



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

Appeal Number: OA/18851/2012

THE IMMIGRATION ACTS

Heard at Field House

On 21 August 2014

Prepared 21 August 2014

Determination

Promulgated

On 2 September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MR MD GEDON MIAH
(NO ANONYMITY ORDER MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - DHAKA

Respondent

Representation:

For the Appellant: Mr T Shah, Solicitor of Taj Solicitors

For the Respondent: Ms K Pal, Senior Presenting Officer

DETERMINATION AND REASONS

1. The Appellant, a national of Bangladesh, date of birth 28 April 1962, appealed against the Respondent's decision dated 4 September 2012 to refuse entry clearance to join his spouse with reference to paragraph 320(3) of the Immigration Rules HC 395.
2. The Appellant's appeal to the First-tier Tribunal was dismissed by First-tier Tribunal Judge Raymond on 29 April 2014. Permission to appeal that

decision was given by First-tier Tribunal Judge P J G White on 3 July 2014. The Appellant had the burden of proof of showing upon a balance of probabilities that at the date of the Respondent's decision he met the requirements of paragraph 281 of the Immigration Rules.

3. The Respondent in the notice of immigration decision took a number of points against the Appellant. First, the marriage of the Appellant was not in doubt but the extent of the relationship between the Appellant and Sponsor, his wife, was not possible to determine on the evidence provided. Second, the marriage was not registered between 15 October 1989 and 12 August 2012. It was said that there was no explanation of what evidence was provided to the registrar, producing the later certificate to confirm a wedding ever took place between the Appellant and Sponsor on 15 October 1989. It was said in effect that the value of any information provided to the relevant registrar was only as good as that given and was not sufficiently contemporaneous to have other relevance of reliability about it.
4. Third, photographs produced really did not sit consistently with their claimed dates of origin. Fourth, further as evidence of a continuing relationship the evidence of financial support from the Sponsor was inadequate. Fifth, there was inadequate evidence of continued contact. Sixth, that there was a lack of evidence relating to DNA evidence of his relationship with his claimed daughter who was in the United Kingdom with the Sponsor. Seventh, there was an absence of evidence to show that the marriage was subsisting. Eighth, the Appellant had used and been in the United Kingdom with an alias as Mohammed Noor Uddin, date of birth 5 March 1962, and it could not be said that the true name of the Appellant was generally Miah as opposed to Uddin.
5. The judge considered these issues and it was accepted that the Appellant is the father of the child currently residing with the Sponsor.

6. As to the marriage of the Sponsor the Appellant had produced the Nika Nama but it is noteworthy, as required in the form, the Appellant did not disclose a previous marriage. It is unclear whether or not the reality is that there never was such a marriage or that there was non-disclosure. I do not speculate nor did the judge as to the cause of that non-disclosure. Nevertheless the judge also looked at photographs provided and was entitled to reach the view, bearing in mind the differences between them, without holding himself out as having expertise that the photographs appeared to be taken at different times. The judge speculated on whether that might be in the 1980s and it is possible to argue around the issue of the photographs, the presence of the baby, the difference in appearance and so on and so forth. Ultimately the issue had been raised by the Respondent and the judge dealt with it as best he could on the evidence before him.
7. The judge was fairly entitled to conclude that if there was a polygamous marriage as claimed then contrary to what he had said that would not exclude the Appellant from entering the United Kingdom so long as his wife of the first marriage was not within the United Kingdom.
8. The judge's error in this respect is not a material error to the overall assessment of the evidence.
9. The refusal raises the issue of the reliability of the Appellant's passport and what is said by the Appellant is that there were other documents before the judge that ought to have swayed the decision. First, the Appellant now had a new Bangladeshi passport and as such it ought to be accepted as a genuine document. Second, the Appellant's national identity card identified him. Third, the marriage certificate, registry office and the local chairman's office again evidenced his name. Fourth, his daughter had a Bangladeshi passport issued in 2010 in her name, with her father's (the Appellant) name in her passport. Fifth, that there was DNA

evidence of the daughter who it therefore followed was related to the Appellant.

10. As to the reliability of the Bangladeshi passport the difficulty is that the Appellant is hamstrung by the fact that he readily used, whether provided by an agent or not, a false identity and really has no explanation why he chose to do so and then maintain that identity. Second, there was no evidence as to the extent of the scrutiny conducted by the Bangladeshi authorities of applications for passports, not least in the context of someone who has previously used a false Bangladeshi passport. There was no evidence as to how national identity cards are issued and the scrutiny of the evidence of identity. It therefore may be a factor but what weight can be given to a card, the original of which I have not seen, is difficult to assess. As to the marriage certificate, so far as I am aware or indeed the judge was aware there was no identification required but if it was and the Appellant had false identification it follows that the marriage certificate would similarly be false.
11. It also follows inevitably that the daughter when obtaining her Bangladeshi passport would have been using the father's identity as known to her and therefore her passport would contain that information. As to the DNA evidence that plainly is important in demonstrating the relationship between the Appellant and the mother of the daughter. Whether he truly is who he says he is is quite another matter and the DNA evidence does not go to the issue of identity.
12. However, it is said 'what else could the Appellant do to establish his identity?' It seems to me, without seeking to be definitive of these matters, that question can be answered in a number of ways. First, confirmation of identity by friends and persons known to him in Bangladesh. Second, by reference to the bank he is with and the extent to which they have checked or known of his identity and the length of time and period over which it has been known. Third, the local council or chairman's office

could confirm length of time of knowledge of the Appellant and his name at material times. Fourth, documents evidencing title to land which are occasionally thumb-printed at the material time.

13. In the circumstances I do not accept that the Appellant was, as he effectively claimed, bereft of ways of providing evidence as to his identity and knowledge of him as a person in Bangladesh. It will of course be the length of time that he has been known as he claims to be that will be a significant factor, particularly if it goes back beyond and before the false identity he used for a period of time.
14. These matters were all in one way or another considered by the judge and in the circumstances other than in respect of the polygamous marriage issue over which the Appellant was mistaken it seems to me that the matters he took into account were those he was legitimately entitled to do.
15. In the circumstances I find no material error of law which would have effected a different decision arising from the judge's assessment of this matter.
16. The appeal is dismissed. The original Tribunal's decision stands.

ANONYMITY ORDER

No anonymity order is necessary.

TO THE RESPONDENT

FEE AWARD

None is appropriate in the circumstances.

Signed

Date 27 August 2014

Deputy Upper Tribunal Judge Davey