

IN THE UPPER TRIBUNAL
EXTEMPORE JUDGMENT GIVEN FOLLOWING HEARING

JR/794/2018

Field House
Breams Buildings
London
EC4A 1WR

20 February 2019

**THE QUEEN
(ON THE APPLICATION OF)
ABDUL MATIN ABDUL MANNAN**

Applicant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

BEFORE

**THE HONOURABLE MR JUSTICE WAKSMAN
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)**

Mr S Karim, Counsel, instructed by KC Solicitors appeared on behalf of the Applicant.

Ms E Dring, Counsel, instructed by the Government Legal Department appeared on behalf of the Respondent.

ON AN APPLICATION FOR JUDICIAL REVIEW

APPROVED JUDGMENT

MR JUSTICE WAKSMAN:

1. This is an application for judicial review of a decision by the Secretary of State not to grant a right of abode to the applicant, Mr Abdul Matin Abdul Mannan, to whom I shall refer as "Mr Mannan".
2. Permission to bring judicial review proceedings was granted by the Upper Tribunal on 28 November 2018. Mr Mannan is a Bangladeshi national, and it is common ground that if he can show that his father was Mr Abdul Rashid, a Bangladeshi national, but who resided here for some time and obtained various citizenship rights here, then the right to abode is made out. This therefore a very straightforward question of fact which I have to decide on the evidence before me, to see if Mr Mannan can establish on the balance of probabilities that Mr Rashid is his father.
3. This is one of those judicial reviews where the issue is one of precedent fact and so I am now the fact-finding Tribunal. Let me make some key introductory points.
4. DNA testing has shown that Mr Mannan is the half-sibling of Mr Hoq, so either they share the same mother or the same father. Mr Hoq, for his part, obtained the right of abode from the First-tier Tribunal on 22 August 2014 by succeeding in his appeal to the Upper Tribunal against the decision of the Secretary of State not to grant him that right. He had to show, and he did show in the satisfaction of that Tribunal, that his father was Mr Rashid. Mr Mannan, and indeed Mr Hoq, say that it was the father that they had in common, not their mother.

The Evidence

5. I have had an array of documentary evidence sent to support Mr Mannan's application, and of course the DNA results, though by themselves they could not be sufficient; but I have also heard and seen Mr Hoq give evidence, which in my view was important. He came to court because he is now living here, and although he needed an interpreter, Mr Ahmed, to whom I am very grateful, his evidence was no less clear for that. I did not hear from Mr Mannan, still in Bangladesh. It is true that there was in theory the possibility of adducing evidence by video link from Bangladesh in the rural area where he lives, though I am not sure of the practicalities of successfully doing that, but I must, and do, take into account that I have had no direct oral evidence from him. I also take into account the fact that neither his brief affidavit in support of his application, nor the witness statement of Mr Hoq said very much about their lives together in Bangladesh and with Mr Rashid. That detail was elicited in the course of Mr Hoq's oral evidence this morning.
6. I need to read certain passages from the decision of the First-tier Tribunal in relation to Mr Hoq's application. Paragraph 3 recites that Mr Rashid had become a British citizen in 1952. In paragraph 4 the judge recites the relevant documents before him, the appellant's birth certificate registered in 1972 (and that was the original), there were then the land documents which I will come back to later, and the father's name is referred to in various pages of those documents. There was an affidavit from the midwife and there was testimony of the villagers, and there were school documents showing Mr Hoq's father's name. The land documents show the names of both Mr Hoq and his father. There was a marriage certificate, his father's national insurance card, his Siemens ID card, and therefore a vast number of

documents which were original and contemporary showing the name of the appellant and his father.

7. At paragraph 11 the judge said that there was a wealth of documents before him to show that Mr Rashid and the appellant were father and son. The original documents could not possibly have been produced solely for the benefit of the appeal. While the respondent stated that fraudulent documentation was readily available in Bangladesh and seen on a regular basis at the High Commission, that was very far from substantiating or even alleging that false documents were used in this particular application. While the applicant did indeed wait until after Mr Rashid's death before applying for citizenship, that did not invalidate his application. The judge said that he was satisfied on the balance of probabilities that he was related to Mr Rashid as claimed and therefore the appeal was allowed.
8. Let me turn to the evidence of Mr Hoq before me. I am going to set it out all in one go for convenience sake.
9. First, let me deal with the early years. Mr Hoq in his witness statement said that Mr Rashid had been married twice. He married Mr Mannan's mother, Joymona Banu, on 4 July 1939. At the time there was no marriage registration system in place, consequently people were only required to register their marriage through a deed. A copy of his late father's marriage deed is enclosed. From this marriage his father had two children, namely the applicant and his younger sister, both of them currently reside in Bangladesh. Mr Hoq further confirms that his late father married his mother, the late Khoyrun Nessa ("Ms Nessa"), on 15 June 1960. At the time she was 17 years old and he enclosed a copy of that marriage certificate. There were two children of that marriage, Mr Hoq

and his younger sister who is currently residing in Bangladesh.

10. Also I record what Mr Hoq said in paragraph 8 because I shall need to refer to it hereafter. He mentioned that in Bangladesh it is very common for a man to marry more than once. The law allows a man to marry more than one woman and be married up to four women at the same time, and therefore his father married in accordance with the law. He then refers to the DNA testing.
11. As to the marriage deed to which Mr Hoq referred, I have a copy of it here. If it is correct, recording a marriage in 1960, and recording that the bride, Ms Nessa, was a maiden in the sense that she had not been married before and was 17 years old, then, if all of that is right, and if Mr Mannan is right to say that he was born in 1956, then for he and Mr Hoq to have shared Ms Nessa as their mother, she would have been unmarried at the time of his birth and only 12 or 13. It is possible, but I agree with Mr Karim, it is highly unlikely, especially in rural Bangladesh and given the prevailing Muslim culture at the time.
12. I will say now some more about Mr Hoq's evidence at paragraph 8. He said in oral evidence that his mother, Ms Nessa, that Mr Mannan's mother had died before Mr Rashid had remarried. In other words, he remarried only after his first wife had died and Mr Hoq was very clear about this in evidence, but if so that raises the question as to why he felt it necessary to refer to the permissibility of polygamous marriages where Mr Rashid had not engaged in polygamous marriages. He said by way of explanation today that this was normal, but in this case it not did not apply but he simply mentioned it. That is not a very full answer to the point and I take that into account.

13. Then I turn to the biographical history of Mr Mannan, Mr Rashid and Mr Hoq. Mr Hoq said that he knows Mr Mannan. He is ten or twelve years older than him, but they stayed and grew up in the same house. He also had the opportunity to know Mr Rashid, although not for too long because if the documents are right, Mr Rashid died in 1977, whereas Mr Hoq was only born in 1965. He said that Mr Mannan lived with him and he said that they lived together after Ms Nessa had died. He was aware of the fact that subsequently Mr Mannan went to Saudi Arabia for some period of time. He said that when Mr Rashid had died his land was divided between the children, certainly between the two sons being Mr Mannan and being Mr Hoq. The land that was left to Mr Hoq, he said, was not in the house where he had been living and where his mother had lived, but about fifteen minutes away in this rural area he said he went to the land that he was given and built a house there. Mr Mannan stayed on in the original house. Indeed, this was the basis of the land documents which he was able to produce to the First-tier Tribunal which named both him as successor, and the original landowner, being Mr Rashid. Mr Hoq was clear that the same thing happened to Mr Mannan who got a plot as well. That obviously raised the question as to whether there was not a land document which Mr Mannan could produce but has not done so in the course of these proceedings. Mr Hoq said that there would be and there should be and Mr Mannan would have it.

14. Dealing with the later period in their lives, even after Mr Hoq obtained his citizen right of abode here, he kept in contact with Mr Mannan and saw him when he went back for a visit to Bangladesh in 2015. He last spoke to him he said on the telephone three or four days ago and therein regular telephone contact, so it cannot really be disputed that they seem to know each other pretty well. If I accept that

evidence as true, then Mr Mannan and Mr Hoq grew up together as brothers or half-brothers for at least a number of years, even though Mr Mannan was ten to twelve years senior to Mr Hoq. They both lived with Mr Rashid and Ms Nessa, they both knew Mr Rashid, though Mr Hoq less well, because of when Mr Rashid is said to have died. I have to say that on its face I found Mr Hoq's account to be clear and coherent and not vague in any important respects as Ms Dring had submitted. It is true that the early life details did not feature in a witness statement, but in one sense that is to Mr Hoq's credit because it was not as if he had a particular script to follow. He was volunteering the details as and when they were asked of him. On the other hand, one can ask why these details had not been put in a witness statement as they should have been, and I take that into account, but as I say I did not find Mr Hoq's evidence on these points to be rehearsed in any way. Indeed, when Mr Hoq volunteered that Mr Mannan should have the same sort of land documents as he would have, that was what I thought was a genuine concession because, of course, it would indeed raise the inevitable question as to why then it had not been produced on this application.

15. So far as the obtaining of documents is concerned, Mr Hoq said that he obtained the documents so far from Mr Rashid. So far as his application was concerned from his mother when she was still alive, she having obtained them from her husband, Mr Rashid. Later on, after he had successfully obtained a right of abode and when Mr Mannan had come back from Saudi Arabia, he then helped Mr Mannan with this application, and in particular by enabling Mr Mannan to go to his home nearby in Bangladesh and obtain copies of the documents pertaining to Mr Rashid that Mr Hoq had used, and that is why we have them here before us today.

16. So far as other documents are concerned, relied on by Mr Mannan, while Mr Hoq said he suggested that Mr Mannan get them in the same way that he had done, he had nothing to do with the obtaining of those documents. He explained in his evidence that although Mr Hoq was in the process of making his application from 1993 onwards and had some legal advice about it, he accepted he did not tell Mr Mannan about that, but that is because he said he was in Saudi Arabia, but it was later on that he informed him of what had been happening with him and what the process was, and he said he was a long time in Saudi Arabia and I have no reason to disbelieve that. Mr Hoq had been able to produce his own birth certificate which mentioned Mr Rashid for his application. That showed that the birth was registered in 1972, some considerable time before he made his application and in fact before his father had died.
17. Overall, I consider that taken by itself, Mr Hoq was a witness of truth notwithstanding the imperfections or defects referred to above; and as Mr Karim has pointed out this is not a question of Mr Hoq being inaccurate, if he was, by mistake. The reality is that either Mr Hoq has come here to tell the truth, or he has come here deliberately and colluded with Mr Mannan to lie in order to support Mr Mannan's case, a point which I should record was never put to him in cross-examination. Moreover, if the latter was the case it would be done in the knowledge that they did not in fact share the same father but the same mother. On the assumption that the marriage certificate in respect of Ms Nessa is genuine, and I cannot see why it is not, then as I have already said, the likelihood they share the same mother is very small, in my judgement.
18. Ms Dring in the course of her submissions suggests that perhaps the answer to that was that Ms Nessa was not the mother of either of them and that their mother was someone

else, but in my judgement that goes so far into the realms of speculation that I can discount it. I consider Mr Hoq has come here to tell the truth and not to present a bogus case. I agree that the lack of detail of the biographical evidence from Mr Mannan himself is an impediment, but it does not matter if you accept the evidence of Mr Hoq, and that is so even though that detail was not put in his witness statement as it should have been. If you then add Mr Hoq's evidence the DNA findings and, and the unlikelihood of Ms Nessa being the mother of both Mr Mannan and Mr Hoq, and stop there, that would take Mr Mannan's case well over the threshold of a balance of probabilities. However this does not take account of the documentary evidence which may either help or on analysis hinder Mr Mannan's case, so I turn to that now.

19. Ms Dring helpfully divided the documents into three categories. The first were the documents that referred to Mr Rashid alone. Obviously, they do not directly show a link to Mr Mannan. We know on the evidence how he got them and they were supplied by Mr Hoq. The first of these is Mr Rashid's passport. It was issued in 1962 and it is a fair point to make that in the section which refers to any children, that is simply struck out, i.e. it is blank and the obvious point is made, well, if he had two children why were they not referred to, and I agree that that is odd. Secondly, there is the national identity card from the Ministry of Labour in Stepney permitting Mr Rashid to work here and that is dated 1954. Thirdly, there is the underlying application form which is from 1952. None of them themselves of course assist Mr Mannan because they do not show any connection to him. Indeed, Ms Dring makes the point that if he was here in 1952 and 1954 and was back here at some time from 1962 onwards, it could call into question whether he was actually back in Bangladesh in 1956 when Mr Mannan was supposed to have been born. I take

that point, although as he clearly travelled, and on the face of the documents was married at the time to a wife in Bangladesh, it is quite possible he was going back and forth.

20. We then have Mr Rashid's marriage certificate to the lady who was said to be his first wife, Joymona Banu. She is later referred to as "Joymona Bibi", but I do not consider there is anything particularly problematic about that, as I understand that Bibi can be used as a denomination for a wife. Now here, there is only a copy that has been made available and the copy was obtained on 28 February 2016 when Mr Mannan's application was well under way, but what this document does show is that the marriage took place on 4 July 1939. If that is right, then this is the woman that Mr Hoq says was Mr Rashid's first wife and Mr Mannan's mother. Of course, Mr Hoq could be making all of this up. The certificate itself could be a forgery or bogus; although I take that into account I do not think it very likely here.
21. One then goes to the death certificate which is dated 27 March 2016. The date of death is given as 22 April 1977 from Mr Rashid and the document records that the death was registered on 4 October 1998. Now, on any view that is some considerable time after the death of Mr Rashid, but if it was registered then, this was before Mr Mannan applied for abode here. Of course, again in theory it could be bogus, but if so it is a bit odd to have recalled a registration date of 1998. One would have thought that if one was creating a bogus paper-trail, the date of registration would be much closer to the date of death.
22. I agree that otherwise this does not inherently help Mr Mannan because, of course, it does not give any connection to him, so I then turn to the second category of documents which were the

subject of submissions by Ms Dring, those which show the names of Mr Rashid and Mr Mannan.

23. First, there is what is said to be a true copy of a birth certificate in relation to Mr Mannan which records that his father was Haji Abdul Rashid and the mother's name Joymona Bibi. I do not think anything turns on the spelling of "Roshid" as opposed to "Rashid", and indeed Ms Dring did not make much of that particular discrepancy, if that is what it was. More importantly, this document shows that not only was the issue of the certificate or a copy made on 18 February 2016, but the birth itself was only registered on 18 February, so that is not really of much help. I do not know what evidence Mr Mannan might have had to submit (if any) in relation to his father in order to get that reference to him on the birth certificate.
24. Secondly, there is the national ID card. This is potentially more useful because the date of issue was 6 August 2008, although it is right to say that by then Mr Mannan had been applying because he first started the process in 2002; but it is of some assistance.
25. Thirdly, there is the school leaving certificate. This was clearly only put together in 2016 because the certificate itself records Mr Mannan's present age as 59 years 11 months; so it is not a question of a copy taken directly from some entry in a register or other document from a much earlier time. From the original which I have been shown, it looks as if this is a standard document, save for all the details of the individual and the parents and the dates which have to be inserted. On any view this does not really add anything, even if it is accurate. There are simply the same references to Mr Rashid and Joymona, but it is possible that this is simply self-serving.

26. There is then Mr Mannan's own the marriage certificate. Now, a copy here was obtained in 2016 from the register. The extract shows that the marriage took place in 1975 on 28 October and, that it was registered contemporaneously on 4 November 1975, giving his age as 20, which would be about right. Now, if this is a genuine document then this is helpful because the original entry was made a very long time before Mr Mannan was considering making an application here.
27. There is then the passport of Mr Mannan. This one, and it is not clear if it was the first one, is dated 1 November 2015 and it does state as his father's name "Mr Rashid" and the mother's name as "Joymona Bibi". But again, this could be self-serving because he could have volunteered those details when obtaining that passport, and I am not provided with any evidence as to say whether parental details would be something investigated before the passport could be issued.
28. Pausing there, looking at those documents in the round and taking into account the number of those documents, I consider that on balance they do assist Mr Mannan somewhat. However, it would not matter in terms of my conclusions even if they did not, because on any view the documents do not hinder his case. The fact that there are some oddities with the documents do not lead me to conclude that they are bogus or would otherwise damage the evidence which has already been put before me in support of the application, that is to say the DNA, the evidence of Mr Hoq and the question about the age of Ms Nessa and the unlikelihood of her being the shared mother. I also should make it plain that in relation to the oddities which have been pointed out in those documents, I have considered that when making my overall assessment of the truth or otherwise of Mr Hoq's evidence.

29. That just leaves a third category of other documents. Mr Hoq had testimony of villagers and the midwife who attended his birth before the First-tier Tribunal. Mr Mannan does not have the same quality of documents. So far as the midwife is concerned, that is hardly surprising since he was born 62 or 63 years ago. There are some limited documents so far as his character was concerned, both are dated from March 2016. One is to certify that Mr Mannan, the son of Mr Rashid and Joymona Bibi was a permanent resident in this union and had been personally known to him and his character was good, and then there is a similar document or reference provided as well from someone else.
30. That is all the evidence before me and I have already indicated my observations in relation to it. In my judgement, having considered the totality of the evidence before me, but also having taken into account what is not before me, notwithstanding some imperfections in the evidence which are said to support his case, I am of the clear view that Mr Mannan has established on the balance of probabilities that Mr Rashid is his father. It is common ground and must therefore follow that this application for judicial review will succeed. I am greatly indebted to both Counsel for the excellence of their oral submissions and written submissions. [brief explanation of judgment for benefit of Mr Hoq then followed].
31. On costs, I considered that the Claimant should receive only 60% of his costs since his success was largely due to the oral evidence given by Mr Hoq today, not previously set out in any witness statement. On assessment I take the view that the starting point should be £12,500.00. 60% of that on my calculation, is £7,500.00. That is the sum that I will award by way of costs. That sum must be paid by the Defendant in 28 days.