



**Upper Tribunal
(Immigration and Asylum Chamber)**
(EA/06375/2020)

Appeal Number: EA/06376/2020

[UI-2021-001726]¹

THE IMMIGRATION ACTS

**Heard at Field House
On 19th August 2022**

**Decision & Reasons Promulgated
On 30th August 2022**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR LOUIS NKANSHA ADDAE
MISS AKOSU DUODUWAA ADDAE
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Miss H Gore instructed by Gans Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The second appellant, a national of Ghana born on 20th December 1998, appealed against the decision of First-tier Tribunal Judge Row² (“the

¹ Decision amended under Rule 42 of The Tribunal Procedure (Upper Tribunal Rules 2008)(as amended)

² Decision amended under Rule 42 of The Tribunal Procedure (Upper Tribunal Rules 2008)(as amended)

judge”) following the dismissal of her appeal against the Secretary of State’s decision dated 12th November 2020 which refused her application for a residence card confirming she was a former family member of an European Economic Area national exercising treaty rights.

2. In 2019, she and the first appellant, were granted a family permit but when they came to the UK on 25th October 2019 the immigration officer refused to allow them entry. They were released on immigration bail and absconded. Both appellants filed applications for residence cards under the Immigration (European Economic Area) Regulations 2016 (“the EEA Regulations”).
3. The applications were refused by the Secretary of State under regulations 7 and 18 of the EEA Regulations 2016 because the appellants were said not to have provided adequate evidence that they were direct family members. The respondent was not satisfied that they were the children of the sponsor.
4. The second appellant’s Ghanaian birth certificate was not accepted on her arrival to confirm her relationship to her EEA sponsor, and this was not accepted as evidence for her application. Further she had failed to provide any further evidence to confirm her relationship to her sponsor or that she was currently residing with her EEA sponsor.
5. First-tier Tribunal Judge Row³ dismissed the second appellant’s appeal on 29th September 2021. The first appellant’s appeal was allowed, however, on the basis that he had produced DNA evidence together with a birth certificate. The second appellant’s application was refused on the basis that there was no certified birth certificate and no DNA evidence.
6. The decision was challenged on the following grounds
 - (i) the standard of proof – the judge had expected DNA evidence which indicated a higher standard of proof was applied and
 - (ii) the judge failed to apply his mind to the relevant documentary evidence namely the certified copy of the birth certificate which was, in fact, in the file
 - (iii) failure to assess the credibility of the oral evidence of the sponsor.
7. At the hearing before me Mr Walker confirmed that the Rule 24 response dated 16th December 2021 had conceded that there had been an error of law in that the judge failed to establish the burden and standard of proof in the matter and the judge failed to take into account the certified birth certificate when criticising the appellant for failing to provide a certified copy of the entry of birth. A document purported to be the same had been produced. Nor had the evidence given by the sponsor been considered. The Secretary of State requested the matter be remitted to the First-tier Tribunal for a fresh hearing.

³ Decision amended under Rule 42 of The Tribunal Procedure (Upper Tribunal Rules 2008)(as amended)

8. At the hearing Ms Gore submitted that the matter could be decided on the papers but following taking instructions considered that further evidence should be provided, and an interpreter was required.

Analysis

9. Regulation 18 of the Immigration (European Economic Area) Regulations 2016 in so far as material states

“Issue of residence card

18.— (1) *The Secretary of State must issue a residence card to a person who is not an EEA national and is the family member of a qualified person or of an EEA national with a right of permanent residence under regulation 15 on application and production of—*

(a) a valid passport; and

(b) proof that the applicant is such a family member”.

10. It is for the appellant to show she is a family member, and the standard of proof is the balance of probabilities. It would appear however that the judge failed to take into account all available evidence including that of the sponsor albeit I consider it was open to the judge to comment on the lack of DNA evidence in relation to credibility and which had been provided for the first appellant.
11. In the light of the concession by the Secretary of State that there was a material error of law, the matter should be remitted to the First-tier Tribunal because of the nature and extent of the matters to be considered to the First-tier Tribunal.

Notice of Decision

The decision of First-tier Tribunal Judge Row⁴ in relation to the second appellant is set aside.

The decision of First-tier Tribunal Judge Row⁵ in relation to the first appellant shall stand and that appeal remains allowed. 's decision re

No anonymity direction is made.

⁴ Decision amended under Rule 42 of The Tribunal Procedure (Upper Tribunal Rules 2008)(as amended)

⁵ Decision amended under Rule 42 of The Tribunal Procedure (Upper Tribunal Rules 2008)(as amended)

Directions

- (i) A substantive appeal hearing for the second appellant is said to be listed in the First-tier Tribunal at Birmingham for 23rd August 2022. **If** that relates to this appeal, it is likely to be adjourned on application by the appellant because of the following directions.
- (ii) Any further evidence to be produced should be filed and served at least 14 days prior to any substantive hearing in this matter.
- (iii) The second appellant's solicitors should advise as to the interpreter language required.

Signed Helen Rimington
2022
Upper Tribunal Judge Rimington

Date 26th August