



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No.: UI-2023-004771**  
**First-tier Tribunal No:**  
**HU/60462/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 15 December 2023**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL McCARTHY**

**Between**

**TRESORINE YAHMIE KANZA**  
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER, SHEFFIELD**

Respondent

**Representation:**

For the Appellant: Mr E Waheed, instructed by Jullizz Solicitors LLP  
For the Respondent: Ms H Gilmour, Home Office Presenting Officer

**Heard at Field House on 8 December 2023**

**DECISION AND REASONS**

1. The appellant appeals, with permission granted by First-tier Tribunal Judge Curtis, against the decision of Judge Swinnerton promulgated on 19/10/2023.
2. This was a hybrid hearing at the request of the Presenting Officer. There were no connectivity issues.
3. After a brief discussion, the parties agreed that there is an error on a point of law in the decision that requires it to be set aside and remitted for a fresh hearing.

4. The first ground of appeal challenged the assessment of the sponsor's credibility, which had been undermined by an apparent discrepancy in the oral evidence. At paragraph 7 of the decision, the judge acknowledged that the sponsor had mental health difficulties. Looking at the medical evidence, it is clear that his difficulties affected his memory. It is not clear that the judge gave any attention to these difficulties when reaching a conclusion that the sponsor lacked credibility and had failed to show that the appellant's mother had died.
5. The failure to take proper account of the sponsor's vulnerability is contrary to the Senior President of Tribunal's 2008 Practice Direction and the Joint Presidential Guidance of 2010.
6. In this case, the failure is compounded because the judge decided that the documentary evidence relied on to establish the mother's death (which was a court document) was not definitive. It is unclear why the judge rejected that evidence. It seems her concerns related to her finding that the sponsor was not a credible witness. As I have already indicated, that is not sound reasoning in the circumstances in this case. In addition, the judge appears to apply too high a standard of proof by looking at the document as not being definitive and by suggesting the sponsor had not done enough to obtain a death certificate. The latter argument is weakened by the fact there is no evidence to indicate that it would be as straightforward a matter to obtain a death certificate in the DRC as in this jurisdiction.
7. As the parties agreed there was legal error in the decision that affected the credibility findings, the appealed decision should be set aside and remitted to be heard afresh.

#### *Other matters*

8. I reminded those present that documents for Upper Tribunal proceedings must be uploaded to CE File and not CCD. Mr Waheed admitted his instructing solicitors had not complied and would remind them. As can be seen, the failure did not cause any difficulty for this appeal and I impose no sanctions.
9. Because of my findings, I did not need to consider whether to admit post-decision evidence from the Presenting Officer who appeared below or from the social worker, Mr Patrick Moore. It was also not necessary to dwell on whether there had been a factual misunderstanding arising from the sponsor's accent in English and the absence of a Lingala interpreter.
10. For the record, I refused permission to admit the additional evidence as it is not material to the error of law decision. I also refused the request for a copy of the recording or for a transcript, the latter because another Practice Direction from the Senior President of Tribunals in 2008 states in effect that unless there are exceptional circumstances, the person requesting the transcript must pay for it.

11. I mentioned to Mr Waheed that should the SSHD wish to rely on the sponsor's testimony in the previous hearing, an application can be made to the First-tier Tribunal for the parties to listen to the recording. The parties will no doubt be required to set out their positions so neither will be taken by surprise.
12. I also recommend that a Lingala interpreter is booked for the remitted hearing to ensure similar difficulties do not arise.

### Notice of Decision

The decision appealed against contains legal error and is set aside.

The appeal is remitted to be heard afresh in the First-tier Tribunal before a judge other than Judge Swinnerton.

It is recommended that before the appeal is reheard, the First-tier Tribunal considers whether the sponsor is to be treated as a vulnerable witness and to make any necessary adjustments that are reasonable.

It is also recommended that the First-tier Tribunal books a Lingala interpreter for the rehearing.

Judge John McCarthy

Deputy Upper Tribunal Judge

Date: