



IAC-AH-PC/SC-V2

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

Appeal Number: OA/06948/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 21st October 2015**

**Decision & Reasons Promulgated
On 25th November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MRS AISHA BIBI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss L Barton, Counsel

For the Respondent: Mr G Harrison

DECISION AND REASONS

1. The Appellant is a Pakistan national born on 7th September 1994. The Appellant applied for a certificate of entitlement to the right of abode in the UK and her application was considered pursuant to Section 2 of the Immigration Act 1971. On 7th May 2014 the Entry Clearance Officer refused the application on the basis that on the balance of probability the Secretary of State was not satisfied that the certificate of registration and the UK birth certificate provided by the applicant related to her.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Nicol sitting at Manchester on 3rd June 2015. In a determination promulgated on 12th June 2015 the Appellant's appeal was allowed under the Immigration Act.
3. On 17th June 2015 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. On 21st August 2015 Designated Judge Woodcraft granted permission to appeal. Judge Woodcraft noted that the cause of the Respondent's concern was that the Appellant's previous Pakistani passport valid from July 2010 to 2015 and presented with the application showed her place of birth as being in Pakistan not the United Kingdom. The Appellant was issued with a second passport a few days after the refusal decision (and a year before the previous passport was due to expire) this time showing her place of birth as the United Kingdom. Judge Woodcraft assumed that the reason why the Appellant's two previous applications for a passport were refused were because of this discrepancy but if there were other reasons the Respondent should give them if he wishes to rely on the previous two refusals as tending to undermine the credibility of this application. He noted that there was no DNA evidence to link the Appellant with the two UK citizens said to be her parents and that the Entry Clearance Manager refers to DNA evidence produced with the application but which related to somebody else altogether. Judge Woodcraft noted that at paragraph 25 of the determination the judge found there to be an error in the first passport which he could not explain and that arguably the judge had given insufficient reasons why he proceeded to overlook the discrepancy between the passport and the two UK documents.
4. There does not appear to be any Rule 24 response served in this matter. I note that this is an appeal by the Secretary of State. For the purpose of continuity throughout the appeal process however Ms Bibi is referred to herein as the Appellant and the Secretary of State as the Respondent. The Appellant appears by her instructed Counsel Miss Barton. Miss Barton is familiar with this matter having appeared before the First-tier Tribunal. The Secretary of State appears by her Home Office Presenting Officer Mr Harrison.

Submissions/Discussions

5. The Grounds of Appeal contend that the judge made inadequate and speculative findings by finding that the Appellant should be entitled to the certificate of entitlement to enter the UK. They submit that the Appellant's credibility is seriously undermined by having made two previous applications for a British passport on 2nd April 2013 and 13th November 2013 both of which were refused. They submit that it is not credible that upon receiving a new Pakistani passport an individual would not straightaway check that all the details were correct and seek to rectify the error at the first opportunity.

6. The grounds further contend that although the judge had given little weight to the witness statements produced in support of the application it is clearly demonstrated that the statements were unreliable and that they further enhance the lack of credibility on the entirety of the Appellant's application. They contend that the Appellant's own witness statement clearly demonstrates that her credibility is not genuine and that she had said she was born in "Nottingham, Pakistan" which clearly does not exist. In the determination they allege that the judge relied heavily on the Appellant's father's oral evidence and although the judge states that his oral evidence was backed up by documentary evidence the most important documentary evidence had not been produced and that given the severe lack of credibility in the Appellant's case rigorous consideration will need to be applied in finding that the Appellant's birth certificate and other accepted documents by the judge are genuine.
7. I recite these grounds from the written Grounds of Appeal because Mr Harrison as the basis of his submissions does no more than rely upon them.
8. In response Miss Barton states that the judgment is lengthy and well-reasoned and refers me to the conclusions reached at paragraph 20 to 27 and that the judge was entitled to come to the decision that he did having seen the documents. She submits that paragraph 2 of Judge Woodcraft's permission to appeal seeks to give advice to the Upper Tribunal and she asks me to ignore such comments as they are not in accordance with the mode to which grants of permission are/should be made. I agree with that contention. She goes on to state that paragraph 25 of the decision refers to the Appellant's first passport having been issued in error and that whilst that cannot be explained the judge is satisfied that the other documentation provided is not part of a connected chain.

The Law

9. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
10. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion

is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

11. This is a well-constructed determination by an experienced judge. The judge has had the benefit of seeing the documentation that has been produced and of hearing the evidence. He has noted that the birth certificate is a true copy of an entry on the relevant register in Nottingham and that it appears to be accepted by the Secretary of State that the person named in that certificate is entitled to be registered as a British citizen having regard to the agreed immigration status of her parents. Further the second Pakistani passport is accepted as genuine and that the holder of that passport would be entitled to a right of abode in the UK.
12. The judge has made a finding that it would be a considerable coincidence if there were two people born on the same day with parents having the same name so that their identities were interchangeable. He quite properly has found that such a finding would not be credible. Thereafter he has gone on to consider the possibility of identity theft and has not found that to be a credible argument. Further he found the account provided by Mr Abdullah to be credible and the supporting documentation. Having heard all the evidence the judge made findings that he was entitled to and that the Appellant met the requirements of Section 2 of the Immigration Act 1971.
13. In such circumstances this judge has carried out a very thorough analysis of all the relevant facts and documents and the submissions of the Secretary of State are little more than disagreement. It is telling that Mr Harrison quite properly does little more than rely on the grounds. There is little further that he can say. However it is clear for all the reasons given above that this judge has analysed the documentation, heard the evidence and made findings that he was perfectly entitled to. In such circumstances the decision discloses no material error of law and the appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Notice of Decision

The decision of the First-tier Tribunal discloses no material error of law and the appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal is maintained.

The First-tier Tribunal did not make an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. No application is made to vary that order and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No fee award.

Signed

Date

Deputy Upper Tribunal Judge D N Harris