IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001807
First-tier Tribunal No: HU/55730/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 27 June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

GIFTY SAKYIWAA BOATEMAA

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Mr Murphy of Counsel instructed by City Heights Solicitors
For the Respondent: Mr Parvar, Senior Home Office Presenting Officer

Heard at Field House on 12 June 2024

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Ghana born on 21 March 2007. The appellant applied on 4 February 2023 to enter the UK as the child of Ms Vivian Boatemaa, her mother, who has leave to remain in the UK. The respondent refused that application on 12 April 2023. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge S J Clarke ('the judge') on 21 March 2024. after a hearing on 20 March 2024.

2. Permission to appeal was granted by Judge of the First-tier Tribunal Gumsley on 19 April 2024, on the basis that it was arguable that the judge had erred in law under ground 1, that the judge failed to have any regard to the document verification report and handwritten birth

certificate copy provided by the appellant; and under ground 2, by failing to have regard to remittance records when assessing the question of sole responsibility. Although the appellants initially pleaded a third ground, permission was not granted on this ground and there was no renewal application to the Upper Tribunal to consider that ground. It was accepted therefore that only Grounds 1 and 2 were before me.

3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so whether any such error was material and thus whether the decision should be set aside.

Submissions – Error of Law

4. In the grounds of appeal and in oral submissions by Mr Murphy it is argued, in short summary, for the appellant as follows.

5. The judge did not accept the birth certificate produced by the sponsor and therefore considered the appellant was not a minor (paragraph [10]). The sponsor asserted in her statement that she does not read or write and always relied upon others to fill out an application for her. She stated that she did not know what information was inserted in the application forms that were filled out on her behalf.

6. The respondent's review stated that the sponsor had put a different date of birth for the appellant when she made her initial visit visa application. The respondent implied therefore that the date of birth on the appellant's birth certificate was false. This new allegation was made in the respondent's review. These allegations were not made out in the respondent's refusal letter.

7. The judge allowed the new allegation, that was made by the respondent to be a relevant consideration for the purposes of the appeal. The respondent relied upon an opensource news link. Again, the judge admitted this evidence.

8. However, the respondent did not produce a verification report to confirm that the document produced by the Home Office was in fact valid. It is submitted, that given the issue of the birth certificate was of such central importance, and went right to the heart of the credibility of the sponsor, it was imperative that the judge considered all relevant evidence in relation to this matter.

9. It was argued that the judge failed adequately or at all to carry out this task. Firstly, the appellant produced a document verification report in relation to the birth certificate (pages 30 to 32 of the appellant's bundle ('AB')). The judge failed adequately or at all to state what they made of this crucial evidence. It was submitted, that this verification report was a crucial document, which on the face of it, clearly corroborated the appellant's stance.

10. The appellant relied upon **MK V SSHD (2013) UKUT 641 (IAC):**

    (1) It is axiomatic that a determination discloses clearly the reasons for a tribunal's decision.

    (2) If a tribunal finds oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it is necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight is unlikely to satisfy the requirement to give reasons.

11. It was asserted that the judge's alleged failure to state what he made of the evidence, rendered the judge's determination to be flawed on reason spaces. In addition, the sponsor produced a handwritten copy of the actual birth certificate. Again, it was argued that the judge failed adequately or at all to state what he made of this evidence.

12. In terms of Ground 2 and sole responsibility, it was argued that it was imperative that the judge reviewed the evidence in the round, in order to come to a decision that considered all the evidence.

13. As a matter of fact, it was submitted that the sponsor produced hundreds of remittance records in the appeal bundle, setting out that these remittances were sent to the Appellant's current carer.

14. It was argued that it was essential that the judge considered this evidence in arriving at their decision on sole responsibility. It was submitted, that the failure to do so by the Judge, rendered their decision in relation fundamentally flawed.

15. In their Rule 24 response and in oral submissions by Mr Parvar for the respondent it is argued, in short summary as follows:

16. It was argued that the judge's determination provided sufficiently detailed consideration of the birth certificates to inform the conclusions made. Weight remains a matter for the judge, and it was open to the judge to come to the conclusions reached. The judge clearly attached weight to discrepancies in the dates of birth found in both the appellant's birth certificate and that of her half-brother when compared to the information provided by the sponsor in her Tier 5 visa application.

17. At paragraph [9] of the determination the judge refers to the document in question, a letter from the Birth & Deaths Registry dated 27 February 2024 and considers and finds at [10] that little weight should be attached.

18. It was submitted that neither the Entry Clearance Officer nor the appellant are expected to produce a verification report in relation to objective evidence. Consequently, the objective evidence relied upon

as set out within the review was evidence which the Judge was entitled to take into account. Upon reviewing the CCD platform it was apparent that the Respondent's Review was uploaded to the CCD platform on 21 December 2023. Thus the appellant was afforded sufficient time to address any issues raised within that response. An adjournment request was made by the appellant to obtain further evidence to address the points within the review some two months later, on 12 February 2024. The appellant was afford extra time and filed an updated bundle which the judge took into account. It was submitted therefore that the judge had not erred in considering the points raised in the respondent's review.

19. In terms of Ground 2, it was argued that it was inaccurate to suggest that the judge had not given sufficient regard to remittances when assessing sole responsibility. At [15] there was a clear reference to money remitted as part of the overall assessment of the issue of sole responsibility 'whilst the sponsor may have paid the school fees and remitted some money…' before a conclusion is reached. Adequate reasoning has been provided as to why the issue of sole responsibility has not been demonstrated, with the grounds disagreeing with the judge's decision.

Conclusions – Error of Law

20. The judge took into account the DNA evidence which confirmed the appellant, and the sponsor were related as claimed. However the judge reminded himself, at paragraph [5], that the appellant's birth certificate was not accepted by the respondent, and it was not accepted that the appellant was a minor.

21. Whilst the grounds of appeal appeared to question the judge considering the respondent's allegation that the appellant was not a minor, when it was raised in the respondent's review, Mr Murphy made no specific submissions in relation to this aspect of the grounds. In circumstances where it is not disputed that the appellant's representative was allowed additional time to provide further evidence after the respondent's review and where there was no indication at the hearing of any objection to the judge considering this issue, it was open to the judge to consider the concerns raised in relation to the appellant's birth certificate. It was incumbent on the appellant to indicate that this was in dispute to the First-tier Tribunal, in terms of procedural fairness, if that were the case **(Lata (FtT: principal controversial issues) India [2023] UKUT 163 (IAC)**). There was no procedural fairness and no error in the judge's approach.

22. Specifically in her application to enter the UK in 2013, the sponsor stated that the appellant was born on 21 March 2004 (and her half brother G who was successful in his appeal, in 2002). The judge noted at [7], that the sponsor, in a change of conditions application on 8 August 2021, when asked if there were people who depended on her who

would not be part of her leave to remain application, she stated 'no' having not mentioned in her family route application in July 2020 that she was visiting her two children in Ghana, only listing her mother and father.

23. Although the judge noted that the sponsor tried to distance herself from the answers given by her in her application forms, the judge found, at [8] that he did not believe the sponsor, noting that she has the ability to ensure that someone reads the answers and noting that she had benefitted from the answers and omissions in the forms. There was no specific challenge to those findings.

24. At [9] the judge considered the birth certificate produced by the appellant and noted that the respondent relied upon a different named person being appointed Registrar of births and deaths than the name on the document initially relied on by the appellant. The judge indicated that in response, the appellant relied on a letter from the Registry dated 27 February 2024, which is headed 'Verification of birth certificate Gifty Sakyiwaa Boatemaa', which indicated that Ms Boatemaa was born on 21 March 2007 and registered on 16 May 2022 and that the birth had been duly processed and entered into the Register of Births, signed by a Henrietta Lamptey. This is the 'document verification report' that the appellant claims the judge did not consider, when it is clear that the judge did. The judge also took into account that there was a new certified copy with the name of Henreitta Lamptey, and dated 15 February 2024.

25. It was open to the judge, who did not believe the sponsor, to find as he did, at [10], that little weight should be attached to the birth certificate because of the 'various irregularities' the judge set out at [9]. It is evident that the judge, having considered all the evidence in the round, did not therefore accept that the 'document verification' from H Lamptey or the additional evidence, outweighed the judge's concerns. The judge was also entitled to take into consideration, as he did, that there was no expert evidence of what checks/process was carried out in the issuing of the passport.

26. The judge did take into account the additional evidence produced by the appellant, including from Ms Lamptey, but rejected that evidence due to the discrepancies in the evidence. Ground 1 amounts to no more than a disagreement with the judge's reasoned findings, and is not made out. Any claimed error would not be material given the judge's findings on sole responsibility.

27. In terms of Ground 2, Mr Murphy did not argue this ground with any great force. The grounds argue that it 'was imperative that the judge reviewed the evidence in the round.' That is what the judge did.

28. Although Ground 2 argued that the sponsor had produced hundreds of remittance records and that it was essential that the judge considered

this evidence, the Tribunal should be slow to infer that a relevant point not expressly mentioned has not been taken into account (**MA (Somalia) v. Secretary of State for the Home Department [2010] UKSC 49, [2011] 2 All E.R. 65**).

29. However, it cannot be properly said that the judge did not take this financial evidence into account. The judge's reached comprehensive findings at [11] to [15] where the judge identified the gaps in the appellant's evidence including in relation to the appellant's medical care and the appellant's education, as well as to who took the necessary decisions and the gap in relation to the role played by the father. The judge also identified that there was no evidence from the appellant herself, despite the fact that it was her appeal.

30. It is difficult to see how the judge could have rationally reached any other conclusion, other than that the appellant had failed to demonstrate that the sponsor had had sole responsibility for the appellant from 2013 .

31. The judge in reaching those conclusions properly considered, at [15], that 'whilst the sponsor may have paid the school fees, and remitted some money', this was not sufficient to demonstrate sole responsibility. The judge had also taken into account that the sponsor paid the school fees, at [12]. It is apparent that the judge gave full consideration to the financial contribution made by the sponsor but was not satisfied that this was sufficient in the context of all the evidence, to demonstrate sole responsibility. Those were findings properly open to the judge. Ground 2 is not made out.

Decision

32. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I do not set aside the decision

M M Hutchinson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Date 20 June 2024