



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

Appeal Number: OA/18627/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 14 July 2015**

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

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL K DRABU CBE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MRS RUKSHANA BEGUM
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms A Fujiwala, Senior Presenting Officer
For the Respondent: Mr I Islam of Citylink, Solicitors.

DECISION AND REASONS

1. Judge Quinn of the First Tier Tribunal following a hearing at Hatton Cross on 17 March 2015 allowed the appeal of the respondent. The respondent is a citizen of Bangladesh whose date of birth is given as 12 June 1991. On 18 June 2014 her application for a Certificate of Entitlement to the Right of Abode in UK as child of the late Mosrab Ali was refused by the appellant for reasons given in the letter of that date. Judge Quinn gave reasons for allowing the appeal and his determination was promulgated on 7 April 2015. He heard oral evidence and also received documentary evidence.

2. In a detailed and comprehensive determination the Judge explained why he had allowed the appeal despite his doubts about genuineness of the respondent's birth certificate. On 4 June 2015 the appellant was granted permission to appeal to the Upper Tribunal by Judge Ransley, a Judge of the First Tier Tribunal who concluded upon the grounds of appeal tendered by the appellant that owing to the doubts that Judge Quinn expressed about the genuineness of the respondent's birth certificate, his decision to allow the appeal was arguably in material error of law.
3. At the hearing before me, Ms Fujiwala representing the appellant argued that an applicant for Certificate of Entitlement to the Right of Abode was required to produce a "genuine" certificate of birth and without the production of such document the application could not get off the ground. She argued that the production of DNA evidence to establish relationship was not enough especially since the DNA report, which had been submitted, was not a complete document since a page of it was missing. Upon further examination of the documents, Ms Fujiwala accepted that the DNA Report was full and no page thereof was missing.
4. Mr Islam representing the respondent argued that the First Tier Judge had carried out a full and fair review of the facts and had come to the conclusion that he was entitled to. He submitted that the relevant regulation required production of birth certificate. The regulation does not require the birth certificate to be "genuine". Whilst Judge Quinn had expressed his doubts about the veracity of the birth certificate, he had not found the birth certificate to be a false or fabricated document. He argued that the grounds submitted by the appellant as well as the oral arguments advanced by Ms Fujiwala had not established a material error of law and the appeal must therefore be dismissed.
5. I have given careful consideration to the determination of Judge Quinn. I note that the Judge has carried out a detailed analysis of all the relevant facts. The Judge has taken account of the history of the case as is evident from paragraphs 15 and 16 of his determination. The Judge noted that the appellant's previous application had been refused on 26 October 2010 as "doubts had been expressed about the birth certificate produced on that occasion. The relationship to Mosrab Ali was doubted." The Judge noted his concerns about the birth certificate produced to support the application in the case before him and correctly and properly referred to the decision in the case of **Tanveer Ahmed IAT [2002] UKIAT**. He also noted that in the application which had been refused and which was the subject of the appeal before him was supported by a report on DNA tests.
6. The Judge carried out a full analysis of the DNA test report and concluded that although "the DNA evidence was not as clear and complete as it could have been but applying the balance of probabilities test I make the finding that Shezlu and Appellant are half siblings and share the same father Mosrab Ali." This finding was perfectly legitimate and was open to the Judge Quinn to make.

7. The argument that an application for Certificate of Entitlement cannot succeed unless it is accompanied by a “genuine” birth certificate has no basis in law or indeed common sense. It is a mandatory requirement that an application should be accompanied by a full birth certificate of the applicant. There is no mention of the word “genuine”. In this case a birth certificate was submitted with the application setting out the requisite particulars. The Judge did not rule out that document as not being non compliant with the requirement.
8. I should like to note that there are countries whose nationals are not able to produce birth certificates because the local requirements do not require such documents to be made. There are countries where registration of births and deaths is by comparative analysis a recent phenomenon and is not enforced as diligently as one would expect in the western world. Bangladesh is or certainly was one of such countries.
9. If the requirement were to prove that a supporting birth certificate was “genuine” it would lead to difficult and unfairly discriminatory consequences for the nationals of countries like Bangladesh. In this particular case the Judge did not find the birth certificate to be a false document. He noted the features that made the document less reliable but at the same time the Judge correctly and lawfully took account of the DNA results, which supported the respondent’s application. I should also note that at the hearing before me it was accepted by Ms Fujiwala that the DNA report submitted with the application had not been incomplete as had been previously suggested. No page of the report had been missing. The DNA results provided compelling evidence of relationship of the respondent to her deceased British citizen father.
10. I find that the decision of Judge Quinn to allow the appeal of Mrs Rukhsana Begum was not in material error of law and must therefore stand. As a consequence so must his order on award of fees.

Judge K Drabu CBE
Deputy Judge of the Upper Tribunal.
21 August 2015