



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2021-001864**  
**First-tier Tribunal No:**  
**EA/03349/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 11 September 2023**

**Before**  
**UPPER TRIBUNAL JUDGE HANSON**

**Between**  
**IVY NAANA DUROWAA**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: No appearance.

For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer.

**Heard at Phoenix House (Bradford) on 30 August 2023**

**DECISION AND REASONS**

1. There was no attendance on behalf of the appellant. I am satisfied there has been proper service of the notice of hearing to the last notified address provided to the Upper Tribunal, containing details of the date, venue, and time of the hearing. There is no evidence the notice has not been received and no application for an adjournment or explanation for the failure of anyone to attend on the appellant's behalf. I am satisfied it is appropriate in all the circumstances to proceed to determine the appeal in the appellant's absence. There is nothing before me to indicate otherwise.
2. The appellant appeals with permission a decision of First-tier Tribunal Judge Elliott ('the Judge'), promulgated on 12 December 2021, following consideration of the merits of the appeal on the papers at the appellant's request.
3. The appellant is a citizen of Ghana born on 24 December 1999 who challenges the Entry Clearance Officer's ('ECO') decision of 19 February 2021 to refuse her application for an EEA family permit as the extended family member of an EEA national exercising treaty rights in the United Kingdom.
4. The appellant claimed to be the dependent of her cousins Samuel Osei-Bonsu ('the Sponsor'), a Dutch national, residing and working in the UK, who was granted pre-settled status under Appendix EU of the Immigration Rules on 30 September 2020.
5. The concerns recorded by the ECO which led to the refusal of the application are in the following terms:

**Case No: UI-2021-001864**  
**First-tier Tribunal No: EA/03349/2021**

To evidence that you are a 'family member' of your EEA citizens sponsor you have submitted your Ghanaian birth certificate registered on 29 December 2017, and your sponsors Ghanaian birth certificate registered on 10 June 2010. I note that these birth certificate was not produced at the time of your birth and have considered the reports available online including the US Department of State website which states that "[r]egistrations not made within one year of an individual's birth are not reliable evidence of relationship, since registration, including late registration, may often be accomplished on demand, with little or no supporting documentation required. In the absence of any other document that supports your parentage, I am not satisfied that you have provided evidence that your relationship with your sponsor is as stated.

You state that you are financially reliant on your sponsor to meet your essential living needs and receive £120 monthly from him. In order for this office to establish your dependency, we must be satisfied that you require financial support from your EEA national sponsor to meet your essential needs. You have provided Western Union money transfer receipts between you and your sponsor in December 2017 and November 2020. I note that when checking a number of MTCN numbers on the Western Union transfer tracker, the tracking numbers cannot be found. This casts doubt on the authenticity of these transfer receipts. Furthermore, these receipts, in isolation, do not demonstrate your essential living needs. It is noted that you have not provided any evidence of these essential needs, such as utility or rent payments. I note that you have submitted a receipt of tuition fees from the University of Energy and Natural Resources dated 28 August 2018, however this evidence is of limited value when demonstrating your dependency on your sponsor. You have not provided any financial documents to demonstrate your circumstances, such as bank statements showing ingoing and outgoings. In the absence of additional evidence, this office cannot sufficiently establish your dependency upon your sponsor. I am, therefore, not satisfied that you are dependent on your sponsor as claimed.

6. The Judge notes no issue being taken with the claim the Sponsor is an EEA national, nor that he is a qualified person exercising treaty rights in the UK. The Judge's findings dealing with the issues in dispute are set out from [31]. At [33] the Judge finds the appellant is residing in a country other than the UK and intends to join the Sponsor here.
7. In relation to the birth certificates, the Judge refers to judicial knowledge of legislation in Ghana relating to the same, and the fact Ghanaian authorities allow late registration, the fact that the ECO will know that is a common situation in Ghana, which is why caution is exercised when considering the reliability of a birth certificate. Having considered the evidence, at [40] the Judge finds that the document produced in relation to the appellant, her biometric birth certificate, is a document upon which the Judge can rely.
8. At [41], however, the Judge writes:
  41. However there remains a problem, and that although the Appellant states that she and the Sponsor are cousins, there is no evidence of that fact. Her Sponsor's birth certificate shows that he is the child of Dixon Osei-Bonsu and Leticia Frimpong. The Appellant's birth certificate shows that she is the child of Maxwell Oduro Braniee and Janet Frimpomaa. The Appellant has produced a copy of the birth certificate for Janet Frimpomaa which shows she was the child of Yain (?) Koranteng and Akosua Brago. No other documentary evidence has been provided to show any familial link between the Appellant and her Sponsor. While she may claim a familial relationship, it is a requirement of the EEA Regulations that she is related to her Sponsor. It is for her to demonstrate on the balance of probabilities that she and the Sponsor are related as claimed. In the absence of evidence to show a familial link on either her maternal or paternal side, and the degree of the relationship, I find that the Appellant has not demonstrated to the required standard that she is related to her EEA national, as required by Regulation 8 (2) (a) of the EEA Regulations.

9. The Judge went on, in the alternative, to consider the financial evidence. At [44] the Judge finds no reason to doubt the reliability of the money transfer documents provided by the appellant.
10. At [47] the Judge finds the appellant had provided little in the way of an explanation for her circumstances. The Judge notes she claims to be a student and that she has no financial assistance other than that which the Sponsor provides, claiming her father has died and her mother is unemployed, although there is no evidence of that, and claiming the house in which she resides is owned by the Sponsor, although the Judge notes in the grounds of appeal there is reference to part of the property being rented out and the appellant being supported from rental income.
11. Having considered the evidence the Judge concludes that it could not be found the appellant requires the support of the Sponsor in order to meet her essential living needs and that on the balance of the evidence the appellant had not established she is related to her EEA national Sponsor or is dependent upon him.
12. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal on 5 August 2022, the relevant part of the grant being in the following terms:
  2. In setting out the reasons for refusal letter the judge notes that the Applicant's biometric birth certificate, which was registered some eighteen years after her birth, was regarded as not reliable evidence by the Respondent. However, the judge later on goes to find that this document, i.e. the Applicant's birth certificate, is a document that can be relied upon. The documents submitted by the Applicant include both her own birth certificate and that of her Sponsor. The grounds refer to documents submitted to the Tribunal on 21st September 2021 named 'Proof of Relationship'. It is arguable that the documentary evidence shows that the Sponsor's mother and the Applicant's mother share the same parents. It is therefore arguable that there is an error of law with regards to how the judge considered the issue of the relationship of the Applicant to the Sponsor in view of the documentary evidence available. In view of the errors of the findings of fact the issue of dependency is therefore arguable. There is an arguable error of law.
13. The application is opposed by the ECO. In a Rule 24 response dated 12 September 2022 it is written:
  2. The respondent opposes the appellant's application for permission to appeal.
  3. Permission was granted on the following basis namely that (i) how the Judge considered the evidence of relationship between the appellant and the sponsor which may lead to an error in the consideration of dependency.
  4. It is submitted that the grounds a merely seeking to re-argue the case. At paragraphs 3, 18 and 19 of the determination the Judge sets out the evidence they have before them which includes the birth certificates being referred to grant of permission. Paragraphs 22 and 23 set out the initial issues raised the refusal letter.
  5. From paragraph 35 the Judge addresses the birth certificates and at paragraph 40 finds the appellant birth certificate can be relied upon. At paragraph 41 the Judge highlights the concerns with the sponsor 's birth certificate and other evidence and finds that it does not provide the familial link between the appellant and the sponsor. The Judge clearly considers the evidence and reached findings open to be made highlighting the requirements of the EEA regulations and that the Judge is not satisfied that the evidence presented establishes that the appellant and sponsor are related has claimed.
  6. For completeness, the Judge continues to consider the evidence with regards to dependency. At paragraphs 47 to 49 the Judge reasons that the appellant has failed to establish the dependency because of the lack of evidence of the appellant's circumstances. These findings are open to be made.

### Discussion and analysis

14. The appellant's claim in relation to the family connection is that two sisters Leticia Frimpong and Janet Frimpomaa had two children. Leticia gave birth to Samuel, the Sponsor and Janet to Ivy, the appellant. That relationship is said to be established by a hand written family tree attached to the application for permission to appeal and by the provision of the birth certificates for the appellant, Sponsor and their parents, showing the familial link of the sisters to the same parents.
15. In the appellant's bundle is a certified copy of an entry in the register of births in relation to the appellant dated 30 January 2018. There is a certified copy of an entry in the register of births for the sponsor dated 12 October 2010. There is a copy of a birth certificate for Janet Frimpomaa dated 14 November 1969 and a certified copy of an entry in the register of births for Leticia Frimpong dated 18 March 1971.
16. The document for Janet Frimpomaa shows in the female child of Yain Koranteng and Akosua Brago and in relation to Leticia Frimpong, that she is the child of Yaw Kakosua Brago and Akosua Brago.
17. Whilst mentioning the females has been common appears to give a different spelling of the name of the alleged father of Leticia and Janet to that that appears on the birth certificates. That document was not, however, before the Judge.
18. As noted in the 24 response the Judge had birth certificates made available which were considered with the required degree of anxious scrutiny. The birth certificate for the appellant, Ivy, shows as father as Mazwell Oduro Brainiee and her mother as Janet Frimpomaa (her maiden name). The birth certificate for Samuel shows his father as Dickson Osei-Bonsu and mother as Leticia Frimpong.
19. There appears therefore to be a material difference in the spelling of the surname for Leticia and Janet on the basis of the certificates provided the Judge.
20. The Judge was being asked to take the spelling of the mother's name as being determinative of their relationship between the appellant and Sponsor. The Judge did not accept that that was made out to give reasons for that in the determination.
21. Even if the Judge was incorrect in relation to the familial relationship, the Judge also considered the issue of dependency. The grounds assert the Judge erred in requiring the appellant to provide evidence of income and expenditure to show that she required the Sponsor's support for essential needs, claiming all that was needed to be shown is dependency as evidenced by money transfers or bank statements. That comment represents a fundamental misunderstanding of the law. It is settled that dependency is proved by establishing not only that remittances are made but that such remittances are required to meet the third country nationals' essential needs which could not be met without such remittances. That is the test properly applied by the Judge.
22. The grounds, whilst referring to the appellant's circumstances, fail to identify legal error as those circumstances were clearly taken into account by the Judge. The Judge also gives adequate reasons the conclusion that the required element of dependency had not been established on the evidence.
23. Having considered the matter further I find the appellant has failed to establish that the Judge has erred in law in a manner material to the decision to dismiss the appeal.

### **Notice of Decision**

24. There is no material legal error in the decision of the First-tier Tribunal. The determination shall stand.

**C J Hanson**

**Case No: UI-2021-001864**  
**First-tier Tribunal No: EA/03349/2021**  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**30 August 2023**