



IAC-FH-CK-V1

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

Appeal Number: OA/00618/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 10 December 2015**

**Decision & Reasons Promulgated
On 22 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**MRS FORIDA ISLAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Noor, Black Stones Solicitors

For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Bangladesh born on 29 April 1992. She appealed against a decision by the Entry Clearance Officer on 2 December 2013 refusing to grant her a certificate of entitlement to the right of abode in the UK as the daughter of Monohor Ali, who is her father and Sponsor. The reason for that decision was that the Respondent was not satisfied that the Appellant had been born after her father was granted British citizenship. The Respondent's decision was upheld by the ECM on 16 January 2015.

2. There have been two previous applications made by the Appellant. The first of those applications was rejected on the basis that it was not accepted that the Appellant was the daughter of Monohor Ali and whilst the Appellant sought to appeal against that decision she then withdrew that appeal and made a second application. In a decision dated 16 October 2011, the Respondent accepted, on the basis of DNA evidence, that the relationship was established but refused the application on the basis of a lack of evidence. An appeal was heard and dismissed by First-tier Tribunal Judge Herlihy, in a decision promulgated on 12 April 2012.

3. Permission to appeal was sought to the Upper Tribunal against the decision of Judge Herlihy and in a decision of the Upper Tribunal dated 20 September 2012 the Upper Tribunal upheld Judge Herlihy's decision. They noted at [16]:

“The sole document pointing to the Appellant having used her date of birth before it was registered is the letter from Lalabazar Alim Madrasah. The judge did not attach much weight to that as the author of the letter did not attach a copy of the relevant register he appears to have consulted. This is a significant omission. Without it the letter is simply a bare assertion and little weight can be attached to it.”

4. The Appellant then made a third application, which is the subject of the current appeal. As part of the documentation that was submitted to the Entry Clearance Officer the Appellant submitted firstly, an affidavit from the midwife, Dilara Begum, who had delivered her and also further documentation from the madrasa where the Appellant was studying which include a certificate that the Appellant had participated in the annual exam of class 8 held in 2005; evidence that she had undertaken a number of examinations and copies of the school admission registers for a number of years which were submitted along with translations.

5. At the hearing before First-tier Tribunal Judge Clayton the judge declined to consider the new evidence. She stated at [18]:

“The Appellant did adduce further evidence in the form of an extract from the school register and an affidavit from the midwife, but applying Devaseelan principles, there is no reason why these should not have been before Judge Herlihy and the Upper Tribunal for their consideration.”

And at [19]: *“Even if I were to admit the new documents, which I have not done, I would find them to be entirely self-serving and to have been produced solely to bolster a weak claim.”*

6. The judge further found that the Appellant had not persuaded her on a balance of probabilities that she was entitled to a certificate of entitlement to the right of abode and she dismissed the appeal.

7. Permission to appeal was sought on a number of bases but in particular that the judge had erred in finding that there was no reason why the Appellant had previously failed to adduce evidence before Judge Herlihy and the Upper Tribunal in that it was only following the decisions of Judge

Herlihy and the Upper Tribunal, who drew attention to the fact that they could not attach weight to the letter from the school absent a copy of the register, that a copy of the register had duly been produced, and it was submitted that this was a good reason bearing in mind Devaseelan, to admit and consider that new evidence.

8. A challenge was also made to the judge's decision at [19] that even if she had admitted the documents she would find them to be entirely self-serving and to have been produced solely to bolster a weak claim.
9. Permission to appeal was granted by Upper Tribunal Judge Finch on 7 September 2015 on the basis that in Devaseelan the Upper Tribunal recognised that its guidance did not cover every possibility and it was open to the second judge to exercise discretion but the First-tier Tribunal Judge had failed to consider exercising her discretion on the particular facts of this case and had further erred in categorising the new evidence as self-serving when such evidence was from an official and objective source and not evidence generated by the Appellant herself.

Hearing

10. I heard submissions at the hearing before me from Mr Noor on behalf of the Appellant and from Ms Willocks-Briscoe on behalf of the Secretary of State. I also had the opportunity to examine two of the original documents, namely the affidavit from the Appellant's midwife, Dilara Begum [56]-[57], who delivered her as a baby, and also the letters from the Appellant's school, copies of which appear at pages 28-30 of the Appellant's bundle.
11. I find that First-tier Tribunal Judge Clayton did err materially in law for the reasons set out in the grounds of appeal. This was the third application the Appellant had made. Each time further evidence had been submitted, essentially in response to the reasons provided for refusing the previous application.
12. The evidence overall showed firstly, that the Appellant is the daughter of a British citizen and that secondly, her date of birth is 29 April 1992. In essence the reason why the documentation supporting her date of birth is material is because her birth was not registered for some seventeen years after it had taken place due to the fact that by operation of Bangladeshi law it was not previously necessary to register the birth. This was an issue dealt with during the previous proceedings.
13. The judge, I find, erred in failing to admit the new documentation on the basis that Devaseelan applied when it is clear that Devaseelan does provide for discretion and in the particular circumstances of this case I find that discretion should have been exercised at least to the extent of consideration of the documentation concerned.

14. I further find that Judge Clayton erred in finding that even if she had admitted the documents she would have found them to be entirely self-serving and to have produced solely to bolster a weak claim when, as Ms Finch noted in her grant of permission, the documents in question, in particular those from the school, are from an official source. They contain a translator's signature and they have also been stamped by a notary public, Belal Ahmed, as has the letter from Dilara Begum, the midwife. There is nothing, I find, to suggest that these documents are self-serving per se given the source or sources from which they emanate.
15. I indicated my decision in court and both parties agreed that I can remake the decision, so I now proceed to do so. The only issue in respect of the appeal was the Appellant's date of birth and whether this postdated the time when her father had been granted British nationality. That was on 26 February 1992 [page 50 of the Appellant's bundle refers]. It is clear from the evidence that the Appellant's date of birth was 29 April 1992 and thus her date of birth postdates the date on which her father was naturalised.
16. As I indicated earlier, I had the opportunity of seeing the originals in respect of two of the key new documents and I find that those documents confirm the Appellant's date of birth and when considered cumulatively along with the evidence already submitted, in particular her birth registration certificate and the previous letter from the school, I find that the Appellant's date of birth is indeed 29 April 1992 and therefore she is entitled to a certificate of entitlement to the right of abode in the UK as the daughter of a naturalised British citizen.

Notice of Decision

For those reasons I allow her appeal.

No anonymity direction is made.

Signed

Date 21 January 2016

Deputy Upper Tribunal Judge Chapman