



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

**Appeal Number: UI-2021-001680  
UI-2021-001681  
On appeal from EA/07089/2019  
EA/07090/2019**

**THE IMMIGRATION ACTS**

**Heard at Field House IAC  
On the 28 November 2022**

**Decision & Reasons Promulgated  
On the 06 February 2023**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**THE ENTRY CLEARANCE OFFICER**

Appellant

**and**

**MALIK OYINDAMOLA SANNI  
AZEEM OLAWALE JIMOH  
[NO ANONYMITY ORDER]**

Respondents

Representation:

For the appellant: Mr Esen Tufan, a Senior Home Office Presenting Officer  
For the respondents: Mr Daniel Coleman of Counsel, instructed by AA & Co,  
solicitors

**DECISION AND REASONS**

1. The Entry Clearance Officer appeals with permission from the decision of the First-tier Tribunal allowing the claimants' appeals against his decision

on 21 November 2019 to refuse them an EEA family permit to join their claimed parents in the UK, pursuant to the Immigration (European Economic Area) Regulations 2016.

2. The claimants are citizens of Nigeria. They were both under the age of 21 when these applications were made, if the birth certificates upon which they rely are reliable.
3. **Mode of hearing.** The hearing today took place face to face.

### **Background**

4. It is accepted that the sponsor, Mr Kazeem Sanni (Mr Sanni) is an EEA national exercising Treaty rights in the UK and that on 1 September 2016 in the UK he married his second wife, Mrs Idayat Bolanle Jimoh (Mrs Jimoh). The marriage certificate has been produced and there is no doubt about the marriage.
5. Mr Sanni and Mrs Jimoh claim that these claimants are, respectively, Mr Sanni's son from his first marriage (he was divorced) and Mrs Jimoh's son from her first marriage. Both boys were mentioned on the application made for Mrs Jimoh and her younger two children, a boy and a girl, to join Mr Sanni in the UK under the EEA Regulations as they then were.
6. Mrs Jimoh was a widow when she married the sponsor, and her younger son and daughter accompanied her to the UK when she joined him. There has been no explanation why the claimants did not accompany Mrs Jimoh when she joined him in the UK, as her younger children did. The application simply said that they were her dependants but were not travelling with her.

### **Refusal letters**

7. The Entry Clearance Officer considered that the claimants did not meet all of the requirements of the 2016 Regulations, in particular Regulation 12 thereof.
8. The Entry Clearance Officer's refusal was based on the lack of reliable evidence of the relationships asserted. The birth certificates were issued in 2018 and 2019 and there was no contemporaneous evidence of the claimants' birth, nor any other credible documentation evidencing their parentage. In particular, there has not been a DNA test to establish their claimed relationship to Mr Sanni and Mrs Jimoh.
9. Photographs of the claimants with Mrs Jimoh's children were produced but were not considered probative of the relationship claimed.
10. The claimants appealed to the First-tier Tribunal.

### **First-tier Tribunal decision**

11. The evidence before the First-tier Tribunal consisted of a death certificate for Mrs Jimoh's first husband, two late-produced birth certificates for the two claimants, together with the oral evidence of the sponsor and his wife, passport copies, and photographs of the family taken before anyone left Nigeria.
12. The First-tier Judge, in a very brief decision, accepted that the claimants were related as claimed:

"9. I find on the evidence before me that all the requirements in Regulation 7 have been met by both these dependents. The first [claimant] is the son of the EEA national and is under the age of 21. The second [claimant] is the son of the EEA national's spouse and is also under the age of 21. The [Entry Clearance Officer] has already permitted the younger two children of the sponsor's wife to enter the UK in the same capacity and they all share the same surname. I accept that the second [claimant] is her son and so is the stepson of the sponsor. The [claimants] do not have to show dependency in view of their ages at the time of the applications. "
13. The Entry Clearance Officer appealed to the Upper Tribunal.

### **Error of law decision**

14. By a decision dated 10 October 2022, I set aside the decision of the First-tier Tribunal for remaking in the Upper Tribunal. I did so on the basis of lack of reasoning in the First-tier Judge's decision for the key finding that the claimants were related as claimed.
15. That is the basis on which this appeal came before the Upper Tribunal.

### **The documents before the Tribunal**

16. Mrs Jimoh produced her late husband's original death certificate, with handwritten notes on the back said to have been written by her, asserting that she collected the original on 5 October 2009, the day after her late husband's death, the primary cause of which was noted to have been from 'biventricular heart failure, toxic hepatitis and septicaemia', with a secondary cause of cardiopulmonary arrest, both of which continued until death. Her late husband was 39 when he died. The information on the reverse of the death certificate is not incorporated into Mrs Jimoh's joint witness statement with her present husband, Mr Sanni, in these proceedings.
17. The claimants also rely on their birth certificates.
  - (a) The first claimant's birth certificate states that that it is an original document. According to the certificate, he was born in Surulere on 15 July 2003, his father being Kazeem Olumide Sanni and his mother Awoyejo Mistura Motunrayo. The birth certificate was issued in Surulere on 16 August 2019, when the first claimant was 16 years old. A sworn affidavit purporting to be from Mrs Motunrayo

gave her consent to her ex-husband taking the first claimant to the UK. The date on that document is 17 October but the year is illegible.

(b) The second claimant's birth certificate records his date of birth as 9 January 2000 at Ikorojo, Lagos, and his father as Kazeem Jimoh. His mother's name is given as Idayat Jimoh. The document was issued on 27 July 2018 at Mota Sanu.

18. Copies of passports for all members of the family are provided, as well as a quantity of family photographs.
19. Despite the concern about the familial relationships, there have been no DNA tests to establish the link between the claimants and their claimed parents in the UK.

### **Upper Tribunal hearing**

20. I heard oral evidence from Mr Sanni and Mrs Jimoh. They had prepared a joint witness statement, which I now summarise.
21. In the joint witness statement, Mr Sanni and Mrs Jimoh complain of the 3-year delay from the lodging of notice of appeal on 5 December 2019. They assert (which is not disputed) that they were exercising Treaty rights in the UK at the material times, and (which is disputed) that they have shown that the claimants satisfied the tests of nationality, identity, proof of relationship and proof of dependency.
22. After setting out the history of these appeals, they observe that the Entry Clearance Officer erroneously criticised their birth certificates: late-produced certificates are normal for Nigeria. They further observe that the reason why the certificate for the first claimant gave a different mother's name was because he was born to Mr Sanni's first wife; that both claimants were named on Mrs Jimoh's entry clearance application, though not as dependants accompanying her to the UK; that the Nigerian Population Commission birth certificates were valid even if hand-written and issued only when required, as here; and that there was photographic evidence supporting the relationships asserted between the first claimant and the sponsor, Mr Sanni, and the second claimant and Mrs Jimoh.
23. Mr Sanni adopted that evidence and confirmed his name and address. He spoke good English. He identified his two stepsons and his stepdaughter, as well as his own son, in two photographs produced to the Tribunal. He had with him the original death certificate for Mrs Jimoh's late husband, but not the disputed birth certificates, which he said were at home. If they were needed, he could bring them.
24. In cross-examination, Mr Sanni was asked how he would satisfy the Upper Tribunal that the relationships were as claimed. He said that he was 100% sure that the first claimant was his biological son by his former wife, and

that the second claimant was his stepson by marriage. The photographs had been taken before anyone in the family left Nigeria.

25. Mr Sanni said that he was last in Nigeria in October 2022. He and Mrs Jimoh had gone there for an emergency 11-day visit between 9 and 24 October 2022, because Mrs Jimoh's son, the second claimant, was sick in hospital with 'fever' due to mosquitos and a poor environment. The boy was fine before they left Nigeria on 24 October 2022 to come back to the UK.
26. Asked why he had not provided DNA evidence of the disputed relationships, Mr Sanni said it had not been requested. If the court, or the Home Office, wanted DNA evidence, he was more than happy to provide it. He was not aware that it was necessary for the claimants to discharge the burden of proving their relationship: DNA evidence had not been requested.
27. There was no re-examination.
28. Mrs Jimoh also adopted the joint witness statement as true, and confirmed her name and address. She identified the claimants in the photographs before the Tribunal.
29. Mrs Jimoh's English was not as good as that of Mr Sanni, but no interpreter had been requested. I am satisfied that, with the questions being posed carefully, she gave a clear account and understood what was being asked of her.
30. Mrs Jimoh said that they had gone to Nigeria in October 2022, for 11 days between 10 and 21 October. They went to greet their sons, as it had been a long separation. Both boys were healthy. Her own son, the second claimant, was well, although he does have asthma. Both claimants were living with Mrs Jimoh's sister, and during their visit, Mr Sanni and Mrs Jimoh also stayed at her sister's house.
31. In cross-examination, Mrs Jimoh confirmed that the second claimant is her biological son. She explained the recent date of his birth certificate by saying that after the death of her husband, she could not find all the documents and had to get a new one. It was a copy.
32. Asked why there was no DNA evidence, Mrs Jimoh paused for a very long time, twisting her hands. Finally, she said that she had not thought of that.
33. There was no re-examination.

## **Submissions**

34. In submissions for the Entry Clearance Officer, Mr Tufan said that the issue was a very narrow one. If the claimants had proved that they were related as claimed, then their appeals would succeed, and if not, they must fail.

35. The birth certificates relied upon both stated that they were 'original' not 'copy'. The photographs were not of much assistance. Mr Sanni and Mrs Jimoh had given discrepant evidence about exactly when, and why, they went to Nigeria in October 2022. The evidence about the second claimant's health was so discrepant that it should be seen as going to the credibility of the evidence of Mr Sanni and Mrs Jimoh.
36. The burden of proof on the claimants was not discharged and the Tribunal should dismiss the appeal.
37. For the claimants, Mr Coleman observed that this was not a specified evidence category and DNA evidence, although helpful, was not obligatory. It was open to the Tribunal simply to believe the witnesses. He suggested that Mrs Jimoh's evidence should not bear as much weight as that of Mr Sanni, as she had not understood the questions asked of her. That was not a point that Mr Coleman took during her evidence, although he now said that she should have had an interpreter to assist her.
38. Mr Coleman argued that Mr Sanni's evidence should be treated as reliable. It was more likely than not that the claimants were related as claimed.
39. The point taken by the Entry Clearance Officer about the mother of the first claimant was a bad point and had infected his decision. The refusal was unfair and unsound, and the witnesses corroborated each other's evidence.
40. The Canadian IRB evidence in the bundle indicated that the type of birth certificate produced was not uncommon. Mrs Jimoh had made notes on the back of her husband's death certificate to show how she obtained it.
41. The respondent had not undertaken any document verification checks on the death certificate or the birth certificates. On the basis of the wealth of evidence before the Upper Tribunal, there was no need for DNA confirmation of the claimants' identity and familial links. The overall aura was that of a genuine application: the Tribunal should not overlook the cultural differences.
42. The claimants' appeals should be allowed.

## **Analysis**

43. I begin with the joint witness statement. The production of a joint witness statement from two individuals is not helpful to the Upper Tribunal: the purpose of a witness statement is to set before the court the primary individual evidence of each witness. In this case, not only did both witness statements (signed this morning) omit the October 2022 visit and its reasons, but that of Mrs Jimoh also omitted the notes she made on the back of her husband's death certificate. She was not cross-examined on that death certificate and I approach this appeal on the basis that her husband died as stated.

44. It is striking that both statements omit the visit to Nigeria last month, and that Mr Sanni and Mrs Jimoh gave such different accounts of why they went to visit. I have considered what weight I can place on the language difficulty which Mrs Jimoh experienced with her oral evidence. I note that the claimants and sponsors have been legally represented throughout and that there was no request for an interpreter when I gave directions at the error of law hearing.
45. I am satisfied that Mr Tufan's and my questions were put to Mrs Jimoh in a way which she understood, and that I can place weight on her replies. I note that the claimant who Mr Sanni said was unwell was Mrs Jimoh's son: it is more likely than not that if he was seriously unwell, and that was the reason for their visit, that she would have been able to say so in her evidence to the Tribunal.
46. I find that I cannot place probative weight on the evidence of Mr Sanni or Mrs Jimoh.
47. I have considered what weight I can give to the birth certificates. I apply the test of reliability in the starred decision of *Tanveer Ahmed v. Secretary of State for the Home Department*, [2002] UKIAT 00439:
  - "38. In summary the principles set out in this determination are:
    1. In asylum and human rights cases it is for an individual claimant to show that a document on which he seeks to rely can be relied on.
    2. The decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round.
    3. Only very rarely will there be the need to make an allegation of forgery, or evidence strong enough to support it. The allegation should not be made without such evidence. Failure to establish the allegation on the balance of probabilities to the higher civil standard does not show that a document is reliable. The decision maker still needs to apply principles 1 and 2."
48. I do not find that the claimants have discharged the burden upon them of demonstrating that the birth certificates, issued many years after their birth (as is undoubtedly normal in Nigeria) can be relied upon as probative of their familial link as the sons of Mr Sanni and Mrs Jimoh. I do have regard to the absence of a DNA test: there has been ample opportunity to obtain that evidence and it would have settled the question, once and for all.
49. I have considered whether the photographs to which I was taken, and in one case, the passport photograph, assist the claimants. I find that they do not. The passport photograph is not very clear: it might be the second claimant, or it might not. There is no evidence as to how it was obtained, or whether it was based on the birth certificate for that claimant, which I have not found to be reliable or helpful in these proceedings.

50. The evidence before the Upper Tribunal does not satisfy me that these claimants are the sons of Mr Sanni and Mrs Jimoh. Accordingly, this appeal must fail.

## **DECISION**

51. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by dismissing the claimants' appeals.

Signed [Judith AJC Gleeson](#)  
2022

Date: 28 November

Upper Tribunal Judge Gleeson