Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/43588/2013
IA/46254/2013
IA/43591/2013
IA/46253/2013
IA/46255/2013

THE IMMIGRATION ACTS

Heard at Bradford	**Determination Promulgated**
On 21st May 2014	**On 29th May 2014**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

CHARLES GOTO (FIRST APPELLANT)
MAVIS MUNATSIRE (SECOND APPELLANT)
TAFADZINA CLARIS GOTO (THIRD APPELLANT)
TAWANDA CHARLES GOTO (FOURTH APPELLANT)
TINUTENDA GOTO (FIFTH APPELLANT)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Khalaf
For the Respondent: Ms R Pettersen, Home Office Presenting Officer

DETERMINATION AND REASONS

1. These are the Appellants' appeals against the decision of Judge Ghani made on the papers at Birmingham on 3rd February 2013, the parties having indicated that they did not wish to have an oral hearing.

Background

2. The first Appellant entered the UK on 13th June 2001 as a student. He then applied for leave to remain on the basis of UK ancestry and was given two periods of leave on that basis from 2003 to 2007 and then from 2007 to 2012. The second Appellant entered the UK in June 2002 as a visitor and was subsequently granted leave in line as a dependent spouse. The older children entered the UK in January 2008, again with leave in line, and a fourth child has been born here.

3. The Appellant submitted a Zimbabwean birth certificate FM579822 to prove his ancestral links to the UK. He says that his mother was born to a British national on 16th December 1945 at the Andrew Fleming Hospital.

4. The Respondent contends that the hospital was not built until 1974. It was also said that further checks on the birth certificate established that it had not been legitimately issued by the Zimbabwean authorities.

5. Accordingly when the Appellant applied for indefinite leave to remain he was refused both on the grounds that he could not establish that he had been born to a British grandparent and also on the grounds that he had submitted false documents in relation to the application by reference to paragraph 322(1A).

6. The judge said that the main Appellant maintained that the information which the Respondent used regarding the Andrew Fleming Hospital was an article published on the internet, but the document had not been submitted. His case is that the name of the hospital had changed a number of times. The judge recorded that the Appellant had been placed on notice as regards the Respondent's reasons for refusal and there was no evidence to confirm the change of name of the hospital over the years.

7. He said that the Appellant had not been able to discharge the burden placed upon him in order to meet the requirements of the Rules.

8. With respect to Article 8, the family would be removed as a unit and there would therefore be no breach of Article 8 so far as family life is concerned. Although Mr Goto had been in the UK for twelve years and been employed, that in itself did not make the decision disproportionate. The children have been in the UK since 2008 with limited leave since they were 18, 13 and 9 years of age. They had spent their formative years in Zimbabwe and there was no evidence presented to show what impact the removal would have on them so far as their education was concerned. Clearly the

welfare of the children was an important consideration, but they would remain with their natural parents and there was no reason why they could not readjust to life in Zimbabwe. So far as the Appellant's private life was concerned the decision was proportionate.

The Grounds of Application

9. The Appellant sought permission to appeal on the grounds that the judge did not give appropriate weight to the Appellant's supporting evidence. There was no document verification report and the judge had not confirmed what investigation had taken place with respect to the hospital. It was also argued that the judge had failed to have regard to the best interests of the children having regard to the relevant case law.

10. Permission to appeal was granted by Judge Hemingway on 4th March 2014. Judge Hemingway said that it was arguable that the judge had failed to direct himself that the burden of showing that the document was false falls upon the Respondent. He observed that the second ground lacked merit but said that he would not shut out the argument.

11. On 20th March 2014 the Respondent served a reply defending the determination.

Submissions

12. Ms Khalaf relied upon her skeleton argument which she adduced at the hearing which, in the main, is simply a copy of the grounds.

13. Ms Pettersen defended the determination with respect to Article 8 but acknowledged that there was an arguable error in the judge's application of the burden of proof.

Consideration of whether there is an error of law

14. The judge was in error in respect of his consideration of where the burden of proof lies in this appeal. Whilst it is for the Appellant to show that he can meet the requirements of the Immigration Rules it is for the Respondent to show that he has produced a false document. The distinction is not clear in this determination and, so far as the Immigration Rules is concerned, the decision is set aside.

Further submissions

15. Ms Pettersen then produced a document verification report which consists of a letter from the central registry for passports, citizenship, national and voter's registration, births, deaths and marriages. It states that, according to records kept at the central registry, the following birth certificates are not authentic; it contains a number of names which have been redacted but also the name of the Appellant's mother. The document is signed E

Dube, for the Registrar general births and deaths and dated 15th May 2013.

16. Because the document had been produced very late I gave Ms Khalaf the opportunity of taking instructions on it. There was an adjournment of 45 minutes.

17. Ms Khalaf submitted that the document verification report could not be relied upon because the copy was not clear, other third parties were named on it and pasted over, there was no indication of the Harare address on the document and nothing to show that there was any authorisation for it to be released. She requested an adjournment because she said that crucial evidence had only been submitted today and the Appellant had not had any opportunity to make his own checks and cross-reference the document with officials in Zimbabwe.

18. Her instructions were that the Appellant had attempted to contact the Zimbabwean authorities in December/January after the Grounds of Appeal had been filed but got no answer, in that when he had called them the officials had asked for money to check the certificate. The Appellant claimed that the hospital had changed its name over the years, but the representatives had not written to the hospital to confirm the Appellant's evidence because it was their view that since the Secretary of State had accepted the document as genuine on two previous occasions it was not logical to reject it at this stage. She repeated the points made in the grounds that the judge had not properly had regard to the fact that the children had been in the UK for six years, and another child had been born here, and it was disproportionate for them to be removed.

19. Ms Pettersen submitted that simply because checks had not been done at an earlier stage did not preclude the Secretary of State from doing so now as a result of the application for indefinite leave to remain. The mere fact that they had been accepted before did not establish that they were genuine. It was open to the Appellant to discover material about the change of name of the hospital and he had not done so.

Findings and Conclusions

20. It is regrettable that the document verification report was not produced at an earlier stage. However he was given the opportunity to give instructions to his representative. There is no prejudice to him by refusing the adjournment.

21. The Appellant has been aware from the very beginning of the Respondent's case. He has chosen not to contact the Zimbabwean authorities directly save by making a single phone call. He did not write to them. It is not surprising that there would be a fee involved to check the register but he elected not to follow the matter up.

22. I am satisfied that the document enables the Respondent to discharge the burden of proof upon her. There is no reason at all to doubt its contents.

23. The fact that other names have been redacted from the document simply indicates a need to preserve their confidentiality and is not any indication that the document cannot be relied upon. The copy is clear enough to read and does in fact give an address. The Appellant's contention that the hospital where his mother was born existed but under another name is not supported by any evidence at all even though he has had more than ample opportunity to obtain that evidence.

24. The mere fact that the document had not been challenged before by the Secretary of State is not evidence that it is a genuine document.

25. So far as Article 8 is concerned there is no error of law in the judge's determination. The consideration is brief but covers all of the main points. Having found that the principal Appellant not only has no basis for stay in the UK but also has produced a false document, the Secretary of State's interest in maintaining immigration control is clear. The judge considered the best interests of the children as he was required to do and was entitled to observe that there was a paucity of evidence of any detriment to them in returning to their country of nationality where they have spent their formative years.

Decision

26. The decision with respect to the Immigration Rules is set aside. It is remade as follows. The appeal is dismissed. With respect to the human rights appeal the decision of the judge stands and again the appeal is dismissed.

Signed Date

Upper Tribunal Judge Taylor