



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

Appeal Number: OA/20228/2013

THE IMMIGRATION ACTS

**Heard at Centre City Tower, Birmingham
On 15th May 2015**

**Decision & Reasons
Promulgated
On 21st May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MRS JUSHNA BEGUM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Tariq Khan (Counsel)

For the Respondent: Mr Neville Smart (Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge A M Black, promulgated on 11th November 2014, following a hearing at Taylor House on 7th November 2014. In the determination, the judge allowed the appeal of Mrs Jushna Begum. The Respondent Secretary of State, subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a female citizen of Bangladesh, who was born on 22nd December 1985. She appealed against the decision of the Respondent dated 2nd October 2013, refusing her a Certificate of Entitlement to a Right of Abode in the United Kingdom as the child of a person by the name of Abdul Garfur, who had since passed away.

The Appellant's Claim

3. The Appellant's claim is that she is the legitimate child, by way of descent, of her British citizen father, Abdul Garfur, who was born after her father registered as a British citizen in the UK. Her father married five times, and she was the child of his last wife. The Respondent has contested the claim on a number of different grounds. The Respondent states that the birth certificate in relation to the Appellant was issued more than 21 years after her birth. There was no evidence that Mr Garfur was in Bangladesh at the date of the conception of the Appellant's birth. There is limited other documentary evidence to support the claimed relationship. Mr Garfur's British nationality certificate contained some immigration stamps from Bangladesh from 1991 to 1994. The Appellant had made her application after Mr Garfur's death and so no DNA evidence was available. The Appellant had provided no family photographs or other documents to demonstrate her relationship with her father. There was no evidence of legitimate descent from her claimed mother.

The Judge's Findings

4. The judge held that the Appellant's father, Mr Abdul Garfur, would likely have travelled on a British passport because there was no Bangladeshi High Commission visa endorsed in his passport when he returned to Bangladesh. He was born in 1924. He would have been aged 55 when he arrived in Bangladesh in 1979. He did not leave again for ten years. The immigration stamps are consistent with having his returned to Bangladesh to retire.
5. The judge went on to hold that Mr Garfur married the Appellant's mother on 10th September 1980 in Sylhet, in Bangladesh. At that time he was a British citizen. This is evidenced in his British passport (see paragraph 16).
6. The Respondent contests that there are no family photographs, but this is incorrect because, "The Appellant has now provided a photograph of herself and her father" (paragraph 17).
7. Furthermore, the Respondent contested that the Appellant's father had five wives, but the Respondent "Does not suggest that the Appellant's mother's marriage to Mr Garfur was polygamous", so that, the logical conclusion was that Mr Garfur was domiciled in Bangladesh, having returned to that country in 1979, and "There is no evidence to suggest that the marriage was not valid in Bangladesh".

8. The appeal was allowed.

Grounds of Application

9. The grounds of application state that the judge found that the Appellant was of legitimate descent from Abdul Garfur, but the Appellant's father had five wives, and the fact that the Respondent was not satisfied as to the legitimacy of the Appellant, implied that the Respondent did not consider the marriage to the fifth wife not to have been polygamous. Therefore, there could be no legitimacy assumed about the Appellant's birth.

10. On 5th January 2015, permission to appeal was granted.

Submissions

11. At the hearing before me on 15th May 2015, Mr Smart, appearing on behalf of the Respondent Secretary of State, submitted that the appeal had been allowed here on the basis of what was a "paper hearing". The judge did not have the benefit of evidence. Mr Smart said that he would rely on the Grounds of Appeal. The judge

"Had not been satisfied that the marriage was not polygamous to the last of the five wives by Mr Abdul Garfur. The judge had properly set out the three issues that he had to determine. These were (see paragraph 8), (1) whether the Appellant is of legitimate descent; (2) whether the Appellant is related as claimed to a British citizen; (3) whether the Appellant was born after her father was registered as a British citizen".

12. Yet, the judge did not then properly consider the issue of "legitimate descent". The only time that the judge comes close to doing so is at paragraph 16, where he holds that, after Mr Garfur married the Appellant's mother on 10th September 1980, the position was that, "By that date he was a British citizen, as evidenced by his British passport" (paragraph 16). However, the Appellant's father had married five times.

13. Mr Smart handed up the "Muslim Marriages and Divorces (Registration) Act, 1974", and this makes it quite clear that "It applies to all Muslim citizens of Bangladesh wherever they may be" (see paragraph 1(2)). The importance of this was that only four marriages were allowed under Muslim law. The Appellant's father had married five times. Therefore, there had to be a legitimate issue of descent that had to be determined. Finally, the judge did not refer to the existence of a "nikah" (i.e. marriage certificate) before deciding that the Appellant's father and mother were legitimately married.

14. For his part, Mr Tariq Khan submitted that the judge had considered all the evidence, and had done so properly, and addressed the issue of "legitimate descent" precisely at paragraph 16, to which Mr Smart had just referred, by stating that, at the time of the marriage on 10th September 1980 with the Appellant's mother, the Appellant's father was a British citizen. Second, the issue of "polygamy" was never reached in the

Grounds of Appeal, and was never before the judge. The only issue was that of “legitimate descent”. It could not be assumed that the issue of “legitimate descent” had to do with a polygamous marriage. It had just as much to do with the legitimate marriage of the Appellant’s mother with Abdul Garfur. The judge determined this properly because there was indeed a marriage certificate (see the Respondent’s own bundle) between the Appellant’s mother and Mr Abdul Garfur.

15. Therefore, it was entirely improper to raise the question of “polygamous marriage” at this late stage on an appeal from a First-tier Tribunal’s decision. Finally, however, and in any event, the fact was that the marriage was in compliance with the Muslim Marriages and Divorces (Registration) Act 1974 because Mr Abdul Garfur’s first wife had passed away in 1971. This is clear from the supplementary bundle, which shows that the first wife died during the “liberation war” between East Pakistan and, what was then West Pakistan.
16. The supplementary bundle left no doubt that the Appellant’s father could legitimately marry the Appellant’s mother. The late Mrs Neckjan Bibi, who had been born in 1933, died in 1971. The other remaining wives were Mrs Safina Khatun, who Mr Abdul Garfur married on 28th June 1966; Mrs Monowara Begum, who Abdul Garfur married on 12th November 1979; and Mrs Nurun Nahar Leily, who Mr Abdul Garfur married on 10th September 1980. These were the three wives in existence at the time that Abdul Garfur married the Appellant’s mother, which was on 16th June 1983, when he married Mrs Hazera Begum. These facts were known to the Respondent Secretary of State which was why no issue of a polygamous marriage was ever reached.
17. In reply, Mr Smart submitted that “legitimacy” is to do with polygamy.

No Error of Law

18. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows. This is a case where the judge considered the three questions, which had been specifically set up at the outset of the factual determination (see paragraph 8).
19. The judge had regard to the evidence, in a paper hearing, which had to do with the “Appellant’s parentage and date of birth”, and there was evidence from a number of witnesses (see paragraph 10). These included the imam from the Appellant’s village, the pharmacist from the village, the local doctor, the headmaster from the village, the school teacher from the high school, and so forth (see paragraph 10). The evidence of witnesses was recounted (paragraph 11).
20. Thereafter, the findings of fact are made from paragraphs 15 to 19. There can be no error of law because the judge was clear in the statement that,

“The Respondent has noted the Appellant’s father had five wives; he does not suggest that the Appellant’s mother’s marriage to Mr Garfur was polygamous” (paragraph 18).

21. The only issue of “legitimacy”, therefore, was to do with the marriage having taken place. There was a “nikah” (marriage certificate) in the Respondent’s own bundle, and this was clear proof of the legitimacy in legal terms of the marriage between Mr Abdul Garfur and Mrs Hazera Begum. On a balance of probabilities, the findings made by the judge were clearly open to the judge. There is no error of law.

Notice of Decision

22. There is no material error of law in the original judge’s decision. The determination shall stand.
23. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

20th May 2015