



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/12451/2016

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice, Belfast  
On 7 August 2019

Decision & Reasons Promulgated  
On 7 October 2019

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

DL  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr S McQuitty, instructed by Worthingtons Solicitors

For the Respondent: Mr Diwnycz, Senior Presenting Officer

**DECISION AND REASONS**

1. I make an order for anonymity pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting disclosure of any matter that may lead to the identification of the appellant and other parties to these proceedings. Any breach may lead to contempt proceedings.
2. This is an appeal by a citizen of the Philippines. Her mother works in the United Kingdom as a nurse and she had left the appellant in the care of her own parents when she was 2 months old. As the appellant's grandmother has died and her grandfather

is in poor health the decision was made for her to come to the United Kingdom with her stepbrother, whose application was successful.

3. The appellant's application was refused on 26 September 2016 under paragraph 320(7A) of the Immigration Rules. A birth certificate which showed the appellant's mother's name only had been provided with the application. The appellant had explained in the application itself that her father was an Egyptian national who had not acknowledged her birth. Checks undertaken with the Philippines Statistics Authority revealed that there was no record of the appellant's birth. Those records revealed that her mother had given birth to two children, J and G, the latter being the daughter of her mother and her alleged father. The birth certificate revealed that her mother and her alleged father had married on 24 July 2001. He had gone to the United Kingdom in 2002 and applied for a number of visas there but was not currently legally present in the UK.
4. With reference to paragraph 297 of the Rules the Entry Clearance Officer considered that as the birth certificate had been fraudulently obtained the appellant's credibility had been undermined and refused it on that basis as well as with reference to Article 8.
5. Judge Farrelly heard the appeal against the respondent's decision. The appellant's mother gave evidence and relevant to the appellant's identity, the judge recorded this as follows:
  - "10. The sponsor has provided a statement in which she confirms she married the appellants alleged father in the Philippines on 24 July 2001. She confirmed that he travelled ahead of her to the United Kingdom in 2002 on a working Visa. She arrived the same year. She states he qualified as a pharmacist and joined her in Northern Ireland in March 2003. She says that she became pregnant with the appellant. She says she became estranged from her husband who threatened to take the child when it was born. She states that to avoid this she decided to give birth in the Philippines.
  11. There are medical records from Altnagelvin Hospital, Derry which indicate that she was working as a staff nurse in the hospital. There is an entry dated 18 March 2003 referring to foetal movements. She was seen on 28 July 2003 and there is an entry 19 + 4 weeks gestation. There is a letter dated 9 July 2003 giving her estimated date of confinement as 28 December 2003. There is a further letter dated 21 November 2003 indicating there were no complications and will be fit to travel to the Philippines. In her statement she said that he travelled to the Philippines in November 2003.
  12. In her statement at paragraph 6 and 8 she says that the appellant was born on 7 December 2003.
  13. She said she registered the birth when she was in the Philippines. The child was named as GLE. She says she remained there until February 2004 leaving the appellant along with her son... in the care of her parents. She indicates that her son who was five years old at the time had a different father.
  14. She says when she returned to in February 2004 she met her husband who again threatened to take his daughter. She states that because of this she contacted her parents and asked them to re-register the birth altering the

details and giving the name [used in this application] with a date of birth as the 30<sup>th</sup> December 2003.

15. In her statement she said in January 2006 she received a telephone call from her sister-in-law who told her that the appellants alleged father had returned to Egypt where he died. Her sister-in-law forwarded his death certificate."
6. In his continuing survey of the evidence the judge noted the appellant's mother's evidence that her mother had died in 2012 and that she had obtained British citizenship in 2015. Specifically, with reference to the records accessed by the Entry Clearance Officer the judge noted the evidence as follows:
  - "18. She comments on the verification report and refers to the statement that [the appellant] was born on 12 July 2003. She suggests this is a mistake as the Philippines uses the American style of dating, namely, the 12.07.2003 which will correspond to the 7.12.2003 in the United Kingdom. She makes the point that in July 2003 she was in Northern Ireland as confirmed by the hospital records and letters."
7. The judge accepted on balance the parental child relationship but went on to find that when the application for entry clearance was made, a different birth certificate was submitted which was not a genuine document, explaining at [32] and [33]:

"32. When the application for entry clearance was made a different birth certificate was submitted. I am satisfied that this is not a genuine document albeit it follows the format of the other document. It refers to the Province as Daveo Oriental but gives a different Municipality. This is reflected in the stamp endorsed on the form. Not only does it give a different date of birth, namely the 30<sup>th</sup> December 2003, but also records a different place of birth. The father's name is not mentioned. On the face of it the form is not completed until 9 January 2007. It is said to be completed by the midwife. On the back of the form is a section entitled 'affidavit for delayed registration of births'. It is said to be completed by the appellant's aunt....

33. I am satisfied this document was not used to register the birth of a child of the sponsor. It did not come up in the search made by the entry clearance officer. As pointed out in the verification report there is one registry number. The number on this form is 2007-62 compared to 2003-39902 on the form I accept is genuine. This is not a genuine document emanating from the registration office in the Philippines albeit containing false information. The form may have been obtained from the registration office but the birth was not registered using this form."

At [35] the judge observed:

"35. Why this false documentation was obtained I do not know. The sponsor in her oral evidence said the birth documentation was required for her daughter's schooling. It is not for me to speculate. Rather, the question to be asked is has the appellant demonstrated on the balance of probabilities by the evidence presented at hearing that she is entitled to the entry clearance she seeks."

8. Accordingly, he concluded that the submission of a false document led to automatic refusal. The judge then turned to article 8 and set out his reasoning at [38] and [39]:

“39. On the claim presented the appellant has now been separated from her stepbrother. Understandably she will be upset if he has come to the United Kingdom in the hope of a better future whereas she had been left behind. I am told her grandparents are now deceased. Again, I now have difficulty accepting the truth of any of the statements in the circumstance. Because of this and mindful of the child’s best interests I do not find she had demonstrated entitlement to entry clearance for settlement with the sponsor.”

9. The grounds of challenge argue the principle established in *AA (Nigeria)* [2010] EWCA Civ 775 where a false document has been submitted by a third party. The judge had not made a positive finding of dishonesty and had made no finding that the sponsor had used the document for the purpose of obtaining entry clearance. On this basis the judge’s approach to paragraph 320(7A) is challenged. In addition the grounds argue that the judge erred in considering Article 8 by failing to consider the appellant’s best interests as a primary consideration but instead had determined all aspects of the appeal through the lens of her mother’s credibility.
10. In response to these lengthy grounds of challenge, almost as long as the decision itself, Upper Tribunal Judge Kekić granted permission on the basis that arguably in making positive findings in respect of some of the sponsor’s documentary evidence and part of her oral evidence the judge had failed to adequately explain why he concluded he could not accept other parts of it. It was arguable that the best interests had not been properly considered.
11. Prior to the commencement of the hearing, I invited the parties to make submissions on the relevance to the issue in this case of the decision of the Court of Appeal in *Saqib Hameed v SSHD* [2019] EWCA Civ 1324 in particular the observations of the Senior President of Tribunals at [25] to [27] as follows:

“25. The underlying question in the appeal, namely whether the appellant or another person was responsible for any dishonesty or deception which is implicit in the need for 'falsity', was considered in *Adedoyin v Secretary of State for the Home Department* [2010] EWCA Civ 773, [2011] 1 WLR 564. At [76] Rix LJ held that:

"Dishonesty or deception is needed, albeit not necessarily that of the applicant himself, to render a "false representation" a ground for mandatory refusal."

26. That has the effect that where, as in this case, an applicant is not responsible for or aware of the falsity and hence the dishonesty or deception being perpetrated, it is necessary for the Secretary of State to establish dishonesty or deception on the part of another as part of the reasoning for a refusal under paragraph 322(1A) (see, for example *Adedoyin* at [68]).
27. What *Adedoyin* also established, however, is that a false document is itself dishonest and that fact avoids the need to establish dishonesty or deception on the part of an applicant or another. That was made clear at [67]:

"First, "false representation" is aligned in the rule with "false document". It is plain that a false document is one that tells a lie about itself. Of course it is possible for a person to make use of a false

document (for instance a counterfeit currency note, but that example, used for its clarity, is rather distant from the context of this discussion) in total ignorance of its falsity and in perfect honesty. But the document itself is dishonest. It is highly likely therefore that where an applicant uses in all innocence a false document for the purposes of obtaining entry clearance, or leave to enter or to remain, it is because some other party, it might be a parent, or sponsor, or agent, has dishonestly promoted the use of the document. The response of a requirement of mandatory refusal is entirely understandable in such a situation. The mere fact that a dishonest document has been used for such an important application is understandably a sufficient reason for a mandatory refusal. That is why the rule expressly emphasises that it applies "whether or not to the applicant's knowledge"

12. Although the Court of Appeal was concerned with the issue of a false document which had led to refusal under paragraph 322(1A), that provision mirrors paragraph 320(7A), being in play in these proceedings:

“(7A) Where false representations have been made or false documents or information have been submitted (whether or not material to the application, and whether or not to the applicant’s knowledge), or material facts have not been disclosed, in relation to the application or in order to obtain documents from the Secretary of State or a third party required in support of the application.”

13. Mr McQuitty sensibly condensed the grounds of challenge in his skeleton argument as follows:

- (i) The FtT erred by concluding that paragraph 320(7A) had been breached. Article 8, in those circumstances effectively compelled the grant of entry clearance. The FtT’s judge’s approach to factual matters was inconsistent/arbitrary and failed to properly apply paragraph 320(7A);
- (ii) Alternatively, even if that is wrong and paragraph 320(7A) had been breached then the refusal of entry clearance was still a breach of Article 8 in this specific circumstances of this case, taking into account the welfare and best interests of the appellant.

14. Mr McQuitty argued that the Senior President had not correctly understood the decision of the Court in *Adedoyin v SSHD* [2011] 1 WLR 564. He contended this decision was not an authority for there to be no need for deception where a false document is used but a need to establish whether a sponsor had dishonestly promoted the document. The passage from *Adedoyin* cited by the Court in *Hameed* indicated that dishonesty was required at some point being the promoter where an appellant is an innocent party. In other words, there has to be some mischief. He argued that Judge Farrelly had not concluded that there had been dishonest promotion. The document produced with the application for entry clearance was erroneous in two respects as to the date and the paternity of the appellant. An explanation had been given by the appellant’s mother for the second birth certificate to come into being. This related to the difficulties the sponsor had encountered with the appellant’s father and the evidence indicated that she had requested her parents re-register the birth in 2004 but

she was unaware of the outcome of that request. A need for the birth certificate arose in 2006 for schooling. Mr McQuitty contended that it was odd that a document would be put forward for no apparent gain particularly as the appellant's father's details were disclosed in the application.

15. By way of additional argument, Mr McQuitty contended that decisions of the Court of Appeal in England and Wales were not binding in Northern Ireland although he readily acknowledged they were highly persuasive. He further acknowledged that the Court of Appeal in Northern Ireland had not wrestled with the issues at stake in *Adedoyin* and subsequently in *Hameed*. He accepted that if I found *Hameed* reflected the correct application of the law ground 1 must fall away. A further subsidiary point that he made related to the judge having reversed the burden of proof in reaching his conclusion despite having rehearsed the correct burden. Furthermore, he identified mutually exclusive conclusions in the judge's decision in having observed that the original birth certificate contained the correct details (as to paternity) but at the same time the judge had expressed doubts in that regard in [38]:

"38. I have considered whether any other circumstances outside the rules make the decision disproportionate. The difficulty is that the use of this document undermines the sponsor's credibility and the factual background to the application. It raises issues as to where the truth lies for instance in relation to paternity of the child and the genuineness of the statement that her father is deceased. The sponsor has produced the death certificate of her husband stating he died on 16 January 2006. He is described as a physician, rather than a pharmacist. On the translation there is a stamp from the British Consulate general in Alexandria dated 30 August 2006. The stamp indicates that the signature of the translator is confirmed rather than the contents of the death certificate. No explanation was given as to why this document was obtained in 2006."

16. In respect of ground 2, Mr McQuitty contended that the nature of the dishonesty was relevant to proportionality. Whilst accepting the very strict test laid down in *Adedoyin* and *Hameed*, with regard to the public interest there had been no separate consideration by the judge as to the appellant's best interests or where they lay. A more careful balancing exercise had been required and the scales needed to be weighed. He relied on the Tribunal decision in *Mumu* (paragraph 320; Article 87; scope) [2012] UKUT 00143 (IAC) in particular the headnote at [2]:

"2. Although paragraph 320(7A) applies only where someone has been dishonest, the dishonesty does not need to be that of the applicant for entry clearance or leave to enter (AA (Nigeria) [2010] EWCA Civ 773)."

17. Although the judge had acknowledged the possibility of a breach of Article 8 notwithstanding any breach of paragraph 320, there was no further consideration given to the point following adverse factual findings made against the sponsor.
18. By way of response Mr Diwnycz accepted that there was some support for the points that Mr McQuitty had made. He was vexed by certain factual matters including why a false birth certificate would have been provided after the appellant's father had died. He accepted that the judge's treatment of Article 8 had not been "fulsome" and agreed

the judge had erred in connection with the section 55 exercise. He considered there was some force in Mr McQuitty's argument on a full reading of *Adedoyin*.

19. By way of clarification Mr McQuitty explained as to the appellant's father's death that the request for a birth certificate arising in 2007 related to the attendance of the appellant at school.
20. In my judgment there is no inconsistency between the analysis by Rix LJ in *Adedoyin* and the observations on that decision by the SPT in *Hameed*. At [67] of *Adedoyin*, Rix LJ used the example of a counterfeit currency note to illustrate the way in which a person can make use of a false document in total ignorance of its falsity and in perfect honesty with reference to a counterfeit currency note. It is clear that he considered the dishonesty of the currency note was unaffected by the user's ignorance and integrity. He then gave a further example of where, in an immigration context, innocent use of a false document might arise and the likely cause; be it a parent, sponsor or agent who has dishonestly promote the use of a document. Rix LJ does not however say that for a document to be a false, the document requires dishonest promotion.
21. With the greatest respect it was properly open to the SPT to summarise the effect of *Adedoyin* the way he did in [27]. It is accepted in this case that the "birth certificate" produced by the appellant was a false document and that alone is sufficient for paragraph 320(7A) to be made out. Whilst it may not be understandable why the appellant's mother used or caused to be used a false document that does not take the document out of the category captured by the rule. Accordingly ground 1 of the challenge cannot succeed.
22. I am satisfied however that having proceeded correctly in respect of the analysis of the document with reference to paragraph 320(7A), the judge failed to carry out an adequate Article 8 analysis in the two short paragraphs with which he concluded his decision at [38] and [39]. The error is material and requires the decision to be set aside with regard to Article 8. The decision of the judge in relation to the Immigration Rules stands.
23. Although the parties expressed concern at the time that has passed since the application for entry clearance was made, given the scope of the Article 8 exercise that is required, and the findings that needed to be made, this appeal is best remitted to the First-tier Tribunal for that exercise to be undertaken. It will be open to the parties to apply for an expedited hearing.
24. By way of summary therefore the decision of the First-tier Tribunal is set aside on the limited basis outlined above and remitted to the First-tier Tribunal for consideration by a different judge.

Signed

Date 20 August 2019

*UTJ Dawson*

Upper Tribunal Judge Dawson