Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/18026/2013
& OA/18018/2013

THE IMMIGRATION ACTS

Heard at Bradford	**Decision and Reasons**
On 15th January 2015	**Promulgated**
	On 10th February 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

THE ENTRY CLEARANCE OFFICER - DHAKA

Appellant

and

TASLIMA BEGUM
RUMENA BEGUM

Respondent

Representation:
For the Appellant: Mr Bashir, Legal Representative
For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Entry Clearance Officer appeals against the decision of First-tier Tribunal Judge Saffer who, in a decision promulgated on the 23rd September 2014, allowed the appeal of Ms Tasilma Begum against refusal of her application for a Certificate of Entitlement of a Right of Abode in the United Kingdom. For ease of reference, I shall refer to the parties in

accordance with their status in the First-tier Tribunal; that is to say, Ms Taslima Begum as 'the appellant' and the Entry Clearance Officer as 'the respondent'.

2. The appellant's case was linked in the First-tier Tribunal to that of her claimed sister, Ms Rumena Begum (reference number 'OA/18018/2013'). However, Judge Saffer dismissed her appeal and she has not sought permission to appeal against that decision. Despite this, permission to appeal was apparently granted for the respondent to appeal the decision in both cases. Moreover, the grant of permission is headed 'Mrs Reumena Begum + 1'. Not surprisingly, however, Mr Diwnycz made it clear that the respondent does not seek to challenge the decision of the First-tier Tribunal to dismiss the appeal of Ms Rumena Begum. The respondent does however argue that the Tribunal erred in allowing the appeal of Ms Taslima Begum. It follows that I am only seized of an appeal in the case of Ms Taslima Begum

3. Despite the above, Mr Bahir argued that I was able to reverse the decision to dismiss Ms Rumena Begum's appeal because he had raised her case in his Rule 24 response to Taslima Begum's appeal. However, whilst Rule 24 permits a party to argue that a decision should be upheld for reasons other than those which are the subject of challenge, it does not permit a person to challenge a decision to which they are not a party. I am therefore satisfied that I am without jurisdiction to entertain an appeal by Ms Rumena Begum.

Background

4. The case of the appellants was that they were full sisters, whose later father was 'Afruz Ali' and whose mother is 'Rushna Begum'. I emphasise that this was their case because, for reasons that Mr Bashir was unable to explain, the author of the DNA report that was before the First-tier Tribunal had apparently only been asked to consider the hypothesis that they were half sisters.

5. Afruz Ali had acquired British citizenship prior to the birth of the appellant. However, because he is now deceased, the only way of testing the hypothesis that he was her father was to compare her DNA samples with one 'Mohammed Moinul Islam'. Moinul Islam's birth certificate recorded that his father was Afruz Ali and that his mother one 'Goytun'. Judge Saffer accurately summarised the conclusions of the author of the DNA report at paragraph 8 of his determination:

> The DNA results establish that is it is 320 times more likely that Rumena and Taslima are half siblings than if they are unrelated. It is 64 times more likely that Mohammed and Taslima are half siblings than if they are unrelated. It is 3.6 times more likely that Mohammad and Rumena are half siblings or more distant relatives than if they are unrelated.

6. Having set out the evidence, Judge Saffer made his findings at paragraph 11:

> I accept that Mohammad's parents are Afruz and Goytun as there is no evidence that they are not. I accept that Taslima and Mohammed are half siblings given the DNA results. I accept that their common parent is Afruz as there is no evidence it is Goytun and given Mohammad's British birth certificate.

Analysis

7. The basis of the respondent's appeal is that the Judge made unwarranted assumptions about facts that were critical to his line of reasoning and thus effectively reversed the correct burden of proof. I have concluded that this argument has been made out for the following reasons.

8. In order to establish that the appellant shared her biological father with Moinul Islam, it was necessary for the appellant to adduce evidence, (a) to prove that the relationship between them was that of half sibling, and (b) to exclude the possibility that either Goytun or Rushna was their shared biological mother. However, the DNA report did not prove the former. This was because, as Mr Diwnycz correctly noted, the author of the DNA report had only compared the probability of them being unrelated with that of them being half siblings. The possibility that they may be related in some other way - as cousins with a common grandparent for example - had not been considered.

9. Mr Bashir struggled to identify a flaw in this argument. He was thus driven to seeking to persuade me that I should admit a further DNA report that belatedly addressed the above issues. It is not however possible, at the stage of considering whether the First-tier Tribunal has erred in law, to admit further evidence in order to fill evidential lacunae that existed at the time of the appealed decision.

10. It is therefore clear that, in the absence of evidence to the contrary, Judge Saffer simply made assumptions about Moisin Islam's parentage. More fundamentally, he misinterpreted the DNA evidence concerning the relationship between Moisin Islam and the appellant. I therefore announced to the representatives that I had decided to set aside the decision of the First-tier Tribunal to re-make the decision.

11. Mr Bashir thereafter renewed his application to admit the new DNA report, the effect of which is to establish that the appellant and Rumena Begum are likely to be <u>full</u> (not half) siblings, and which effectively excludes the possibility that they share their mother with Moinul Islam. In support of this application, Mr Bashir repeatedly cited "the interests of justice" as a reason for admitting the evidence. However, in deciding where the interests of justice lie, it is necessary to consider why the evidence in question was not made available to the First-tier Tribunal, and Mr Bashir was unable to provide me with any explanation for this. In a case such as the present, where the fundamental human rights of the appellant are not engaged, it seems to me that further evidence should only be admitted if it could not, with reasonable diligence, have been placed before the court or tribunal of first instance. Absent any argument from Mr Bashir to the

contrary, there would appear to be no reason why this evidence could not have been made available to the First-tier Tribunal. I have therefore decide not to consider it when remaking my decision.

12. Based upon the evidence that was before the First-tier Tribunal, I am not satisfied that the Moinul Islam and the appellant are either full or half siblings. I am not therefore satisfied that they have either parent (mother or father) in common. It follows from this that the appellant has failed to prove that the late Afruz Ali was her father and her appeal must therefore fail. It is now a matter for her to decide whether to make a fresh application, which would no doubt be supported by the evidence that I have refused to admit in these proceedings.

Notice of Decision

13. The decision of the First-tier Tribunal to allow the appeal against the respondent's refusal to grant her application for a Certificate of Entitlement to a Right of Abode in the United Kingdom is set aside and is substituted by a decision to dismiss that appeal.

Signed Date: 9th February 2015

Judge D Kelly

Deputy Judge of the Upper Tribunal