



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005331

First-tier Tribunal Nos: HU/53249/2022
IA/05054/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 7th of May 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

Miss Christine Nhyira Asare Kwakye
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Layne (Counsel), Wisemart Solicitors

For the Respondent: Mr Lindsay, Senior Home Office Presenting Officer

Heard at Field House on 21 February 2024

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Bartlett, promulgated on 8th November 2023, following a hearing at Taylor House on 2nd November 2023. In the determination, the judge allowed the appeal, whereupon the Respondent Secretary of State, subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a citizen of Ghana, a female, with a disputed date of birth. She applied for entry clearance on 16th December 2021, which was refused by the Respondent in the refusal letter of 26th April 2022 on the grounds that the Appellant's relationship with the Sponsor was disputed, as was her identity.

The Appellant's Claim

3. The Appellant's claim is that she is setting out to join her mother in the United Kingdom and that, not only is her relationship with her mother genuine and verifiable, but that her identity is exactly who she claims to be, so that she has been wrongly refused entry clearance.

The Judge's Findings

4. The essential point of contention, as the judge explained, was to do with a series of applications made in 2014 in the name of a person known as "Nhyira Asare" who gave a date of birth as 13th March 2004. These applications, made on three separate occasions, for a visit visa, had all been refused. In these applications, the Applicant claimed to have been born in Accra. The name of the mother and the father of the Applicant on those occasions was different to the name of the sponsoring mother on this occasion. In those applications, it was said that the Applicant lived with her aunt.
5. By the time of the appeal before Judge Bartlett, the Respondent had carried out a review on 25th May 2023 whereby it was confirmed that in the light of the DNA report, it was now accepted that the Appellant and the Sponsor were indeed mother and daughter as claimed. This meant that the relationship was accepted (see paragraph 3(a)). However, it was not accepted that the Appellant was under the age of 18 at the date of the application because her birth certificate was not accepted as proof of her identity.
6. At the hearing on 2nd November 2023, Judge Bartlett initially gave consideration to adjourning the appeal because of the fact that copies of the photographic identity documents of the Appellant in her bundle were not clear. The judge was "concerned that the case might need to be adjourned or evidence submitted" (at paragraph 4) but the Appellant's Counsel submitted that there was a copy of the Appellant's passport photo on her ID page, which was allegedly more clear. However, the judge concluded that, "I do not consider that this page is clear because the main photograph has a reflection of the flash or a light which bleaches out the clarity of the photo" and that, although, "there is another photo on that page but unfortunately the page crease goes straight through the mouth area of the photograph" (paragraph 4). Nevertheless, the judge did not adjourn and proceeded to hear the appeal with the Sponsor, Mrs Hammond, giving evidence (at paragraph 5).
7. When Mrs Hammond gave evidence, she maintained that, "she does not recognise the person in the photo ID used in the 2014 applications". In the light of her evidence, the judge went on to reconsider the photographic evidence again and observed that, "I consider that there are some similarities which are, perhaps, compounded by the fact that the person in both photographs wears a striking striped top", but that nevertheless, "having looked carefully at the photographs, I am willing to accept that they are of different people" (at paragraph 6).
8. The judge then went on to give further reasons for why his view was that the two photographs were indeed entirely different. He observed that, "the appellant has never claimed to have been born in Accra or to have been born in 2004 and she denies that the identification documents used in the 2014 applications are her" (paragraph 7). Moreover, the judge observed that, "the 2014 applications are in the name of Nhyira Asare and, aside from the similarity of the photos, that is the end of the common information between that person and the appellant".

Indeed, the judge also observed that, “they did not claim the same birthday, the same parents or the same place of birth” so that “it is reasonably likely that there is another individual that has the name Nhyira Asare”, which would not be unusual in itself because, “Most names are not unique and are shared by other people” (paragraph 8).

9. Finally, the Appellant’s representative also maintained at the hearing that, “the appellant's name was *Christine Nhyira Asare Kwakye* not Nhyira Asare and that she used her full name on her passport, her birth certificate and almost all the other documentation in the bundle”, and the judge observed that, “I accept this submission” (at paragraph 9). In pulling all these different strands together, the judge came to the view that the Appellant had made out her case and the appeal was allowed.

Grounds of Application

10. The grounds of application state that the judge made contradictory findings leading to an arguably perverse decision, in that she expressed significant concerns about the Appellant’s identity documents but then went on to allow the appeal despite those concerns.
11. Permission to appeal was initially refused by the First-tier Tribunal on 7th December 2023 on grounds that, notwithstanding the concerns of the judge, she had given clear reasons at paragraphs 6 to 11 for a finding, that the 2014 applications were made in respect of another person with a similar name to the Appellant. They were not made by the Appellant. Therefore, her claim could not be treated as being a fraudulent application.
12. However, on 19th January 2024, the Upper Tribunal granted permission on the grounds that in the light of the issues in respect of the photographic identity documents which the judge had identified at paragraph 4 of the decision, there was arguably insufficient evidence for the judge to make the finding in the way that she did.

Submissions

13. At the hearing before me on 21st February 2024. Mr Lindsay, appearing on behalf of the Respondent Secretary of State, submitted that there was a single ground of appeal and that was that Judge Bartlett had misapplied the law. The Appellant had in 2014 made similar applications using different names. The judge had noted that she had significant concerns that the photo ID was unclear, and in a case like this the photographic evidence should be clear. Indeed, the judge had considered adjourning the appeal so that clear evidence could be provided. However, in fairness to both parties, the judge then decided to proceed with the hearing. What the judge did not consider was the “overriding objective” which would have led the judge to actually adjourning the appeal. If one looks at the Appellant’s bundle (at page 30), it is clear that there is a significant glare over the passport photo and this had always been an issue which should have led the judge to adjourned the appeal. Yet, the judge observes (at paragraph 6) that, “despite the clear similarities ... I am willing to accept that they are of different people”, and there simply was not a proper basis for this finding. Furthermore, it is true that the judge stated also (at paragraph 8) that the Applicant in 2014 and the present Applicant did not claim the same parents or the same place of birth but this is not enough of a basis for the judge to simply say that, “there may well be someone else in Ghana called Asare Kwakye”.

14. For his part, Mr Layne submitted that it was not denied that the judge had (at paragraph 4) expressed concerns about the passport pictures. There were two photographs. The last photograph had a camera glare on it but the smaller one did not, and was clear enough for the judge to take a different view on it. More importantly, the 2014 photo is that of one child who is 10 years old. These were two completely different people and the judge was entitled to come to this decision. If one looks at the judge's reasoning (at paragraph 6) it is clear that the judge gives reasons for why she should conclude that these are two different people. Indeed, the judge then goes on to make other findings (at paragraph 9) and these are that the Appellant has used her full forename description. This is important. The Appellant's birth certificate, her passport, and the Ghanaian passport, together with the previous expired passport (which expired in 2015), all use the *full* name description of her. It was important to recognise that if the Appellant's passport did not expire until 2015, carrying her full forename description, there was no need for her to use another passport belonging to someone else. The multiple applications in 2014 (one in August and two others in October 2014 and all by the name of "Asara Kwakwe") were not those of the Appellant, and it seems that the Appellant's application has got mixed up with somebody else's, on a previous occasion. To that extent the judge is not wrong in saying (at paragraph 8) that "most names are not unique and are shared by someone else". The fact is that the only application that the Appellant has made is the current one. She did not make an application in 2014. The judge was entitled to allow the appeal.

No Error of Law

15. I am satisfied that the decision of Judge Bartlett did not involve her in making an error on a point of law. This is because the judge approaches the appeal with an open mind and expresses her concern about the state of the copies of the photographic identity documents of the Appellant (at paragraph 4). She refers to the reflection of a flash on one photograph and an unclear photocopy of another photograph. However, the judge then heard evidence from Mrs Hammond (at paragraph 5). The judge went on to say that she had considered all the applications "and the supporting evidence contained in them when reaching my decision" (paragraph 6). Although the judge makes it clear that the Appellant "would have been well served to have provided a undeniably clear photographic ID", that is not to say that the judge, on a balance of probabilities, was not entitled to conclude as she did.
16. The way that the judge concluded was to say that, "there are some clear similarities" which are, "compounded by the fact that the person in both photograph wears a striking striped top" (at paragraph 6). However, at the end of the day, the judge was satisfied that they are of two different people. The Appellant has never claimed to have been born in Accra, or to have been born in 2004, or to have made any applications in 2014 (paragraph 7).
17. Furthermore, the applications in 2014 were "in the name of Nhyira Asare" and that is indeed the only similarity between the two sets of applications. As the judge observed, "they did not claim the same birthday, the same parents, or the same place of birth" (paragraph 8).
18. In addition, the Appellant in her application has used her full name of "Christine Nhyira Asare Kwakye not Nhyira Asare" which is also the full name that she uses on her passport, her birth certificate, "and almost all the other documentation in

the bundle” (paragraph 9). The judge accepted this to be the case. She allowed the appeal and was entitled to do so.

Notice of Decision

19. There is no material error of law in the judge’s decision. The determination shall stand.

Satvinder S. Juss

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

29th April 2024