



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

Appeal Number: OA/17097/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 7 October 2015**

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

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

v

**MR MOTLIB ALI
(no anonymity order made)**

Respondent

Representation:

For the Appellant: Ms S. Vidyadharan, Home Office Presenting Officer
For the Respondent: Mr A. Malik, counsel instructed by Westminster Law Chambers

DECISION & REASONS

1. The Respondent is a national of Bangladesh, born on 2nd February 1986. On 16th April 2013, he applied for a certificate of entitlement to the right of abode as the son of Mozid Ali, who was registered as a British citizen under section 6(1) of the BNA 1948 on 8th September 1972. His three siblings applied at the same time. The applications were refused on 22nd July 2013 and appeals were lodged against the decisions.

2. The appeals came before First Tier Tribunal Judge Sullivan for hearing on 15th April 2015. Both of the Respondent's parents had died but his brother, Akbul Ali, attended the hearing as the Sponsor of the Respondent and his other siblings. At the hearing, the Home Office Presenting Officer accepted that Mozid Ali could pass British citizenship on to his children and the only issue in the appeals was whether the Respondent and his siblings were the sons and daughters of Mozid Ali.

3. In a decision promulgated on 1st May 2015, First Tier Tribunal Judge Sullivan allowed the appeal of the Respondent and dismissed the other three appeals, based on the DNA evidence.

4. On 7th May 2015, the Home Office made an in-time application for permission to appeal on the basis that the First Tier Tribunal Judge materially erred in law in failing to have regard to the mandatory documents required by the Schedule to the Immigration (Certificate of Entitlement to Right of Abode in the United Kingdom) Regulations 2006. Specific reference was made to the failure by the Judge to make a finding on whether or not the Respondent's parents' marriage certificate and the Respondent's birth certificate were genuine. It was submitted that it was not open to the Judge to allow the appeal on the basis of the DNA evidence alone.

5. Permission to appeal was granted by First Tier Tribunal Judge McDade on 22nd June 2015 on the basis that the points raised in the grounds of appeal were arguable and there was an arguable error of law.

Hearing

6. At the hearing before me, Ms S. Vidyadharan sought to rely on the grounds of appeal. She submitted that the Judge had failed to make findings on the genuineness of the Respondent's parents' marriage, the birth certificates and their genuineness and also failed to make findings on the genuineness on the education certification. She referred me to [24], [25](e), [26] and [29] of the Judge's decision and that at [31] the documents had been found in each case to be unreliable [31] in respect of the Respondent. She reminded me that there had been no cross-appeal in respect of the other siblings. She submitted that there was a clear error of law by the First Tier Tribunal Judge.

7. In response, Mr Malik submitted that if anyone had made an error it is the Home Office itself through their representative who appeared before the Judge. At [23] he conceded clearly that the Respondent's appeal should succeed. At [25](b) the Judge clearly made a finding that the parents were married on or about 15 March 1956. Mr Malik accepted that there are some errors but in view of the DNA evidence and there had been no challenge to that, once the Home Office Presenting Officer considered this there was no need for further findings despite the shortcomings. I drew the terms of the schedule to the regulations to Mr Malik's attention in response to which he submitted that there was no need to go into detail and the Judge must consider all aspects of the matter. He relied on the decision in Begum v Secretary of State for the Home Department [2014] EWHC 2968 (Admin) where he submitted that HHJ David Cooke made

findings in respect of DNA evidence despite not having other mandatory documents. If some of the documents cannot be obtained the Court still has to make a finding. He accepted that there were some errors in the birth certificate but the Sponsor had been found to be credible and the Respondent's parents' marriage was accepted. He accepted that there was a difference between the siblings in terms of the DNA evidence and drew my attention to page 16 of the bundle, which confirms the likelihood that all are full siblings but the Respondent has a closer relationship according to the DNA test. He informed me that the other siblings were not pursuing further appeals due to the expense. He submitted that there was no need for this case to go any further and that I had the power to refer it back to a different Judge for re-examination.

8. In response, Ms Vidyadharan submitted that it was not possible for the Home Office Presenting Officer to have waived the statutory requirements which are set out in the schedule.

9. I reserved my decision in order to properly consider the decision in Begum (*op cit*).

Decision

10. Having now had the opportunity to consider the judgment of HHJ Cooke in Begum v Secretary of State for the Home Department [2014] EWHC 2968 (Admin) I conclude that it is not materially relevant to the matter before me as it concerned a judicial review of the standard of proof utilized in the refusal to issue that Claimant with a British passport and the failure to accord any evidential weight to the DNA evidence. Begum did not involve any consideration of the Schedule to the Immigration (Certificate of Entitlement to Right of Abode in the United Kingdom) Regulations 2006.

11. It is clear that the schedule contains mandatory requirements. Those requirements in respect of an Applicant who was born outside the United Kingdom on or after 1st January 1983 to a parent registered or naturalised in the United Kingdom prior to the applicant's birth are: (i) the Applicant's full birth certificate showing parents' details; (ii) Parents' marriage certificate (if claiming through father); and (iii) Parents' full birth certificate, registration or naturalisation certificate.

12. The material documents before First Tier Tribunal Judge Sullivan were: (i) the Respondent's birth certificate, which was not accepted as genuine by the Entry Clearance Officer nor by the Judge at [25(e)], [26] and 31 and (ii) the Respondent's father's confirmation of registration as a CUKC dated 8 September 1971 relating to Mozid Ali, which was authenticated and accepted as genuine by the Home Office Presenting Officer but not by the Entry Clearance Officer. No marriage certificate in respect of the Respondent's parents has been submitted either to the ECO or the First Tier Tribunal Judge.

13. Consequently, I find that First Tier Tribunal Judge Sullivan erred materially in law in allowing the Respondent's appeal on the basis of the DNA evidence alone. It is clear that the mandatory requirements of the Schedule to the

Immigration (Certificate of Entitlement to Right of Abode in the United Kingdom) Regulations 2006 were not met for the reasons set out at [12] above in that the relevant documents were either not produced or were not accepted as genuine. For the avoidance of doubt, I accept the submission of Ms S. Vidyadharan that, whilst it is the case that at [23] the Home Office Presenting Officer accepted that the appeal of the Respondent should succeed, it was not possible for the Home Office Presenting Officer to have waived the statutory requirements which are set out in the schedule.

14. The appeal by the Entry Clearance Officer is, therefore, allowed with the result that the Respondent is not entitled to a certificate of entitlement to the right of abode.

Deputy Upper Tribunal Judge Chapman

22nd November 2015