



The Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: OA/19711/2012

THE IMMIGRATION ACTS

Heard at Field House
On November 11, 2014

Decision and Reasons Promulgated
On December 3, 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

MR KHALED MIAH
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Khosla (Legal Representative)
For the Respondent: Mrs Holmes (Home Office Presenting
Officer)

DETERMINATION AND REASONS

1. The appellant, born July 20, 1969 is a citizen of Bangladesh. He has applied for a certificate of entitlement to a right of abode under section 2 of the Immigration Act 1971 (as amended). The respondent refused his application in a refusal letter dated August 29, 2012.
2. The appellant appealed to the First-tier Tribunal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on October 12, 2012 and on February 24, 2014 Judge of the First Tier

Tribunal Raymond (hereinafter referred to as the "FtTJ") heard his appeal and in determination promulgated on April 29, 2014 he refused the appellant's claim. The appellant lodged grounds of appeal on June 18, 2014 and on July 23, 2014 Judge of the First-tier Tribunal McDade gave permission to appeal. The matter came before me on September 22, 2014 and I found there had been an error in law. My reasons for the error were as follows:-

- a. Domicile of origin and domicile of choice are complex issues especially when children are involved. The FtTJ was not helped by failure of the two representatives to address the key issues. The FtTJ should have had regard to whether the appellant's father retained Bangladeshi domicile when he married in 1965 because this would determine whether the appellant was legitimate in the eyes of the law. Put simply, if he retained his domicile of origin then the appellant was legitimate and entitled to the certificate he had applied for.
 - b. Alternatively, if the marriage was void the FtTJ should have determined whether the parents reasonably believed the marriage to be valid. As the appellant was born before the Family Law Reform Act 1987 there was no presumption the parents reasonably believed that the marriage was valid unless there was evidence to the contrary.
 - c. I was satisfied the FtTJ failed to consider these issues and concentrated on DNA tests and relationship between the appellant and siblings and there was an error in law.
3. I then adjourned the case for further evidence to be submitted and issued directions requiring the appellant to serve additional evidence and a skeleton argument on the respondent and Tribunal. I also gave directions for the respondent to file a skeleton argument setting out her position once she had received the papers from the appellant's solicitors.
 4. Regrettably the appellant's solicitors did not comply with my direction to serve their papers until November 7, 2014 and consequently there was no skeleton argument from the respondent.

PRELIMINARY ISSUES

5. Mrs Holmes confirmed she was in a position to deal with the matter as she had spoken to Mr Khosla last week about the matter. She indicated she had had an opportunity to consider the additional evidence filed alongside the evidence that had been previously submitted. She had had regard to the Tribunal decision

of Abdin [2012] UKUT 00309 (IAC) and in particular paragraphs [14] and [15] in which Upper Tribunal Judge Storey stated:

“14. I am satisfied that the FTT Judge was fully justified in finding that the appellant’s husband had not retained a Bangladesh domicile. There were, it is true, some factors pointing to its retention: that he had retained his Bangladesh citizenship (being a dual national); that (contrary to what the FTT judge thought) he had renewed his Bangladesh passport; that he had no property in the UK; that he had travelled back to Bangladesh on several occasions. However, there were also a very significant set of factors pointing to his having acquired a domicile of choice in the UK: that he had applied for and obtained British citizenship in 1997; that he had applied for and obtained British citizenship for his children; that he had been ordinarily resident in the UK for some 25 years (more than half his life) and that in a statutory declaration he had described himself as “permanently settled in the UK”.

15. Of course, under what is known as the principle of tenacity of domicile of origin, the burden of proving loss of such domicile rests on the respondent. In addition, I accept that the FTT judge was mistaken in finding that the sponsor had not renewed his Bangladesh passport; the file shows it was renewed on 31 May 2009. However, I do not consider that the sponsor continuing to hold a Bangladesh passport detracts in any significant way from the very weighty factors otherwise indicating that he had acquired a domicile of choice in the United Kingdom prior to November 2009.”

6. Mrs Holmes accepted that she had considered the facts of this case based on the approach taken by the Upper Tribunal in Abdin. She found the following facts significant:-
 - a. The appellant’s father was born in Pakistan in 1927 and his mother was born in August 1947.
 - b. In October 1955 the appellant’s father obtained a “Labour Voucher” and came to work in the United Kingdom.
 - c. In 1961 he registered as citizen of the United Kingdom and Colonies and in October he was registered as a citizen of the United Kingdom and Colonies.
 - d. The appellant’s father married the appellant’s mother in Sylhet, Bangladesh in June 1965. His brother was born in

August 1966 in Bangladesh and the appellant was born in July 1969 in Bangladesh.

- e. The appellant's father's first wife died in November 1973.
 - f. The appellant's father died in Bangladesh in May 1976.
 - g. The appellant's sister (Happy Begum) was born in Bangladesh in September 1976.
 - h. The appellant's brother applied for a certificate of entitlement to the right of abode in 2005 and this was allowed on appeal on August 16, 2006.
 - i. The appellant's sister applied for a certificate of entitlement to the right of abode in 2007 and this was allowed on appeal on September 17, 2008.
 - j. The appellant's father financially supported his family in Bangladesh by sending money which was used to support his wife, the appellant and his siblings. The money was also used to purchase land for a property for them all to live in and additional farm land was used to provide a further income the family.
 - k. The appellant's father did not own any property in the United Kingdom but rented a room and lived frugally sending the majority of his money back to Bangladesh.
 - l. The appellant's father spent all his holidays in Bangladesh and planned to return to Bangladesh once he finished working.
 - m. It was on one of his many trips back to Bangladesh that he suffered a heart attack and passed away. He was buried, according to his own wishes, in his ancestral village.
7. She indicated to me that in light of these facts and the burden of proof placed on the respondent to prove the appellant had lost his domicile of origin she accepted that the appellant's father had retained his domicile of origin.
8. I indicated to Mrs Holmes and Mr Khosla that if that was the respondent's position then the appeal must succeed because the appellant was legitimate and as his father had British citizenship he was entitled to certificate of entitlement to a right of abode under section 2 of the Immigration Act 1971 (as amended). Both representatives agreed.

DECISION

9. There was a material error of law. I allow the appeal and direct the appellant be issued with a certificate of entitlement to a right of abode.
10. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order was made in the First-tier Tribunal and I see no reason to amend that Order now.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

The respondent conceded the appeal following the service of further evidence that I directed be obtained and served. No fee award is appropriate.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis