



Upper Tier Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/19939/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 6 January 2014

Determination Promulgated  
On 7 January 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Entry Clearance Officer - Shefo

Appellant

and

Elizabeth Imuwanhen Maintainance Aghafekokian  
[No anonymity direction made]

Claimant

**Representation:**

For the claimant: Mr D Sellwood, instructed by Cardinal Solicitors  
For the respondent: Mr P Duffy, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This is the appeal of the Entry Clearance Officer against the determination of First-tier Tribunal Judge Harris promulgated 19.9.14, allowing the claimant's appeal against the decision of the Entry Clearance Officer, dated 10.7.13, to refuse her entry clearance to the United Kingdom as the child of the sponsoring father, pursuant to paragraph 297(i)(d) of the Immigration Rules. The Judge heard the appeal on 4.9.14.
2. First-tier Tribunal Judge Ransley granted permission to appeal on 10.11.14.

3. Thus the matter came before me on 6.1.15 as an appeal in the Upper Tribunal.

### **Error of Law**

4. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Harris should be set aside.
5. The grounds complain that the judge failed to give any or any adequate reasons for making findings on material matters. Specifically, complaint is made that the judge relied on the photocopy of the death certificate of the claimant's mother, issued in 2013 purporting to confirm her death in 2008.
6. In granting permission to appeal, Judge Ransley considered that although the judge claimed to have followed the guidance in Tanveer Ahmed [2002] UKAIT 439, "his subsequent assessment regarding the credibility of the copy death certificate of the appellant's mother would indicate otherwise. The respondent had strongly challenged the appellant's credibility by reference to her 2009 application and 2012 application under para 297 when it was stated that the mother was alive. The judge's assessment of the copy death certificate, which was challenged by the respondent, indicate that the judge might have failed to apply the Tanveer Ahmed guidance. The determination has been shown to involve arguable errors of law that may have made a material difference to the outcome of the appeal. Permission is therefore granted."
7. As a preliminary issue, Mr Sellwood stated that shortly after the hearing the 'original' of the death certificate had been sent to the Tribunal by recorded delivery, for which he had the receipt. However, the document clearly did not reach the judge prior to the promulgation of the decision. An examination of the case file showed that no such document was present. Nor was there any confirmation of receipt of the same. In the circumstances, the Tribunal is no further assisted than was Judge Harris in the First-tier Tribunal appeal hearing.
8. It is clear from §9 through §14 of the decision that the judge did not just rely on the death certificate. An explanation was recorded for why the two previous applications had suggested that the mother was then alive but that it was only clarified in 2013, after the refusal decision that she had died in 2008. The judge was thus not satisfied that these earlier applications undermined the claimant's credibility. Neither was the judge persuaded at §10 that making a new application rather than awaiting the outcome of an appeal against the 2012 refusal decision undermined the claimant's credibility.
9. At §11 the judge explained that hearing oral evidence from the sponsor, whom the judge found entirely credible, assisted the judge in the weight to be attached to the documentary evidence adduced on behalf of the claimant. Thus, at §12, the judge did not consider that the production of a copy rather than the original was necessarily an obstacle to reliance on the document.

10. At §14 the judge noted that the certificate was not issued close to the alleged date of death of the mother stating, "I accept that in Nigeria it cannot be assumed that a death certificate will only be issued immediately around the date of death." Whilst there was no expert or objective evidence to support that assumption, it is clear that the judge found the sponsor's explanation for the delay in obtaining the death certificate credible.
11. It follows that the judge took account of all the evidence in the round and assessed the weight to be accorded to the copy death certificate in the light of other evidence. I do not accept that process can be regarded as perverse or one to which no judge properly directed could come. It was open to the judge to reach a view on the certificate and cogent reasons have been given for doing so.
12. Mr Duffy raised some concerns about maintenance issues, but accepted that was not raised in the grounds of application for permission to appeal and no application was made to amend those grounds.
13. In the circumstances, and for the reasons set out herein, I reject the submission that there was inadequate evidence, or more particularly inadequate reasoning supporting the conclusion on the issue of the mother's death. It follows that I find no merit in the grounds of appeal.

**Conclusion & Decision:**

14. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains allowed.



Signed:

Date: 6 January 2015

Deputy Upper Tribunal Judge Pickup

**Anonymity**

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

**Fee Award**                      **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make a whole fee award.

Reasons: The appeal has been allowed.



Signed:

Date: 6 January 2015

Deputy Upper Tribunal Judge Pickup