

**Upper Tribunal  
(Immigration and Asylum  
Chamber)**  
OA/16601/13



Appeal Numbers:

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15<sup>th</sup> September 2014**

**Decision Promulgated  
On 22<sup>nd</sup> September 2014**

**Before**

**Deputy Upper Tribunal Judge Rimington**

**Between**

**ENTRY CLEARANCE OFFICER- Nairobi**

Appellant

**And**

**Jamila Nabakooza  
(No Anonymity direction made)**

Respondent

**Representation:**

For the Appellant: Ms D Ofei-Kwatia, instructed by Equity Law Solicitors  
For the Respondent: Mr S Whitwell, Home Office Presenting Officer

**DECISION AND REASONS**

**The Appellant**

1. For the purposes of this decision, although the application for permission to appeal was made by the respondent I shall refer to the parties as they were referred to in the First-tier Tribunal that is Ms Nabakooza as the appellant and the Entry Clearance Officer as the respondent.
2. The appellant is a citizen of Uganda and is an 10 year old girl born on 22<sup>nd</sup> December 2003 and she appealed against a decision of the respondent dated 16<sup>th</sup> July 2013 to refuse her entry clearance to the United Kingdom further to paragraph 297 (i)(e), (iii) (iv) and (v) and further to the Human Rights Act 1998 to join her father Mr K Suleman.

3. On 7<sup>th</sup> July 2014 First Tier Tribunal Judge McDade allowed the appellant's appeal to the First Tier Tribunal.

### **Application for Permission to appeal**

4. The respondent applied for permission to appeal on the basis the judge allowed the appeal on the failure of the Secretary of State to verify the death certificate, an adjournment already having been granted for that purpose. The judge failed to allow the Presenting Officer to cross-examine the sponsor in relation to the documentation or make submissions on the evidence. Given the history of the case (a previous application had been declined owing to the submission of a false document) the Presenting officer should have been allowed to test the evidence before the court.
5. Further the judge allowed the appeal solely in relation to the failure to discharge the burden of proof in relation to the death certificate. The judge also failed to give consideration or reasons as to how the appellant satisfied the maintenance and accommodation aspect of the rule which was cited as a ground of refusal.

### **Grant of Permission to appeal**

6. Permission to Appeal was granted by FTT Judge Andrew who stated that it was apparent that the judge had not given the presenting Officer the opportunity to cross examine the sponsor regarding the document. It was unclear whether or not the Presenting Officer conceded the question of maintenance and accommodation.

### **Findings**

7. At the hearing Mr Whitwell advised that the original certificate had been handed to Counsel acting for the respondent at the first hearing on 24<sup>th</sup> March 2014 and this had not been sent to the ECO for verification. He understood this document had been requested from Counsel but not returned. He produced an email from Ms S Jones, the Presenting Officer at the hearing before Judge McDade stating 'to the best of my knowledge I did not concede maintenance and accommodation'.
8. Ms Ofe-Kwatia produced her colleague's back sheet which identified that Mr Balroop counsel on that occasion recorded that 'I explained that the only issue outstanding was the death certificate. The DNA establishes that they are related, his payslips prove that he can maintain his daughter and if the appellant's mother has passed away there is a strong presumption that the Sponsor has sole responsibility of the Appellant. '.
9. At [4] of the determination the judge recorded that a previous hearing was adjourned

*'in order to give the Home Office time to send a documents that was claimed to be the death certificate of the Appellant's mother time to send*

*a document that was claimed to be the death certificate of the Appellant's mother to the ECO verification unit for examination'.*

10. The judge recorded in his determination quite clearly with reference to the genuineness of the death certificate that 'Ms Jones accepted that this was the only issue in the case' inferring that the issue of maintenance and accommodation had been accepted.
11. However, the reliability of the documentation, that is the death certificate would affect the assessment of the case under paragraph 297(i)(d) as to whether the 'other parent is dead' or paragraph 297(i)(e) which is whether 'one parent is present and settled in the United Kingdom ...and has sole responsibility for the child's upbringing'. Both of these were issues before the judge.
12. The ECO had stated that the previous death certificate was false but the point made in the ECO refusal regarding the death certificate presented in the second application was not that it was false but with regards the '*adequacy of the documentation*'. The Judge considered the matter on the basis that the certificate was represented by the ECO to be false and thus the burden of proving it was false rested with the Secretary of State which was not undertaken. The judge made no findings in respect of the reliability of the evidence of the death of the mother overall. The judge did not engage with the evidence which was produced in respect of the death certificate and made no findings as to whether the documentation produced with regards the death of the mother was reliable.
13. It was recorded in the determination without more that the Presenting Officer had conceded the accommodation and maintenance issues. Ordinarily this may be sufficient. However, the Judge's record of proceedings is entirely blank as to the proceedings. In view of the sensitive nature of this case I find that a clear record of any issues raised needed to be made and findings given. Further, an assessment of the evidence regarding the death of the mother and sole responsibility of the father was not addressed.
14. I take heed of the point made by Ms Ofei-Kwatia that there has been considerable delay in this matter and this is the second application made by the appellant. However, a false document was submitted by the appellant in the first application which has cast doubt on the reliability of the documentation produced in the second application. This case involved an 11 year old female child who has lived her life in another country and apart from the sponsor and it is important that the judge engaged with and assessed the evidence.

## **DECISION**

15. I find that there is an error of law and the determination cannot stand. The determination is set aside in its entirety. The matter is to be set for a fresh substantive hearing before the First Tier Tribunal.

**Directions**

That the respondent use his/her best endeavours to obtain from Counsel the original death certificate supplied by the appellant to the respondent and to submit to the appellant and the Tribunal any document verification report at least 7 days prior to the substantive hearing.

The respondent is to provide expert evidence on the legal formalities and process required for the registration of deaths in Uganda at least 14 days prior to the substantive hearing.

Signed  
2014

Date 15<sup>th</sup> September

Deputy Judge of the Upper Tribunal Rimmington