



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: EA/01388/2020

THE IMMIGRATION ACTS

**Heard at Field House
On 07 March 2022**

**Decision & Reasons Promulgated
On 25 March 2022**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

VICTORIA ATAA OWUSU

Appellant

and

ENTRY CLEARANCE OFFICER (ACCRA)

Respondent

Representation:

For the appellant: No appearance

For the respondent: Mr T. Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, 'VICTORIA', appealed the respondent's decision dated 09 January 2020 to refuse to issue a family permit as the direct family member of an EEA national. The appellant applied for a family permit to join her father, who is an Italian national. The respondent was not satisfied that the appellant had produced sufficient evidence to show that they were related as claimed.
2. A separate decision dated 09 January 2020 was issued to her twin sister Veronica Ataa Owusu ('VERONICA') giving the same reasons for refusal.

3. The documents on the court file indicate that two appeal forms were completed and lodged with the First-tier Tribunal. In the form relating to VERONICA, the address given for the sponsor appeared to accord with the format of an address in the UK i.e. number, name of building or road, town, and postcode. In the form relating to VICTORIA the same information was muddled, stating that the address for service was '18 Welwyn Garden City'. This made no sense as a UK residential address.
4. Although the file indicates that appeal forms for VICTORIA and VERONICA were received by the First-tier Tribunal, the Upper Tribunal has been unable to verify whether two sets of fees were paid for separate appeals to be lodged. The documents also indicate that an 'Online Coversheet' was completed in VICTORIA's name, naming her sister as another person who was appealing. The sheet states: 'please list their details below to enable us to keep your appeals together'. The file also contains a copy of an 'Online Coversheet' completed in VERONICA's name, naming VICTORIA as the linked appeal.
5. The Upper Tribunal can find no record of VERONICA's case being registered as a separate appeal.
6. The bundle of documents filed by the appellant provides no indication of when it was sent to the First-tier Tribunal. An undated letter from the sponsor indicates that, despite the inaccurate address, the family must have received some notification of the case because it includes the appeal reference for VICTORIA's case. In it, he also asks for an interpreter to assist him at the hearing. Unfortunately, the sponsor did not follow the usual convention of putting his address on the top of the letter.
7. A case management review form in VICTORIA's name was completed by First-tier Tribunal Judge Burnett on 21 July 2021. The form indicates that the Home Office bundle had been received but there was at that stage no bundle from the appellant. Nothing in the pro forma form completed by the judge for the court records asks the judge to consider whether there might be other cases to be linked.
8. The hearing notice sent on 16 August 2021 for the hearing on 21 October 2021 was addressed to the incorrect address of '18 Welwyn Garden City'. The hearing was listed as a remote video hearing. From this it is reasonable to infer that some form of electronic communication may have been sent to the email address given on the appeal form. It is unclear whether the hearing notice was received by the sponsor either in paper form at his residential address or by email.
9. There was no appearance by or on behalf of the appellant or the respondent at the hearing before First-tier Tribunal Judge K.R. Moore on 21 October 2021. Although it appears that the appellant sent further documents to the First-tier Tribunal, it is unclear whether she received the

notice of hearing. This may not have been the First-tier Tribunal's fault if her father's address was recorded inaccurately in the appeal form.

10. Given that there was no appearance by either party, Judge Moore determined the appeal on the papers. He considered the evidence produced by the appellant and explained why it was insufficient to establish the claimed familial relationship to the EAA sponsor. In the course of those findings he said:

'It is not clear to me why there are two certified copies of the appellant's birth certificate showing two different entry numbers in each of those certified copy documents. It would seem, in the absence of any reasonable explanation, that an applicant might be able to obtain any number of certified copies of a birth certificate on request.'

11. The documents on file indicate that the decision was served by email. The appellant must have received the decision because she applied for permission to appeal to the Upper Tribunal.

12. The application for permission to appeal was granted by First-tier Tribunal Judge Parkes in an order dated 29 December 2021 and in the following terms:

2. The grounds argue that the [judge] confused the birth certificates. Victoria and Veronica are twins and both appealed but only [one] appeal letter was sent, the writer deemed it was for both of them but the Judge failed to identify that the documents were for 2 different individuals. The grounds state that reliance on the USSD report does not necessarily mean that the birth certificates are genuine, I take it that the word "not" is missing. The receipts for the birth certificates had been thrown away. The appeal was dismissed as no one attended on their behalf and the Judge therefore erred. The grounds do not actually state how the Judge erred.

3. The Judge's decision was based solely on the papers, neither party being represented. The Judge discussed the evidence relating to the issuing and reliability of birth certificates at some length. When considering the documentation in paragraph 17 the Judge referred to there being different entry numbers but also discussed the absence of supporting evidence such as the birth weight record. The way that the decision is phrased throughout is in reference to a single Appellant, if there are 2 appeals for twin sister then it is not clear how that could have been missed. In the circumstances if the Judge failed to consider and deal with an extant second Appellant then that would be an error. Whether that makes a difference given the evidence that was available remains to be seen, but on the basis that an appeal might not have been identified and disposed of there may be an error.'

13. It is unclear whether Judge Parkes had the full set of papers before him when he made the decision to grant permission to appeal to the Upper Tribunal. Having identified that there might have been a second appellant, no enquiries seem to have been made to determine whether an appeal was registered for VERONICA. Having identified that there might have been a second appellant, no consideration appears to have been given to whether a procedural error might have taken place that might justify

setting aside the decision with reference to rules 34 and 35 of The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

14. There was no appearance on behalf of the appellant at the hearing in the Upper Tribunal today. I note that the tribunal records continue to show what appears to be an incorrect address for the sponsor. It is unclear whether the appellant or the sponsor received the notice of hearing. I considered that it was in the interests of justice to proceed to determine the appeal. There is no unfairness to the appellant given the outcome is that the Upper Tribunal is going to set aside the First-tier Tribunal decision as requested. On behalf of the Home Office, Mr Lindsay agreed that the decision involved the making of an error of law and that the appeal should be remitted to the First-tier Tribunal for a fresh hearing.
15. In view of the fact that three judges of the First-tier Tribunal have considered this case at various stages of the appeal, it is unfortunate that the procedural issues highlighted above were not identified at a much earlier stage. The problem should have been identified within the First-tier Tribunal and did not need to expend resources in the Upper Tribunal to be resolved. Nevertheless, it seems clear that Judge Moore determined the appeal based on a misapprehension of the evidence. The certified birth certificates in fact related to VICTORIA and her sister VERONICA, which explained why the entry numbers differed. Had all the papers on the file been considered, it may have been apparent that VERONICA's appeal might not have been registered and that something might have needed to be done to correct what may have been an administrative error.
16. I note that the appellant and her sister appear to be acting in person. The only reason given for refusing the family permit was insufficient reliable evidence to demonstrate their relationship to the EEA sponsor, who is said to be their father. There are more obvious ways to establish that relationship by DNA testing, but it is entirely a matter for the appellant what evidence she produces to support the appeal.
17. For the reasons given above I find that the First-tier Tribunal decision involved the making of an error on a point of law. The decision is set aside and remitted to the First-tier Tribunal for a fresh hearing.
18. In light of the problems highlighted above it is necessary to make case management directions. The Upper Tribunal will ask the First-tier Tribunal to check various pieces of information. In view of the fact that some of the confusion has been caused by inaccurate information provided in the original appeal form, the appellant should also comply with the following directions.

DIRECTIONS

19. **The appellant** shall confirm the following information to the First-tier Tribunal within 28 days of the date this decision is sent.

- (i) the full and correct postal address for service of documents and hearing notices;
- (ii) a full and correct email address (the email address given in the original appeal form has returned correspondence 'undelivered' on more than one occasion);
- (iii) to confirm whether the appropriate fee of £140 each was paid when the appeals were lodged or whether they lodged two forms with only one fee;
- (iv) any other information she considers might be relevant to assist the First-tier Tribunal in relisting the appeal.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The appeal is remitted to the First-tier Tribunal for a fresh hearing

Signed M. Canavan Date 07 March 2022
Upper Tribunal Judge Canavan

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

- 5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**
- 6. The date when the decision is “sent’ is that appearing on the covering letter or covering email**