forensics dated 19 February 2013 attaching "Maternity Analysis Reports" in respect of each of the appellants.
5. Ms Akinbolu on behalf of the appellants chose not to call Ms Anning to give evidence. The hearing therefore proceeded on submissions only.
6. Before dealing with the submissions on behalf of the appellants it is said on their behalf that their mother Ms Anning is married to an EEA national who is exercising treaty rights in the United Kingdom. He is therefore a qualified person as defined in the Immigration (European Economic Area) Regulations 2006. The children are said to be family members as defined in Regulation 7(1)(b)(i) because they are direct descendants of his, his spouse or his civil partner who are under 21.

Burden and standard of proof

7. The burden is upon the appellants to show that they are entitled to succeed in their appeals and the standard of proof is that of the balance of probabilities.

My Findings

8. It is not in issue that Ms Anning married Mr J Boateng. There is documentation that has been produced on behalf of the respondent that indicates that Ms Anning entered the UK on 14 May 2010 with entry clearance on an EEA family permit as a spouse and that the leave granted

was valid until 20 October 2010. It is also clear from the documentation that the marriage ran into difficulties such that Ms Anning commenced proceedings with a view to obtaining a divorce from her husband. However, thereafter there is evidence in the file from a solicitor acting on behalf of Ms Anning dated 4 May 2011 indicating that her husband consented to the divorce petition being dismissed. "I have sent this (consent) to the court and I now await the court's decision in respect of our earlier application."

9. I am satisfied on that basis that the marriage was still in existence at that time and there is nothing to support any argument that the Decree Absolute has been pronounced. There is some additional evidence that has been produced such as voter registration form, bills etc. which suggest that Ms Anning and her husband are still together as both their names are referred to. There is a copy of an identity card in the name of Ms Anning's husband, a copy of his contract of employment (although part of that is missing) and two copy pay slips in his name from June 2013. On balance I am satisfied on that evidence, and it does not in any event appear to be in issue, that Ms Anning's husband is a Dutch citizen who is exercising treaty rights in the United Kingdom.
10. As referred to in Ms Akinbolu's submissions the main issue is whether the appellants are related to Ms Anning. The Entry Clearance Officer noted that the birth certificates in respect of the children were only issued a few months before the applications were made and in the first named appellant's case some sixteen years after his claimed date of birth. Suspicions arose because of that fact and the appellant in her application in 2009 stating that she had no children and named none on her application form.
11. As to that point the respondent has never produced a copy of the 2009 application form. Mr Walker informed me that a search had been made but it could not be found. However, Ms Anning in her statement, to which I can give little weight considering that she has not confirmed its contents to be true and was therefore not cross-examined on its contents, had this to say about it:-

"I did not declare my children when I made the application as John (her husband) advised me that we would make a further application for the children separately. I was new to the system and not very good with reading so I followed what John had told me. John does not (have) any legal knowledge of any immigration matters. However I trusted him as my husband to do the right thing for the family."

It is apparent therefore that Ms Anning accepts that when she made her application to join her husband in the United Kingdom she did not reveal that she had three children in Ghana. How the question may have been phrased in the form I do not know but it is hardly surprising that the Entry Clearance Officer, and thereafter the Manager, would be suspicious when Ms Anning applies for the children to join her, having stated that she had

none. The birth certificates that have been produced are of very little evidential weight because they have been issued so long after the event.

12. It is inevitable therefore that the DNA evidence that is available becomes the main focus of this appeal. What I have before me are reports that indicate to a probability of 99.99% that the three appellants are the biological children of Ms Anning. Those reports are headed "Maternity Analysis Report" and come from "Identigene" in Salt Lake City, United States of America. The reports have been notarised and were sent under cover of a letter from Priority Forensics dated 19 February 2013 to Lucia Benyu who is a solicitor working for Peters & Company which firm is representing the appellants in this appeal. There is a statement from Ms Benyu dated 13 August 2013.
13. The reports state that "the collection, transport and testing of specimens for the purpose of generating the data shown in the reports were performed in compliance with relationship testing and "chain-of-custody" guidelines established and maintained by the AABB. Associations of name, relationship, date of birth and race/ethnicity with the accompanying results rely strictly upon information provided to the laboratory.". I do not know what the AABB is and of course the results rely upon information provided to the laboratory. As to that Ms Benyu has made some effort, it seems, to establish how the information was provided to the laboratory.
14. There is an email from Charley Gracey of Priority Investigations dated 13 August 2013 attaching scans of the identification provided for each child. A copy was made of each child's passport, and the copy signed and dated by both "Dr Quarshie and the uncle who accompanied them to the appointment. A photograph of each child was taken at the time of the appointment. This can be seen in the left hand corner of each scan. I am getting a full breakdown of our guidelines from my manager, and I will have these to you as quickly as possible".
15. As far as I am aware the guidelines have not been produced. I do not know who Dr Quarshie is although each copy document produced refers to Dr Eric L. Quarshie "Collector" dated 26 January 2013. Also referred to is Mr Emmanuel Gyamf who describes himself as "uncle". There are photographs accompanying what appear to be copy entries in the passports and those photographs appear to be the same as those on the application forms for the children seeking admission to the United Kingdom.
16. As to the position with regard to Ms Anning there is another email to Ms Benyu from Mr Gracey attaching photographic ID provided by Ms Anning which is said to have been at the time of her appointment with PI Limited agent Jamie Wither who confirmed that the individual he met with was Ms Anning. "Our agents must be satisfied that they are meeting with the correct person before they undertake the sampling procedure". There is in the papers what appears to be a copy of a page from the passport of Ms Anning. Finally, Ms Benyu in her aforementioned statement said that she

contacted or became aware of the existence of PI from a colleague in the office who had previously used them for “their matter”.

17. I find that there are many questions that could be raised in relation to the DNA evidence but that opportunity has been lost in the sense that Ms Anning did not give evidence, upon advice presumably, and the gaps have not been filled in any other way. I am left to ponder therefore what the true position is.
18. There does not appear to be any real doubt that the appellants are related to each other as claimed. Unless the test results themselves are completely fraudulent, and on balance I find that not to be the case because of the amount of detail provided, the DNA of the true biological mother of the children would have had to have been tested for the results to appear as they do, namely that the probability of the three children’s relationship to the person tested is 99.99%. It seems to me therefore that the only question is whether Ms Anning was the person who was tested.

Conclusion

19. The evidence that has been obtained that it was indeed Ms Anning whose DNA was tested raises questions to which answers have not been given but evidence going the other way is really only that provided by her in her 2009 application, namely that she had no children. I give little weight to her explanation as to why she did not mention them but that explanation is nevertheless of some weight. If Ms Anning needed to prove her relationship with the children beyond reasonable doubt I find that she would be unable to do so on the evidence presented. As a result the appellants would not succeed in their appeals. However, that is not the applicable standard of proof which, as previously mentioned, is that of the balance of probabilities. To that standard I find that the appellants have proved their relationship to Ms Anning. The DNA evidence produced allows me to make that finding.
20. Thus these appeals succeed because the relevant parts of the 2006 Regulations apply to these appellants and this is for the above given reasons.

Decision

21. The appeals of the first, second and third appellant are allowed.
22. An anonymity direction was not sought. In the particular circumstances of these appeals I find that the interests of the children do not require that an anonymity direction be made.
23. Fees have been paid in respect of the appeals of each of the children. Although the appeals were dismissed by the First-tier Tribunal (IAC) and have been allowed by me I regard it as almost entirely the fault of the sponsor, or her husband perhaps, that the applications were not granted in the first place and therefore fee awards are not warranted.

Signed

Date

Upper Tribunal Judge Pinkerton