



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/06038/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On 17 August 2015**

**Decision & Reasons Promulgated
On 21 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE L MURRAY

Between

RABEYA BEGUM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Bashir, Bashir Consultancy

For the Respondent: Mr Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is Bangladeshi national. She was born on 17 May 1991. She appealed against the decision of an entry clearance officer dated 16 April 2014 refusing her a certificate of entitlement to the right of abode under section 2 of the Immigration Act 1971. Her appeal was heard on 18 February 2015 and dismissed by First-tier Tribunal Judge T Jones in a decision promulgated on 31 March 2015. The matter now comes before the Upper Tribunal to determine whether the decision involved the making of a material error of law and if so what to do.

2. Permission to appeal was granted by First-tier Judge Heynes on the basis that it was arguable that inadequate reasons had been given by the First-tier Tribunal for the findings reached. The first ground of appeal argues that given that the First-tier Tribunal found that the DNA evidence supported the fact that the Appellant was the child of the UK sponsor; that he was domiciled in Bangladesh and that he was in a polygamous marriage at the time of the Appellant's birth the appeal should have been allowed. The remaining grounds of appeal set out law and policy in relation to domicile and polygamous marriages and assert that the First-tier Tribunal failed to take this into account.
3. The Respondent argues in the Rule 24 response that the First-tier Tribunal directed itself appropriately and applied the correct standard of proof. The Respondent further argues that the grounds have no merit and merely disagree with the adverse outcome of the appeal without identifying an error of law.
4. The First-tier's conclusions are set out at paragraph 10 of the decision. The First-tier Tribunal found that the Appellant did not discharge the burden of proof and rely on the findings of First-tier Judge Elvidge in a previous determination in respect of the same Appellant. In that determination Judge Elvidge found that the DNA evidence supported the claimed parentage; that the Appellant's father, Mr Kolomdor Ali, was domiciled in Bangladesh and that he was in a polygamous marriage (permitted in Bangladesh) at the time of the Appellant's birth. First-tier Judge T Jones adopted the findings at paragraph 23 of Judge Elvidge's determination that the Appellant was not recognised as legitimate at birth and as she was born before 1 July 2006 did not benefit from the provisions of section 9 of the Nationality, Immigration and Asylum Act 2002.

Error of law

5. Mr Jarvis informed me at the hearing that the Respondent agreed that the First-tier Tribunal had made a material error of law. In deciding that the Appellant was not a legitimate child, the First-tier Tribunal had failed to consider the validity of the Appellant's parent's marriage by reference to the country of her father's domicile, which had been found by the First-tier Tribunal to be Bangladesh. He invited me to set aside the decision and remake it allowing the Appellant's appeal. Mr Bashir had no objection to this course.
6. By virtue of Regulation 6 of the Immigration (Certificate of Entitlement to Right of Abode in the United Kingdom) Regulations 2006 one of the conditions for the issue of a certificate of entitlement is that the applicant has a right of abode in the UK under section 2 (1) of the Immigration Act 1971, which provides that a person is to have the right of abode in the UK if she is a British Citizen. The basis of the Appellant's claim to be a British Citizen rests on section 2 (1) of the British Nationality Act which provides that

‘A person born outside the United Kingdom ... after the commencement shall be a British citizen if at the time of the birth his father or mother -

(a) is a British citizen otherwise than by descent ...’

7. The Appellant’s claim is on the basis of descent from Mr Komodor Ali who, as was accepted by Judge Elvidge, was properly registered as a British citizen in 1971 and became a British citizen under section 11 (1) of the British Nationality Act 1981. The definition of father for the purposes of section 2 (1) of the British Nationality Act is found in section 50 (9) of the 1981 Act prior to its amendment. The amendment only applies to children born after 1 July 2006 and hence does not apply to the Appellant.
8. In its pre-amended form, under the heading ‘Legitimacy of child’, the section read “... (b) subject to section 47, the relationship of father and child shall be taken to exist only between a man and any legitimate child born to him; and the expressions “mother”, “father”, “parent”, “child” and “descended” shall be construed accordingly.”
9. The Appellant, in order to succeed in her appeal, had to prove that she was a legitimate child of Mr Ali. The First-tier Tribunal found that she was not legitimate at birth because the marriage with the Appellant’s mother was a polygamous one and was not recognised by the law of the UK. However, the First-tier Tribunal failed to take account of the effect of section 11 of the Matrimonial Causes Act 1973 which states that a polygamous marriage entered into outside the UK is void under English law if either of the parties to the marriage was domiciled in England and Wales at the time of the marriage. The First-tier Tribunal found at paragraph 10 that Mr Ali was domiciled in Bangladesh. The First-tier Tribunal made this finding on the basis of the findings of Judge Elvidge that Mr Ali left the UK in 1988 to live in Bangladesh, married in 1989 and only returned to the UK in 1991 to renew his passport. In the light of these findings, and as acknowledged by Mr Jarvis for the Respondent, the First-tier Tribunal should have allowed the appeal as the marriage was a valid one and the Appellant therefore the legitimate child of Mr Ali.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I re-make the decision in the appeal by allowing it.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and on the evidence before me there are no grounds for making such an order.

Signed

Date

Deputy Upper Tribunal Judge L J Murray