



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001322
First-tier Tribunal No:
HU/53751/2022
IA/05809/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 08 September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

NJUKE SAIDY
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER -Sheffield

Respondent

Representation:

For the Appellant: Mr I Hussein of Syeds Law Office, solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer.

Heard at Field House on 6 September 2023

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of the Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Prudham, dated 9 February 2023, which dismissed the Appellant's appeal.

Background

3. The Appellant was born on 30/05/2005 and is a national of The Gambia.
4. The appellant is a child who applied for leave to enter the UK to join her mother. On 17/06/2022 the respondent refused the appellant's application.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Prudham ("the Judge") dismissed the appeal against the Respondent's decision.
6. Grounds of appeal were lodged, and on 16/05/2023 Upper Tribunal Judge Blundell gave permission to appeal stating

It is arguable that the appellant was not given notice in either the ECO's decision or the subsequent Review that there was to be a challenge to her father's death certificate. The respondent's concern up to the date of hearing appeared to be that the appellant was not related as claimed to the subject of the death certificate. It is also arguable that the Judge's reasons for dismissing the evidence of the relationship between the appellant and her father were inadequate, based as they were on findings made in relation to other documents and the evidence of the sponsor.

The Hearing

7. For the appellant, Mr Hussein moved the grounds of appeal.
8. Mr Walker told me that the appeal is no longer resisted. The Secretary of State now agrees that the First-tier Tribunal decision contains a material error of law in relation to challenges to the death certificate of the appellant's father.
9. Both Mr Walker and Mr Hussein referred me to the grant of permission to appeal. They joined in telling me that the appellant had not been given fair notice of a matter which became determinative of the decision. They (jointly) urged me to set the decision aside and to remit this case the First-tier Tribunal.
10. Both Mr Walker and Mr Hussein suggested that the respondent should carry out a new review correctly identifying the challenges raised to any documentary evidence relied on by the appellant so that, before this case is heard of new, the appellant will have the opportunity to address challenges properly raised by the respondent.

Analysis

11. In the respondent's decision letter dated 17 June 2022 the respondent specifies the reasons for refusing the appellant's application. The respondent challenges the birth certificate produced for the appellant and says that the respondent is not satisfied that the birth certificate is evidence of the appellant's relationship to her father.

12. The respondent moves on to consider the death certificate produced and simply says that, because the relationship between the appellant and the man named as her father is not accepted, the respondent is not satisfied that the appellant's mother is the appellant's sole living parent.

13. The respondent did not challenge the authenticity of the death certificate produced. Instead, the respondent disputed whether or not there was a parental link between the deceased person and the appellant.

14. In a review decision dated 27 September 2022, the respondent adhered to that position.

15. At [25] the Judge analyses the death certificate and raises matters which had not been raised by the respondent and which had not been put to the appellant. At [26] (relying on the analysis at [25]) the Judge places little weight on birth and death certificates and finds his analysis at [25] causes him to doubt the evidence of the sponsor.

16. In YHY (China) AP Petition for JR 2014 CSOH 11 it was held that there was procedural unfairness amounting to an error of law where points were taken against the appellant that were not in the original decision and notice of the additional points had not been given to the appellant.

17. Parties agree that the Judge's decision was heavily influenced by points taken against the appellant which were not in the original decision, and that the appellant did not have fair notice of the matters which were held against her.

18. The Judge's decision is tainted by a material error of law. Parties agree that the decision should be set aside because procedural unfairness has occurred. Because there has been procedural unfairness, I am not able to substitute my own decision and this case must be remitted to the First-tier Tribunal.

19. The decision contains a material error of law. I set it aside.

Remittal to First-Tier Tribunal

20. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

21. I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re hearing is necessary.

22. I remit the matter to the First-tier Tribunal sitting at Birmingham to be heard before any First-tier Judge other than Judge Prudham.

Decision

The decision of the First-tier Tribunal is tainted by a material error of law.

The Judge's decision dated 9 February 2023 is set aside.

The appeal is remitted to the First-tier Tribunal to be determined of new.

Signed **Paul Doyle**
September 2023
Deputy Upper Tribunal Judge Doyle

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