



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

Appeal Number: EA/01444/2020

THE IMMIGRATION ACTS

**Heard at Field House via Microsoft Decision & Reasons
Teams Promulgated
On 29 October 2021 On 18 November 2021**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**VALENTINE NII OKANTEY ADJETEY
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Adewole of Blackfields Solicitors

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Ghana. He appealed to a Judge of the First-tier Tribunal against the respondent's decision of 20 January 2020 refusing his application for an EEA family permit as a family member of his stepfather, Frank Ajeti Agekurn, the sponsor.
2. The judge did not accept the claimed relationship and as a consequence did not allow the appeal.

3. The essential difficulty with the appellant's evidence, as the judge found it, was his failure to show that the lady he claims to be his mother, and who is the sponsor's wife, is in fact his mother. Her name was recorded differently in a number of relevant documents. The judge noted that she claimed her full name given at birth was Nana Adwoa Yankyirah Amponsah Patience Domete. The judge observed that no independent or other reliable evidence was provided to support her claim. She said that she had decided to shorten her name to Patience Domete in 2017 when she applied to remain in the United Kingdom. The judge noted that the documentation showed that when she obtained a passport in 2015 it was in the name of Patience Domete though he did not give significant weight to this inconsistency. He was concerned, however, at the absence of any documentary evidence, official or otherwise, that she was using another name prior to 2015.
4. In her oral evidence she could not say why the appellant's birth had been registered in 2014 but thought it might be because it was when he wanted to apply to come to the United Kingdom. She could not explain why the name of his mother on his birth certificate did not include all her names, in particular the names Patience Domete but it said the person who attended and registered the birth was his mother and her name was Nana Amponsah Yankyirah.
5. The judge remarked that this was significantly inconsistent of Ms Domete's claim that in 2014 she was in the UK unlawfully. If that was right she could not have been in Ghana registering the appellant's birth. The judge was aware of the fact that the appellant had not addressed the issue nor indeed had the respondent but did not consider it to be unfair to take it into account on the basis that appellants have a responsibility to explain inconsistencies in the documentation on which they rely. He had borne in mind that the inconsistency regarding the date of registration had not been put to her.
6. He also noted that the bundle contained a single photograph of Ms Domete with a baby she claimed was the appellant, and there was no independent or other reliable evidence to confirm that what she said was accurate. Nor was there any independent or other reliable evidence of frequent contact though she claimed to be in frequent contact with him. Also, there was no such evidence with respect to her claim to have been sending money to the appellant in Ghana.
7. Given the evidence as a whole, the judge did not find that the appellant had provided sufficient evidence to show that it was likely that Ms Domete was his mother. The appeal was therefore dismissed.
8. In his grounds of appeal the appellant argued first that the judge had not provided adequate reasoning for not accepting that the birth certificate put the name of the mother in respect of a sibling of the appellant as Patience Domete and put her full name as well. There was also said to be

error in saying that only one name was the same whereas two of the names, Adwoa and Amponsah, appeared on the birth certificate.

9. It was also argued that the judge's decision was procedurally unfair in not putting the apparent inconsistency as to whether Ms Domete was in the UK or Ghana at the relevant time as noted above. In addition, it was argued in ground 3 that there was no adequate, if any, finding of credibility in respect of the EEA sponsor, the appellant's stepfather.
10. Permission to appeal was granted on all grounds.
11. In his submissions Mr Adewole argued that the judge had erred in law in particular with regard to the procedural matters, emphasising what was said at paragraphs 53 and 54 and arguing that as could be seen from the evidence in the bundle at pages 108 and 109 that the mother's name was there and if the documents were taken together it could be seen that the mother was the same person.
12. In his submissions Mr McVeety argued that although a judge could be criticised for post-hearing research, the issue of the claimed mother's identity was the sole issue in the case. A birth certificate had been put in and it was clearly stated that the mother had attended to register the birth but that could not be true as she claimed to be in the United Kingdom at that time or someone else had registered the birth. It did not assist the appellant and was not a new matter but went to the heart of the case and was clearly a live issue. There was therefore no material error of law. The judge could not deal with everything at the hearing, the bundle was a large one and it was open to him to conclude as he did. He had not placed total weight on the document as it had not been put to the appellant but it was an obvious document.
13. It was also relevant to note what was said at paragraphs 55 to 57 as to the other reasons for refusal including a lack of evidence of devotion between parent and child and contact. It could also be seen, from paragraph 49 of the judge's decision, that the claimed mother's evidence lacked detail and was a little vague in parts and did not give a great deal of information about his life in Ghana. There was no consistency in the evidence and also variations of the claimed mother's name. There was no error of law.
14. By way of reply Mr Adewole reinforced the arguments that he had made previously that the judge had erred as contended and the decision fell to be set aside.
15. I reserved my decision.
16. I consider that there is force in the argument concerning procedural unfairness in this case. The fact that the identity of the mother was a central issue in my view only reinforces the point that the question of the inconsistency about the registration of the birth in 2014 required to be put

to her. It is undoubtedly true, as the judge pointed out, that appellants have a responsibility to explain inconsistencies in the documentation on which they rely, and the appellant was represented and it was reasonable to expect his representatives to address this issue and he wished them to do so. As it seems to me, the matter was sufficiently central and sufficiently important to the judge's findings that it required the matter to be put to the witness to see what, if any, explanation she could provide for it. The other matters that go to credibility remain issues which the appellant will have to address, though they are not such as to mean that one can in effect bypass the fairness issue and conclude that the error of law was lacking in materiality. In my view, the error is such that the appeal will have to be heard afresh in its entirety at the First-tier Tribunal at Hatton Cross by a different judge.

17. To that extent, the appeal is allowed.

Notice of Decision

The appeal is allowed to the extent set out above.

No anonymity direction is made.



Signed

Date 11 November 2021

Upper Tribunal Judge Allen