



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

Appeal Number: UI-2022-001208
EA/50784/2021; EA/10761/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 8th November 2022**

**Decision & Reasons Promulgated
On 12th December 2022**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**GIDEON BAFFUOR
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer

For the Respondent: Ms D Ofei-Kwatia, of Counsel, instructed by BWF Solicitors

DECISION AND REASONS

Introduction

1. The claimant is a citizen of Ghana born on 22nd November 1998. He applied under the EUSS for confirming of his right to reside as the son of an Italian citizen residing in the UK. His application was refused on 23rd March 2021. His appeal against the decision was allowed by First-tier Tribunal Judge S Taylor in a determination promulgated on the 9th December 2021.
2. Permission to appeal was granted by Upper Tribunal Judge Jackson on 8th August 2022 on the basis that it was arguable that the First-tier judge

had erred in law in allowing the appeal under the Immigration (EEA) Regulations 2016 when the application was made under the EUSS and a decision taken under these regulations, and so the wrong legal framework was applied, although it was noted that this error may not ultimately be material. Secondly, it was found to be arguable that the First-tier Tribunal misunderstood the position of the Secretary of State with respect to the claimant's birth certificate. The position of the Secretary of State was that the document was not reliable because the signature differed from that of the official on the list, not that it was signed by someone not on the list. It is also arguable that it was not rational to put reliance on the issuing of a family permit when there was an intervening refusal of a residence card. Again, however, a number of other matters were placed in the balance and these arguable errors might ultimately not be material errors of law.

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

Submissions – Error of Law

4. In the grounds of appeal and in oral and written submissions from Mr Melvin it is argued, in summary, as follows. The key issue in the appeal was whether the claimant was related as claimed to his Italian father, although it is argued that this was not the only issue which was relevant to his qualification under the EUSS.
5. Firstly, it is identified that at paragraphs 1,2, 5, 12 and 16 of the decision of the First-tier Tribunal makes references to the 2016 EEA Regulations. There is no reference to whether the appellant succeeds in his appeal under the Immigration Rules at Appendix EU for pre-settled or settled status as there should have been in light of this being the application made.
6. Secondly, it is argued, that the First-tier Tribunal did not understand that the Secretary of State argued that the reason the claimant's birth certificate was not accepted was that information provided to the British High Commission in Accra showing the signature of the official who signed the birth certificate indicated that the signature on the claimant's birth certificate was not the same. However at paragraphs 3(d) and 13 of the decision of the First-tier Tribunal the reasoning of the Secretary of State is misrepresented as being that the person who signed the claimant's birth certificate was not on the list provided to the High Commission in Accra.
7. Thirdly, it is argued, that the First-tier Tribunal erred in law by placing irrational weight on the issuing of a Family Permit based on this birth certificate when it maybe that in-depth enquiries about the birth certificate were not made at that time, but have now taken place.

8. Fourthly, it is argued, that the First-tier Tribunal erred in law, as the Family Permit expired in April 2020 so is not proof that the claimant is entitled to pre-settled or settled status under the EUSS. Mr Melvin also added that the new evidence in the supplementary bundle, which was relied upon by the First-tier Tribunal at paragraph 15 of the decision, was not before the entry clearance officer, and pointed out that the verification letter related to the newly issued copy of the birth certificate and not the one that had been before the Secretary of State with the application.
9. Ms Ofei-Kwatia articulated that the only matters that were necessary for the claimant to show to succeed in his application were a Family permit and a valid birth certificate. The validity of the birth certificate was the only matter on which the First-tier Tribunal therefore needed to make a decision. It was therefore not material that the wrong legal framework was set out, and ultimately there was sufficient valid reasoning as to why the birth certificate was found to be genuine to mean that there was no material error of law.

Conclusions – Error of Law

10. It is clear from the application letter made on the claimant's behalf by Bennard Wiseman Family Solicitors dated 12th January 2021 and the Secretary of State's reasons for refusal letter that the application made by the claimant was for status under the EUSS under EU14 of Appendix EU of the Immigration Rules, and was not an application under the 2016 EEA Regulations. The Secretary of State therefore makes a valid criticism of the decision of the First-tier Tribunal decision as at numerous paragraphs (1,2,5,12 and 16) reference is made to the previous legal framework under the Immigration (EEA) Regulations 2016. I find that this is an error of law, as however alerted to in the grant of permission, and the submissions of Mr Ofei-Kwatia, the question is whether this error is ultimately material if in fact the First-tier Tribunal made all of the relevant factual findings to reach a decision.
11. Whilst the Secretary of State argues that it is not the case that only showing the claimant is related as claimed to his father is the only matter relevant to EUSS, there is no explicit challenge to the finding at paragraph 12 that the only reason the application was not granted was the doubts over the validity of the birth certificate. This is the only issue put in dispute in the reasons for refusal letter, and the First-tier Tribunal identifies the other issues which go to the grant of EUSS status and records that they are not challenged as having been met in paragraph 12 of the decision. Ultimately, I therefore find therefore that the errors the First-tier Tribunal make in setting out the legal framework, whilst very regrettable, are not material unless the assessment of this issue is also flawed by error of law.

12. The challenge to the factual findings that the claimant is the son of his Italian father is flawed is that the case against putting reliance on the birth certificate misunderstands the reason for the Secretary of State's concerns and puts undue/irrational weight on the original issuing of a family permit based on this document. It is the case that erroneously, at paragraph 3(d) of the decision, the First-tier Tribunal records the issue taken by the Secretary of State with the birth certificate as being that the particular official who signed it was not on the list provided by the Ghanaian authorities to the British High Commission in Accra, and this error is repeated at paragraph 13 of the decision. In fact at page 2 of the reasons for refusal letter it is recorded that the reason the Secretary of State doubted the birth certificate was that the signature the Ghanaian authorities had provided for the particular official did not appear to match that on the birth certificate. It is therefore clear that the birth certificate was apparently signed by an official with power to do so but the implication is that it may not be his actual signature. I find that this was an error of fact amounting to an error of law but once again the question arises as to whether this is a material error.
13. To consider whether this error is material I must look at the other reasoning of the First-tier Tribunal finding that the birth certificate is genuine. It is arguable that the fact that the birth certificate was previously accepted when the Family Permit was issued as genuine, because on its face it has no obvious anomalies, as set out at paragraph 14 of the decision is not a very strong argument for finding that the potentially discrepant signatures is not a factor against it. As the Secretary of State has argued in her grounds it may not have been scrutinised with the same degree of intensity previously. However at paragraph 15 of the decision reliance is made to the fact that the claimant has now produced additional documentation from the hospital where he was born, a baptismal certificate and a further letter from the birth certificate registry confirming that his birth certificate is genuine. There is no challenge that these findings were not open to the First-tier Tribunal and there is evidence that these documents were not ones on which the First-tier Tribunal could properly place reliance. Further, at paragraph 16 of the decision, it is noted by the First-tier Tribunal that there is no actual document verification report supporting the contention that the signature on the birth certificate submitted with the application varied from the information on the birth certificate and those given to the Ghana High Commission. In these circumstances I find that the factual error amounting to an error of law, identified at paragraph 12 above, does not lead to a conclusion that there is a material error of law because the reasoning at paragraphs 15 and 16 of the decision suffices to mean that the outcome of the appeal would inevitably be the same even if the error had not been made.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

2. I uphold the decision of the First-tier Tribunal allowing the appeal.

Signed: Fiona Lindsley
Upper Tribunal Judge Lindsley

Date: 8th November 2022