



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

Case Nos: UI-2022-005227  
UI-2022-005228  
First-tier Tribunal Nos: EA/01011/2022  
EA/01012/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

29<sup>th</sup> January 2024

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**MAMUDOU FOFANA  
MUSA FOFANA  
(Anonymity Order not made)**

Appellants

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Khan, of Nationwide Law Associates  
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

**Heard at Field House on 25 January 2024**

**DECISION AND REASONS**

1. The appellants appeal, with permission, against the decision of the First-tier Tribunal dismissing their appeals against the respondent's decision refusing their applications under the EU Settlement Scheme (EUSS).
2. The appellants are nationals of Gambia and are brothers whose dates of birth are given as 15 March 2004 and 12 February 2002 respectively. They applied to the EUSS on 15 October 2021 as the family members of a relevant EEA national, their father Mahamadou Fofana Sidebeh, a Spanish national living in the UK.
3. Following receipt of their applications, the respondent sent both appellants letters on 11 December 2021 requesting further information in relation to the birth certificates they had submitted, advising them that there were concerns that the

documents may not be authentic and that consideration was being given to refusing the applications on that basis. The various concerns were listed in the letters. The appellants were given 14 days to respond addressing the concerns set out in the letters and providing the requested evidence in relation to their EEA national sponsor. The appellants responded, providing further copies of their birth certificates accompanied by a letter of authenticity purportedly from the Gambian Registry of Births & Deaths.

4. The appellants' applications were both refused on 5 January 2022.

## **Refusal Decisions**

### First Appellant

5. With regard to the first appellant, the respondent noted that he had initially provided a birth certificate, number 2324678 registered 23 March 2004, issued on 23 February 2004 [this should be 23 March 2004] and signed by O.F.S Ceesay as evidence of his relationship to the sponsor. The respondent listed the various concerns about the birth certificate, as raised in the letter of 11 December 2021, as follows:

- "There are clear signs of the document having been edited, for example, the "1"s in the dates 2014 have clearly been changed to "0"s
- The information in the column "No." is not what is expected given the rest of the data in the document.
- Your birth is listed as being registered late, but the dates in the other columns do not reflect this and show your birth as being registered on time 7 days after your birth.
- The book number it was entered into is the same as your stated siblings, given the difference in registration date we would not expect this.
- The record numbers of each of yours and your sibling births are sequential, this is also unlikely given that they here all reportedly registered years apart at the times of your births.
- The year of registration is listed as 2014 in one place but then as 2002 in another."

6. The respondent noted that the appellant had since provided a new birth certificate, numbered 2995867, registered 23 March 2004, issued on 16 December 2021 [should be 2014] and signed by O.F.S Ceesay and accompanied by a letter of authenticity from Lamin B. Fatty. The respondent assessed the birth certificate alongside that produced for the second appellant, stating the following:

"I have concerns with the new documents, as the "No." column contains the book of entry and the entry number. Your sibling's entry is sequential with your own even though it is purported to have been registered 10 years later. This brings further doubt on whether the new birth certificate you have provided is genuine either. The "No." column lists the year of registration as 2014, yet the "when registered" column lists the year of registration as 2004. The letter of authentication accompanying the document also lists the year of registration as 2004 when the birth registration numbers clearly state 2014. As such we do not believe that the new birth certificate you have supplied is any more genuine than the previous one that we believed was false."

### Second Appellant

7. With regard to the second appellant, the respondent noted that he had initially provided a birth certificate, number 2324996 registered 19 February 2002, issued on 19 February 2002 and signed by O.F.S Ceesay. The respondent again listed the various

concerns about the birth certificate, as raised in the letter of 11 December 2021, as follows:

- “The information in the column "No." is not what is expected given the rest of the data in the document.
- Your birth is listed as being registered late, but the dates in the other columns do not reflect this and show your birth as being registered on time 7 days after your birth.
- The book number it was entered into is the same as your stated siblings, given the difference in registration date we would not expect this.
- The record numbers of each of yours and your sibling births are sequential, this is also unlikely given that they here all reportedly registered years apart at the times of your births.
- The year of registration is listed as 2014 in one place but then as 2002 in another.”

8. The respondent noted that the second appellant had since provided a new birth certificate, numbered 2995866, registered 23 March 2014, issued on 16 December 2021 and signed by O.F.S Ceesay and accompanied by a letter of authenticity from Lamin B. Fatty. The respondent assessed the birth certificate alongside that produced for the first appellant, stating the following:

“I have concerns with these documents, as the “No.” column contains the book of entry and the entry number. Your sibling’s entry is sequential with your own even though it is purported to have been registered 10 years earlier. This brings further doubt on whether the new birth certificate you have provided is genuine either. Your birth was also registered 14 years after your date of birth, this gives us reason to believe that even of the document is genuine, that the information it contains may not be factual.”

9. The respondent considered that it was proportionate to refuse the appellants’ applications as the documents supplied were considered to be false and could not be relied upon to confirm their relationship to the EEA sponsor. In the absence of other acceptable evidence, it was considered that the appellants were not related to the EEA sponsor and that they did not meet the requirements for settled or pre settled status under the EU Settlement scheme. The applications were accordingly refused under rule EU6 and under the suitability provisions in EU16(a).

10. The appellants gave notice of appeal against the respondent’s decisions, asserting that the Secretary of State had failed to consider that they had been granted entry clearance on the same evidence which had been provided in the current applications.

11. The appeals came before First-tier Tribunal Abebrese on 27 July 2022. The sponsor attended by video-link and gave oral evidence, expressing his surprise at the objection to the documents given that they were first made available when the entry clearance application was made and no objections were raised at that time. The sponsor gave evidence that he did not have DNA evidence as proof of his relationship to the appellants and he explained that the delay in providing the birth certificates was because he resided in the rural part of the country where it was not unusual for the process to take so long. He answered questions about the dates in the birth certificates. It was submitted on behalf of the appellants that the documents were genuine.

12. The judge considered that the appeals could not succeed because of the doubts raised by the respondent which had not been adequately dealt with by the appellants and the sponsor and he accordingly dismissed the appeals in a decision dated 17 August 2022.

13. The appellants sought permission to appeal to the Upper Tribunal against Judge Abebrese's decision on the grounds that the judge had failed to consider the other documents besides the birth certificates confirming the date of birth of the appellants; that the judge had failed to give consideration to a letter issued by the relevant authority confirming that the birth certificates were genuine; that the judge had wrongly rejected the fact that the appellants had used the same documents and the same birth certificates when applying for entry to the UK and that the ECO had accepted the documents as genuine and granted entry clearance based on the documents; and that the respondent ought to have invited the sponsor and appellant to carry out DNA tests if there were serious concerns.

14. Permission to appeal was granted in the First-tier Tribunal.

### **Hearing and Submissions**

15. The matter then came before me for a hearing. Both parties made submissions before me.

16. Mr Khan submitted that there was only one error in the documents, namely as to the year of birth of the first appellant in his birth certificate, and that that had since been corrected by the Gambian authorities. He submitted that an explanation had therefore been provided by way of the letter from the Gambian Registry of Births and Deaths, the judge should have accepted that and that it was unreasonable to question the Gambian authorities' procedure in registering births. Mr Khan submitted that the error had been made by the Gambian authorities and it was not up to the appellants to explain why they had made that error. He submitted further that there were other documents such as the Family Certificate which provided details of the appellants' dates of birth as well as copies of the appellants' passports, all of which had been disregarded by the judge, and that the judge had put too much weight upon one error which had since been corrected.

17. Mr Lindsay referred to the inconsistencies in the birth certificates which he submitted showed that, at its best, the evidence was confused. The judge had therefore reached the only conclusion that was open to him and it would have been wrong for him to find the other documents reliable.

18. In response, Mr Khan submitted that there were no contradictions in the documents and that any difference in dates was due to when the information was extracted from the birth registry.

### **Discussion**

19. The respondent's case before Judge Abebrese was essentially that the appellants had failed to discharge the burden of proof to provide an innocent explanation for the various concerns raised in the refusal decisions. It seems from [14] of the judge's decision that the same submissions were made before the judge for the appellants as have been made before me, namely that it was not reasonable for the respondent or the judge to question the Gambian authorities' processes, that there was only one discrepancy in the documents and that the entry clearance officer had accepted the documents when granting entry clearance to the appellants.

20. Mr Khan asserts that Judge Abebrese erred in his decision by finding against the appellants. He submits that there was in fact only one error, in only one of the birth certificates, which was a simple mistake made by the Gambian Registry of Births and Deaths and which had since been corrected by them. That sole error, he submits, was

the '1' in the years being changed to a '0' in the first appellant's birth certificate and was not the appellant's own error which he could be expected to explain. His case was that there was otherwise consistent evidence of the appellants' birth dates and the registration of their births and that the respondent and the judge were wrong to have the other concerns stated because the other entries were consistent with the procedure for registering births in Gambia. He submits that the judge ought to have accepted the letter from the Gambian authorities confirming that the birth certificates were genuine and that it was unreasonable for the respondent and the judge to question the procedure for registering births in Gambia.

21. Mr Khan's assertion that there was only one error in the documents, which had been amended, is, however, clearly wrong. The respondent identified various errors in the documents. With regard to the first appellant, those errors included not only the editing of the first birth certificate to change the '1's in the years to '0', but also the fact that the record numbers of the certificates of the two brothers were sequential despite the births apparently being registered years apart as well as the year of registration shown in the new birth certificates (under 'no' and 'when registered' ) differing by 10 years. With regard to the second appellant, there were the same concerns about the record numbers of the certificates of the two brothers being sequential despite the births apparently being registered years apart, but also the year of registration in the first certificate produced being 2014 under 'no.' but 2002 under 'when registered' and the new birth certificate giving a different date of registration of the birth to that in the first certificate.

22. In addition, Mr Lindsay identified further discrepancies arising out of the new birth certificates in relation to the date given for the information being extracted, which was 16 December 2014 in the first appellant's certificate and 16 December 2021 in the second appellant's certificate, whereas both certificates were written and signed by the same person in the same handwriting, but several years apart. Although Mr Khan sought to suggest that there was no inconsistency as that was simply the date the information was extracted from the birth register, it seems to me that since the accompanying letter from the Gambian Registry of Births and Deaths was dated 16 December 2021, the date 16 December 2014 appears to be yet another 'error'.

23. As for Mr Khan's submission that it was unreasonable for the respondent and the judge to question the procedure for registering births in Gambia, and his own attempt at explaining how births were registered together for family units, the problem with that is that he was making unsupported assertions of his own and was merely speculating. It is not suggested that he is an expert on Gambian birth registration and documents. No expert evidence was produced nor explanations provided by the appellants to support any such assertions, despite there having been ample opportunity to do so, either in response to the respondent's letters of 11 December 2021 or for the appeals before the Tribunal. The fact that the Gambian Registry of Births and Deaths with the accompanying new birth certificates raised further discrepancies was a proper reason not to accept that evidence at face value.

24. Mr Khan submitted that the judge was in any event wrong to focus only on the birth certificates and to give the matter the weight that he did, when there were other documents which he failed to consider, namely the Family Certificate, the appellants' passports showing their dates of birth and the fact that the appellants' documents had been accepted by the entry clearance officer when they were granted entry clearance. In that respect it is relevant to note that the respondent's concerns about the birth certificates was not simply as evidence of the appellants' dates of birth, which had to be viewed as against the other evidence such as their passports, but rather the

concerns went to the reliability of the evidence of the appellants' relationship to the sponsor. The judge did not have before him any evidence to show that documents the entry clearance officer had before him when he granted entry clearance and, as he properly found, the fact that the documents were not questioned previously did not preclude them from being assessed and questioned subsequently for the current application.

25.As for the Family Certificate in the appellants' appeal bundle, it is correct that the judge did not make specific reference to the document. However the judge had before him appeal bundles for the respondent and for the appellants, as he confirmed at [10], and he made clear at [15] that he had considered all the evidence before him. That evidence also included the sponsor's oral evidence as well as the submissions from both parties. The judge was not required to refer to each and every document in the appellant's bundle and there is no reason to conclude that he disregarded any of the documents. It is unsurprising that he focussed on the birth certificates when that was the focus of the respondent's refusal decision and when there were significant inconsistencies in the documents. The fact that the appellants were relying upon such documents which were found to be unreliable clearly led the judge to conclude that none of the evidence about the appellants' relationships to the sponsor could be relied upon. It seems to me there was nothing unreasonable in the judge reaching such a conclusion.

26.As for the assertions made about the judge's reliance upon an absence of DNA evidence, it seems to me that the judge was perfectly entitled to draw adverse conclusions from the absence of evidence which the appellants could reasonably have been expected to produce to resolve the concerns raised by the respondent, both in the letters of 11 December 2021 and the refusal decisions. That was not a matter which the judge mentioned only in his decision, but was a matter which had been put to the sponsor at the hearing and which he had clearly had an opportunity to address. There was no obligation on the respondent to invite DNA tests to be done. It was clear to the appellants that the respondent had serious concerns about their relationship and the burden of proof was upon them to dispel those concerns and prove their relationship. DNA evidence would have been determinative of the issue and, whilst there was no requirement for DNA tests to be done, the judge was perfectly entitled to take account of the lack of reliable supporting evidence as a whole when determining the appeals.

27.For all these reasons I do not consider the grounds to be made out. As Mr Lindsay submitted, the evidence available to the respondent and to the judge was, at its very highest, confused. In the circumstances, the judge was perfectly entitled to conclude that the appellants had failed to demonstrate their relationship to the sponsor for the purposes of meeting the eligibility requirements under Appendix EU. Mr Lindsay submitted that it is open to the appellants to produce DNA evidence to prove the relationships and make fresh applications. For the purposes of this appeal, however, the judge was entitled to conclude as he did and did not err in law in so doing.

### **Notice of Decision**

28.The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeals stands.

29.The First-tier Tribunal made an anonymity order but no reason has been given as to why that was necessary or appropriate, and in any event both appellants are now

adults so that such an order is no longer required. I therefore discharge the anonymity order previous made.

Signed: S Kebede  
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

26 January 2024