



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

Appeal Number: OA/21929/2012

THE IMMIGRATION ACTS

Heard at Field House

On 14th July 2014

**Determination
Promulgated**

On 4th Aug 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MRS AMINA BEGUM
(Anonymity Direction Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hossain instructed by Hossain Law Associates

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DETERMINATION AND REASONS

The Appellant

1. The appellant is a citizen of Bangladesh who claimed to be born on 10th October 1969 and on 11th July 2012 applied for a Certificate of Entitlement to the Right of Abode in the United Kingdom as the child of the late Masood Ali (the sponsor) and the application was refused on 7th October 2012.

2. In a determination promulgated on 10th March 2014 the First-tier Tribunal Judge having heard the appeal at Hatton Cross on 28th February 2014 dismissed the appellant's appeal. He identified that the applicable provisions of the Immigration Act 1971

"2 Statement of Right of Abode in the UK

(1) A person is under this Act to have the right of abode in the United Kingdom if

(a) he is a British citizen or

(b) he is a Commonwealth citizen who

(i) immediately before the commencement of the British Nationality Act 1981 was a Commonwealth citizen having the right of abode in the United Kingdom by virtue of Section 2(1)(d) or Section 2(2) of this Act as then in force and

(ii) has not ceased to be a Commonwealth citizen in the meanwhile."

3. Section 2(1)(b) of the Immigration Act 1971 then in force stated

"He is a British citizen of the United Kingdom and Colonies born to or legally adopted by a parent who had that citizenship at the time of the birth or adoption and the parent either

(i) then had that citizenship by his birth, adoption, naturalisation or (except as mentioned below) registration in the United Kingdom or in any of the Islands; or

(ii) had been born to or legally adopted by a parent who at the time of that birth or adoption so had it."

4. The Nationality, Immigration and Asylum Act 2002 Section 10 gives the Secretary of State power to make provision regarding the issue to a person of a certificate that he has the right of abode in the UK. This is exercised in the form of The Immigration Certificate of Entitlement to Right of Abode in the United Kingdom Regulations 2006.

5. Regulation 6A of the Immigration Certificate of Entitlement to Right of Abode in the United Kingdom Regulations 2006 reads

*"6. A certificate of entitlement will **only** be issued where the appropriate authority is satisfied that the applicant*

(a) has a right of abode in the United Kingdom under Section 2(1) of the 1971 Act."

6. The schedule to the Immigration Certificate of Entitlement to Right of Abode in the UK Regulations 2006 sets out that where the applicant was a citizen of the United Kingdom and colonies and had a parent who was born, adopted, registered or naturalised in the UK prior to the applicant's birth or adoption that the following documents must be provided:
 - (i) applicant's full birth certificate or adoption certificate;
 - (ii) parents' marriage or civil partnership certificate if claiming through father or if claiming through woman who is a parent of the applicant by virtue of Section 42 or 43 of the 2008 Act; and
 - (iii) parents' full birth certificate, adoption registration or naturalisation certificate.

Application for Permission to Appeal

7. An application for permission to appeal was made in the following terms.
8. It was asserted that the respondent refused the application mainly because the appellant could not establish she was related to her father Masood Ali. The respondent also raised concern about not submitting the father's nationality certificate to prove that he was a British citizen and that the appellant could not succeed by virtue of the 1971 Act.
9. The judge heard oral evidence from the appellant's brother Protab Miah who came to the UK with the same rights as his father and also a DNA test report confirming Mr Miah was the full sibling of the appellant. The father's first British passport was issued on 21st August 1969 and other supporting documents were put before the judge. On the day of the hearing the appellant also submitted a copy of the Home Office letter dated 1st August 1984 confirming that a letter could be used to show that the appellant's father was registered as a British citizen.
10. The judge accepted at paragraph 14 the relationship issue but it was not clear how the appellant would be eligible for the Certificate of Entitlement of Right to Abode. The judge did not refer to the High Court decisions.
11. The judge made no decision as to whether the 1948 or the 1971 act applied. Secondly the judge was self-contradictory about the British passport of the appellant's father. He stated it was before him but not before the ECO and the archived citizenship certificate he stated was neither before him nor the ECO. The grounds questioned whether it would make any difference if the original certificate was before the Judge. The judge failed to place proper weight to the documentary evidence provided and the judge made a material error by excluding the archived copy of the British citizen certificate from the National Archive. The appellant had provided a copy of his father's previous UK passport.

12. The judge did not dismiss the entirety of the testimony of the appellant's brother and he accepted the evidence that the appellant was the daughter of the late Masood Ali.
13. On the day of the hearing the appellant's representative sent a further written submission and a copy of the Home Office letter but the judge made no reference to the submission and the letter.

Permission to Appeal

14. Permission to Appeal was granted by First Tier Tribunal Judge Shimmin on the basis that it was arguable that the Judge failed to make a decision whether the appellant had the right of abode, failed to give proper weight to the evidence, he excluded evidence from the National Archive and his findings did not reflect the evidence before him.

The Hearing

15. At the hearing Mr Hossain relied essentially on the written grounds for permission to appeal. He stated the passport was sufficient to show the father's status and showed he was a British citizen. The passport was dated 21st August 1969 and the appellant was born on 10th October 1969. At the hearing Mr Hossain produced an original stamped and authenticated copy of the father's registration certificate from the National Archives for the father but he confirmed that this was not before the judge. The original had been lost. The judge had seen the letter from the Home Office dated 1st August 1984 and he submitted this was sufficient.
16. Mr Whitwell submitted that the letter from the Home Office dated 1st August 1984 merely confirmed that it was possible to write and request that information be passed to the Passport Office. The witness was found to be incoherent and further only a copy of the relevant certificate was submitted and this the judge had regard to.

Conclusions

17. The judge is clear that he had regard to the fact that copies handed into the Tribunal at the commencement of the hearing of a National Archives certificate of 26th November 2012 certifying as true and authentic a copy of the sponsor's confirmation of registration as a citizen of the UK and colonies dated 25th July 1969. This was referenced at paragraph 5 of the determination and it is clear that the judge had taken this into account.
18. With reference to the witness Protab Miah the judge found the witness to be an *"incoherent and muddled witness particularly in his testimony at paragraph 13"*. The judge was clear about the Land Registry document which was incompletely translated.
19. The judge found that he was satisfied on the balance of probabilities that the appellant was born in Bangladesh to the sponsor and his wife the late Shobutera Banu on 10th October 1969 and the judge also noted that a

bundle of originals were submitted in respect of documents that the appellant relied on.

20. However and this is the key part, the judge noted [15] that the original documentation produced at the hearing included in the 1969 issued passport for the sponsor and yet this had not been made available to the respondent at the time of the decision. Crucially and most of all the judge stated

“Furthermore neither at the time of the decision or indeed the time of the hearing before me was an original of the aforementioned certificate of the National Archives produced. At the time of decision it was not even made known to the respondent that such a certificate was available. Having regard to these considerations the appellant’s claim that the respondent’s decision was unreasonable and unjustifiable could not be made out.”

21. I find it is quite clear from the reading of the Immigration Acts 1971 that the Immigration Regulations specifically restrict all applications for a certificate of entitlement to abode. In particular the parents’ full birth certificate was not provided and nor was an original copy of the registration or naturalisation or registration certificate of the father or mother.
22. The Immigration Certificate of Entitlement to Right of Abode in the United Kingdom Regulations 2006 apply to this appeal and to the appellant’s application.
23. The judge had regard to the evidence, was entitled to attach no weight when presented with documents without originals and was not entitled to ignore the requirements of the Regulations. As the ECO indicated the registration certificate is important because it shows how British citizenship is acquired and this in turn affects the acquisition of citizenship for the appellant.
24. Mr Hossain confirmed that after the hearing the solicitors obtained a stamped copy of the claimed certificate but this original was clearly not before the judge.
25. I do not accept that the appellant is entitled not to produce an original certificate and further to the Immigration Tribunal Procedure Rules and in particular Rule 51(5) where a party seeks to rely upon a copy of a document as evidence the Tribunal may require the original document to be produced. The appellant was on notice that there was a question in relation to whether the father had citizenship of the UK and it is made clear in the decision notice from the Entry Clearance Officer that

“The British nationality certificate is important as it tells us which Section of the British Nationality Act your relative gained their citizenship through and also when they registered. Without this

information I am not satisfied you qualify for a Certificate of Entitlement to the Right of Abode in the UK. I note that this document is listed as a required document under the legislation for certificate of entitlement applications and therefore your application falls to be refused."

26. I did not find the unreported decisions from the first Tier Tribunal helpful. Previous unreported decisions from the First Tier Tribunal are not precedents and this case must be decided on its own facts. **AO (unreported determinations are not precedents) Japan [2008] UKAIT 00056.** The High Court cases provided predate the Regulations cited and only extracts of those cases were provided not the full transcripts. They do however confirm that the Immigration Act 1971, which the judge applied, amended and replaced the then present immigration laws.
27. I am not satisfied that the judge made a material error of law and I therefore find the determination should stand.

Signed

Date 26th July 2014

Deputy Upper Tribunal Judge Rimington