



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002832
EA/09952/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 27 September 2023

Before

UPPER TRIBUNAL JUDGE LANE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT Appellant

and

Isabella Amanie Boateng Respondent

Representation:

For the Appellant: Mr Lindsay, Senior Presenting Officer
For the Respondent: Not present or represented

Heard at Field House on 14 September 2023

DECISION AND REASONS

1. I shall refer to the 'appellant' as the 'respondent' and the 'respondent' as the 'appellant', as they appeared respectively before the First-tier Tribunal. The appellant is a female citizen of Ghana born on 20 April 2002. On 21 May 2022 she made application for an EU Settlement Scheme Family Permit under Appendix EU (Family) Permit to the Immigration Rules on the basis that she was a family member of a relevant EEA citizen. On 28 September 2022, a decision was made to refuse the application. The only point raised in the refusal was the claimed unreliability of the appellant's birth certificate. By Notice dated 6 October 2022. She appealed to the First-tier Tribunal which, in a decision promulgated on 27 April 2023, allowed the appeal.
2. Granting permission, Judge Landes wrote:
 2. I consider the grounds are arguable. It is arguable that the judge misunderstood the significance of the weighing card (ground 1). The judge appears at [9] to imply that the weighing card goes to paternity in the same way as a DNA report, but absent further explanation, the weighing card would appear to be secondary evidence of the date of birth, rather than of the relationship itself. It is also arguable (see ground 2) that the judge wrongly placed a burden on the respondent. The respondent had challenged the reliability of the information in the birth certificate because of the late registration. Insofar as there

was any evidential burden on the respondent, that had been satisfied by the production of the background material as to the unreliability of the information in a late birth certificate. For the reasons highlighted in ground 2, verification checks would not have assisted. The overall conclusion that the judge is satisfied on the balance of probabilities is arguably inconsistent given the findings at [5] and [7] of the missing documentation, or alternatively inadequately reasoned as the judge does not explain why he is satisfied on the balance of probabilities despite his findings about the missing documents (ground 3).

3. Whilst I do not intend by my comments to restrict the grounds which may be argued, it is not self-evident that production of an unsigned consent letter was an attempt to mislead, neither is it self-evident that the absence of DNA evidence should damage the credibility of the application

3. The sponsor did not attend the initial hearing. He had emailed the Upper Tribunal to say that he was unwell and asked that the hearing should proceed in his absence. I decided to proceed in the absence of the sponsor accordingly.
4. Mr Lindsay, who appeared for the Secretary of State, told me that the Secretary of State agreed with the comments of Judge Landes at [3] (see above).
5. I find the grounds of appeal (succinctly and accurately summarised by Judge Landes in the her grant of permission) are made out. First, the judge was wrong in law to find at [9] that there remained any an evidential burden of proof on the respondent (*'it was open to the Respondent to make verification checks; the Respondent was not relieved of an evidential burden'*[9]). As Judge Landes observed, in so far as there was a burden on the respondent following her assertion that the birth certificate was unreliable, it had been discharged by the production of the country material which the First-tier Tribunal judge himself quotes at [8]. The respondent was certainly under no obligation to carry out verification checks of the weighing card adduced in evidence by the appellant. To find that such an obligation existed is *per se* a serious error of law. Secondly, the weighing card did nothing to confirm paternity, but only date of birth as Ground 1 asserts. Contrary to what the judge found, the matter of paternity, central to the refusal and to the outcome of the appeal, remains outstanding.
6. In the circumstances, I set aside the decision. Whilst I note that there is no obligation on the appellant to adduce DNA evidence, I observe that such would evidence would resolve the central issue of paternity. I also agree with Mr Lindsay that the next hearing in the First-tier Tribunal (to which this appeal is returned for it to remake the decision) shall be a face to face hearing; the sponsor should make every effort to attend that hearing.

Notice of Decision

The decision of the First-tier Tribunal is set aside. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the following an oral hearing *de novo*

C. N. Lane
Judge of the Upper Tribunal
Immigration and Asylum Chamber
Dated: 14 September

2023