



IAC-BFD- MD

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

Appeal Number: OA/07519/2014

THE IMMIGRATION ACTS

Heard at Bradford
On 12th August 2015

Decision & Reasons Promulgated
On 24th August 2015

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

ENTRY CLEARANCE OFFICER - DHAKA

Appellant

and

**MR ABU THAHER THAHER
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mrs R Pettersen, Home Office Presenting Officer

For the Respondent: Mr A Bashir, of Bashir Consultancy

DECISION AND REASONS

1. The Entry Clearance Officer – Dhaka appeals with permission against the decision of the First-tier Tribunal (Judge Caswell) promulgated on 7th April 2015, in which it allowed the Respondent’s appeal against the ECO’s refusal of 11th May 2014 to grant him a certificate of right of abode in the UK.

2. For the purposes of this decision I shall herein after refer to Abu Thaher as “the Appellant” and the Entry Clearance Officer as “the Respondent” which reflects their respective positions before the FtT.
3. The Appellant was born on 1st January 1991 and is a national of Bangladesh. He applied for a certificate of right of abode as the son of Salim Ullah, a British citizen. The Entry Clearance Officer refused the application primarily because he was not satisfied that the Appellant had provided satisfactory evidence of paternity.
4. By the Appellant’s own account his father would have been almost 70 years of age at the time of the Appellant’s birth; there was no real evidence of contact and furthermore the Appellant’s father died a year after the Appellant’s birth. It was always the case that the Appellant’s mother counted as the Appellant’s father’s second wife. His father was married to a woman called Aymona Bibi. She resided in the UK along with her children, one of whom is a woman by the name of Begum Bibi (the Sponsor).
5. The Appellant produced DNA evidence. That showed a claimed relationship of half-sibling kinship with Begum Bibi.
6. When the appeal came before Judge Caswell she took into account the DNA evidence and oral evidence from the Sponsor. It was accepted before her, that the only issue was the paternity of the Appellant. She found in favour of the Appellant and allowed the appeal.
7. The grounds seeking permission claimed that the Judge had failed to give adequate reasons for her findings. In support of that proposition it was said that the Judge had found that the DNA test results leant substantial support to the claimed relationship (between the Appellant and the Sponsor). However she failed to consider the possibility that the Appellant and her (sic) claimed father were related, but not as father and son. Neither does the DNA evidence address the possibility that another family member was the Appellant’s father.
8. The grounds go on in the light of the ECO’s concerns over the evidence, including the Appellant’s birth certificate and the advanced age of the claimed father, it is submitted that the Judge’s findings that the DNA evidence between claimed half-siblings adequately established that the Appellant was the son of a British citizen, is inadequately reasoned.

Permission was granted on 4th June 2015.

UT Hearing/Error of Law

9. In coming to her decision Judge Caswell set out fully the issues before her. She noted pertinently that the burden of proof lies on the Appellant to establish his claim to the standard of balance of probabilities. She also noted that the evidence put forward by the Appellant is in various forms.

10. She analysed the Sponsor's oral evidence and it is of note that the Sponsor's evidence was tested by cross-examination. The Judge said this at [15] and [16],

"First, the sponsor gave oral evidence and was cross-examined. She explained the history of the family and said she had all along been aware of the Appellant's birth and of her father's marriage to his mother. She had met the Appellant several times, most recently in the month before the hearing. She had seen him at various stages of his life from when he was a very small baby.

This evidence was not directly challenged by Mr Lees, and the witness was quite clear, consistent and detailed in her evidence. She confirmed that she and the Appellant share the same father, and have different mothers. Given the clear consistent and detailed evidence of Ms Bibi, including her evidence of involvement with the Appellant over the years, I accept her as a credible and reliable witness."

11. The Judge then went on to say in [17], that she took account of evidence from other sources which supported the Sponsor's oral evidence. She then makes findings about the birth certificate of the Appellant but balances that with a letter from his school a succession certificate and the marriage certificate of the Appellant's father to the Appellant's mother. She addresses the issue of it being rare for a man to father a child at the age of 70 but accepts that it does happen.
12. I find nothing about the circumstances of this appeal which would call into question the Judge's reasoning or which might indicate that she has misapplied the Immigration Rules or misconstrued the evidence before her such as to amount to perversity or irrationality.
13. The Judge is tasked with taking into account all the evidence before her; analyse that evidence and arrive at findings. That is precisely what Judge Caswell did. She has not relied solely upon the DNA evidence. She has looked at all the surrounding evidence and come to her findings and conclusions on that evidence. It is not her task to go on a free ranging consideration of whether or not there is a possibility that the Appellant's UK half-sister maybe related to him in some other way.
14. Her findings on the claimed relationship are clear and are ones open to her especially in view of the mainly unchallenged evidence of the Appellant's half-sister.
15. For those reasons I find the determination of Judge Caswell discloses no error of law. The Entry Clearance Officer's appeal is dismissed.

Decision

16. The decision and reasons of the FtT dated 7th April 2015 allowing Abu Thaher's appeal against the Entry Clearance Officer stands.

No anonymity direction is made

Signature
Judge of the Upper Tribunal

Dated

Fee Award

As in this case the FtT's appeal stands and Judge Caswell have allowed the appeal, her I consideration of making a fee award shall also stand. She stated: "I have decided to make a fee award of £140, as the position and arguments of the Respondent were manifestly unreasonable, given the DNA report filed and the Respondent's own guidance."

Signature

Judge of the Upper Tribunal

Dated