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Case No: CO/2811/2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/05/2019

Before :

HIS HONOUR JUDGE JARMAN QC
Sitting a judge of the High Court

Between :

THE QUEEN on the application of ABDUL KADIR
- and -
SECRETARY OF STATE FOR THE HOME
DEPARTMENT

Claimant

Defendant

Mr Shahadoth Karim (instructed by **Hamlet Solicitors LLP**) for the **claimant**
Mr Zane Malik (instructed by **Government Legal Department**) for the **defendant**

Hearing date: 21 May 2019

Approved Judgment

HH JUDGE JARMAN QC :

1. The claimant asserts that he is Abdul Kadir and was born in Bangladesh on 28 April 1975 to Suroth Ali and Mortuza Bibi who married in that country on 12 March 1953, and that his father was on 11 April 1974 registered here as a citizen of the United Kingdom and Colonies. The defendant accepts that if each of those facts is proved then he is a British Citizen. The claimant says that the evidence produced by him is sufficient to meet this threshold, but the defendant disagrees. That is the issue before me, which turns on whether the issues of fact set out above have been proved.

2. In those circumstances, the relevant statutory provisions can be stated quite shortly, and are set out in three pieces of legislation. The first is the British Nationality Act 1948 (the 1948 Act), which first established the status of citizen of the United Kingdom and Colonies. Section 5(1) thereof provides:

“Subject to the provisions of this section, a person born after the commencement of this Act shall be a citizen of the United Kingdom and Colonies by descent if his father is a citizen of the United Kingdom and Colonies at the time of his birth....”

3. The second is the Immigration Act 1971 (the 1971 Act) as later amended. Section 2(1) provides:

“A person is under this Act to have the right of abode in the United Kingdom if-

(a) he is a British citizen; or

(b) he is a Commonwealth citizen who-

(i) Immediately before the commencement of the British Nationality Act 1981 was a Commonwealth citizen having the right of abode in the United Kingdom by virtue of section 2(1)(d) or section 2(2) of this Act as then in force; and

(ii) has not ceased to be a Commonwealth citizen in the meanwhile.

4. The third is the Act referred to in section 2(1)(b)(i) above (the 1981 Act). Section 11 (1) thereof provides:

“Subject to subsection (2), a person who immediately before commencement-

(a) Was a citizen of the United Kingdom and Colonies; and

(b) Had the right of abode in the United Kingdom under the Immigration Act 1971 as then in force,

shall at commencement become a British citizen.”

5. Section 3(8) of the 1971 Act provides that the burden of proof in asserting British citizenship lies upon the person asserting it. The standard of proof is the balance of probabilities (see *R(Sinha) v Secretary of State for the Home Department* [2013] EWHC 711 (Admin)).
6. I heard oral evidence from the claimant, and a witness who it is claimed is his brother, Abdun Noor. Each gave evidence through an interpreter in the Sylheti dialect of Bengali. In his final submissions, Mr Malik for the defendant made clear that the defendant, whilst putting the claimant to proof on each of these facts and whilst making several points concerning the credibility of the claimant and Abdun Noor, nevertheless does not put forward a positive case that these witnesses are not who they say they are or that they are not the sons of Suroth Ali and Mortuza Bibi. However, the defendant does assert that the claimant was not born on 28 April 1975 as he now claims, but on 16 April 1971 which is the date of birth given on earlier documents which he now claims are mistaken. The importance of his date of birth, which was the main focus of the evidence and submissions, is that if he was born before Suroth Ali obtained his British citizenship in 1974, then even if all the other requirements for British citizenship are made out, then the claimant does not qualify as a British citizen.
7. Both the claimant and Abdun Noor claim that they are two of the four sons of Suroth Ali and Mortuza Bibi and that they have three sisters. The family were farmers in a village called Shahar Para in the district of Jagannathpur, a few miles from the city of Sylhet in north-eastern Bangladesh. Their parents and they were illiterate and had little formal education. It is not in dispute that Suroth Ali became a British citizen on 11 April 1974, and remained so until his death at the age of 57 in 1990. He worked in a restaurant in the UK, although he returned from time to time to Bangladesh.
8. Mortuza Bibi remained in the village with their children. In 1982 she made an application (the 1982 application) to the British High Commission in Dhaka to join her husband and to settle in the UK. The application was authenticated by her thumb print and the pro forma in the English language was completed by someone else. Abdul Kadir, whose date of birth was written in as 16-4-71, and Abdun Noor, whose date of birth was written in as 10-2-76, were included as applicants. Two other children were identified in the form as not included in the application, namely Moyna Miah, whose date of birth was written as 4-6-1962 and Toyab Ullah, whose date of birth was written in as 10-9-1961. That application was refused and an appeal dismissed.
9. Suroth Ali died in 1990 in Bangladesh. There is a death certificate issued from the Jagannathpur district office of the registrar of birth and death dated 20 September 1990, stamped and signed by the chairman of the office. It records the date of death as 19 January 1990, and the age as 57 years 4 months and 22 days. The named informant is stated to be of the village police and the cause of death was given as paralysis.
10. The claimant was cross-examined about the circumstances of death. He said that his father had been diabetic for a number of years and had to inject himself. Shortly before his death, he wanted to visit Bangladesh to see his wife and children, but his doctor in the UK advised against it and suggested that he should try to get them to visit him, but he did not take this advice. Some three weeks after arriving in

Bangladesh, he became bedridden. For two to three days he could not speak or move. He lost the use of one side of his body. The claimant said that he was young at this time and was present when his father passed away.

11. The following year, by an application dated 29 May 1991 (the 1991 application) Abdun Noor applied for right of abode in the UK as a child of Suroth Ali and Mortuza Bibi. Photographs of him are attached which bear a marked resemblance to the person who appeared in court. In his oral evidence he said that the signature on the form was his, but it was otherwise filled in by, he thinks, a lawyer in Sylhet. His father is identified as Suroth Ali and his mother as Mortuza Bibi. His date of birth is given as 10-2-1976. Then details of other children including dates of births are given who were not included in the application, as follows: Moyna Miah 22-1-55, Tayob Ullah 18-9-57, Achor Bibi 11-2-59, Kasa Bibi 25-10-61, Angur Bibi 8-7-64, Abdul Kadir 16-4-71. He could not recall where the information came from. It is noteworthy that the date of birth of Abdul Kadir given in that application is the same as in the 1982 application, but that dates for Moyna Miah and Tayon Ullah are given as seven and four years earlier than the 1982 application. The application was refused, and an appeal dismissed.
12. In March 1992, Mortuza Bibi attended the Magistrates Court in Sylhet and made an affidavit before a magistrate that she married the late Suroth Ali on 12 March 1953 and that the marriage was monogamous. She authenticated the affidavit with a thumb print and it was stamped with the court stamp. There is also available an English translation of the Bengali marriage deed which gives the same date of marriage.
13. In his witness statement, the claimant describes how he first became aware that he was born in 1975 as follows:

“I confirm that, I discussed the case with my mother. My mother had a calculation in her mind and said that I was not born in 1971 but I was born in 1975. I well remember she said in 1971 there was a war in Bangladesh but I was born after four years of the war. She then calculated from Bangla calendar and said I was born on 28 April 1975.”
14. In cross-examination he said that that conversation took place in about 1998. It is common ground that the Bangladesh Liberation War took place in 1971.
15. In 2000, Abdun Noor made another application for a certificate of right of abode in the UK. That was granted, and he now resides in the UK.
16. On 11 July 2001, Abdul Kadir made his own application for a certificate of right of abode. Photographs of him are attached, which bear a marked resemblance to the claimant. In his witness statement he says that he had not made one earlier because he did not have the funds to do so, but then his brother Abdun Noor sent him the funds. He gave his date of birth in the application as 28 April 1975 and said that it was not 16 April 1971 as stated in the previous application. He submitted further evidence namely his birth certificate and an affidavit from his mother.
17. The birth certificate is dated 28 June 2001 and issued by the office of the registrar of birth and death of the Jagannathpur district, signed by the chairman and stamped. It

gives the date of birth of Abdul Kadir as 28 May 1975. The named informant was stated to be of the village police. The chairman also wrote a letter dated 28 June 2001 to the British High Commission in Dhaka in which he said this:

“This is to certify that Abdul Kadir was born on 28/04/1975 at village Shahar Para, PO Shahar Para, P/s. Jagannath Pur, Dist.Sunamgonj, Bangladesh is a real son of Late-Mr. Suroth Ali and has been the permanent resident within my Union. I have thoroughly checked and found that the record held in my office shows that Abdul Kadir is a Son of Suroth Ali.

Therefore I can confirmed that Abdul Kadir is true, real and genuine son of Late Mr. Suroth Ali born on 28/04/75. Two Colour photographs are attested with this certificate.

Should you wish to require further information or details please do not hesitate to write to me. My office will be pleased to supply any further information you may wish to require. The above information is true and accurate to the best of my knowledge and belief.”

18. It is not clear what checks the chairman carried out to establish the date of birth, but on the evidence before me it does not seem that the High Commission asked for those details.

19. The affidavit of Mortuza Bibi is dated 8 July 2001. It was made before a notary public in Sylhet ,and signed and stamped by him. In it she confirms that Abdul Kadir is her son and that of her later husband Suroth Ali, and says he was born on 29 April 1975 and not 16 April 1971. She goes on to give this explanation:

“That in the past my late husband had made certain declaration to inland revenue in vitally important respect which was not true which involved some false elements the false date of our son Abdul Kadir for purpose of income tax claims for income tax relief for false date of birth of Abdul Kadir. That all false elements are now discarded and true date of birth are now stated above. I sincerely apologise for my husbands improper act.”

20. In his oral evidence the claimant said the he went with his mother in a taxi to Sylhet and was present when that affidavit was made. He said that the lawyer asked his mother if 1975 was correct and she said yes and then asked if 1971 was wrong and he said yes. He also asked her three times if she was okay and she replied, “I am fine.” It is not suggested on his behalf that there would be any tax advantage to his father by saying that Abdul Kadir was four years older than he in fact was.

21. On 2 December 2001 Abdul Kadir was interviewed at the British High Commission Dhaka in relation to his application through an official interpreter in the Sylheti dialect. He said he was about 16 when his father died and that his father gave his wrong date of birth in the earlier applications. When it was pointed out the 1971 date was also given in the 1991 application, Abdul Kadir replied that his father told his

mother that he did that for income tax purposes. When it was pointed out that his date of birth would have made no difference for such purposes, there was no reply. He was also examined by a medical officer on the same occasion. He estimated his age as between 38 to 40 years. If he had been born in 1971, he would then have been 30 years old. The entry clearance officer did not find these explanations credible and refused the application.

22. Abdul Kadir appealed that refusal. One of his grounds was that a DNA test could have been carried out between him and his brother Abdun Noor to establish their relationship. However, that appeal was withdrawn. In cross examination the claimant said the reason for this was that his brother Abdun Noor was dealing with the appeal in the UK but was new here. The paperwork was not in order, and his brother did not attend a hearing.
23. Abdul Kadir then made a fresh application on 9 March 2003. As part of the application he submitted age assessments. One was dated 19 September 2003 by an assistant professor of diagnostic imaging who gave an opinion on bony age deterioration on the basis of x-rays. The professor acknowledged the difficulty in assessing exact bony age but was of the opinion that the bony age was between 25 to 30 years. That would give a date of birth of 1972 to 1977. The x-rays were seen by a civil surgeon in Sylhet who also examined Abdul Kadir and gave the opinion that he was about 27 ½ years old. That would give a date of birth of about March 1975. He was interviewed again in Dhaka on 2 November 2003. Again, he was asked about the different dates of birth. He said that his father made a mistake “because of income tax or maybe some other reason, I don’t know.”
24. It appears that shortly afterwards the British High Commission in Dhaka did arrange for a DNA test to be carried out in respect of Abdul Kadir. Full details, and the report itself, are not available. Upon enquiring why, I was told by Mr Malik upon instructions that this was because documents had been destroyed in accordance with the defendant’s policy of destroying such documents after 10 years. The claimant, however produced a letter addressed to him from the High Commission dated 18 May 2004, which indicated that “the DNA test results have arrived and I am now able to issue you an entry clearance for the United Kingdom, subject to there being no change in your circumstances.” The letter went on to ask him to attend the office with his passport and two recent colour passport size photographs.
25. He did so and in June 2004 came to the UK. He then applied for his wife and child to join him in the UK and they were granted a visa. The couple had a second child in 2009 and a third in 2013.
26. He has made various applications for confirmation of his British citizenship and for British passports for himself and his wife and children in the last few years, all of which have been refused, save that a British passport was issued to their second child in 2010 and to their third child in 2015.
27. By a claim form filed in July 2018 the claimant challenges the latest refusal in April 2018 to issue a passport to him and also a removal notice served on him in that month.
28. His witness statement in support of his application, which consists of 19 paragraphs is dated 13 March 2019. There are also short statements from 5 persons who say they

are his siblings; one brother and the mother having died. These statements are dated 23 April 2019, including one form Abdun Noor who continues to live in London. The other four continue to live in the Jagannathpur district of Bangladesh. In each of the statements, the maker confirms that it has been read to him or her in Bangla. Each has produced a copy of his or her national ID card confirming his or her date of birth.

29. Taiyeb Ali says that he is the son of Suroth Ali and Mortuza Bibi and the claimant's brother. He says that he was born on 1 January 1971. He continues:

“I confirm that I was born in the year of the independence war in Bangladesh. Me exact date of birth is not know. That is why it says 01 January 1971. However, my parents were sure that I was born just two months before the war. I confirm that I had an elder brother named Moyna Miah. He is no more and I am not sure about the day he passed away. In Bangladesh, people do not bother about date of birth and death. I remember growing up with our siblings together. I confirm that the Claimant and all of us were almost the same age. We only had a age difference with our eldest brother. I confirm that only my elder brother and myself were born before the war. I am fully aware that the Claimant was born after 3 years of the war...I am aware the Claimant's date of birth issues. I well remember when my mother made the calculation in order to reach his date of birth.”

30. The fact that this witness says that the claimant was born 3 years after the war, which would put the birth date at the end of 1974 and after the British citizenship of Suroth Ali, is not wholly inconsistent with the evidence of the claimant, but does tend to suggest an absence of collusion between the two.

31. Ashor Bibi in her statement says that she was born on 15 March 1972. She confirms her parentage and that the claimant is her younger brother and that she is the third child of her parents. She continues that it is impossible that her brother was born before her, and that he has always been a good younger brother to her.

32. Kasa Bibi confirms that she was born on 10 December 1973 and confirms her parentage and that the claimant is her younger brother. She continues:

“I confirm that I am the fourth child of my parents. I am aware that we were born just after one another. In those days our father travelled to Bangladesh frequently.”

33. Angur Bibi also confirms her parentage and that the claimant is her brother. She says that she is the youngest child of her parents and intends to apply for a British passport but does not yet have the funds to do so,

34. Mr Karim for the claimant relies in particular upon the entry clearance and certificate in 2004, being granted as they were after DNA tests had been obtained. It is a reasonable inference however that the grant was made on the basis that the results showed that Abdul Kadir is the brother of Abdun Noor.

35. In *R (Miah) v Secretary of State for the Home Department* [2017] EWHC 2925 (Admin), Ms Alexandra Marks CBE, sitting as a Deputy High Court Judge, considered whether the claimant in that case was a British citizen by descent. In that case a determination by the Immigration Tribunal in 2002 showed that an immigration adjudicator found as a matter of fact that the claimant was the son of a British citizen by registration and thus entitled to a certificate of entitlement. The evidence relied upon was the father's British passport, a copy of the Pakistani passport of the claimant's brother showing his father's name and date of entry in the UK and a DNA blood test report showing a 99.999% probable kinship between the claimant and his brother as brothers of the same parents. The judge found at paragraph 72 that such determination provided a clear basis for finding that the claimant was a British citizen by descent.
36. The defendant however says this is immaterial and relies upon the decision of Upper Tribunal Judge Kate Markus QC sitting as a Deputy High Court Judge in *R (Rasul) v Secretary of State for the Home Department* [2017] EWHC 1306 (Admin). The issue there was whether the defendant was in breach of policy in treating the minor claimant as unlawfully present in the UK when her father's citizenship, on which her own was dependant, was revoked. At paragraph 16, this was said:

“The endorsement on the claimant's passport of a certificate of entitlement to the right of abode could not confer the right of abode. In the claimant's case the only basis on which she could have had the right of abode was under section 2(1)(a) Immigration Act, as a British citizen. Although, prior to the discovery of her father's deception, it was thought that she was a citizen by descent, that was mistaken. Her father was not a British Citizen. Accordingly the claimant could not have been a British Citizen at any time and so did not have the right of abode. As I have said, the right could not be conferred by endorsement of her passport.”
37. In my judgment, the extent of the reasoning in the latter case is that a certificate cannot prevail where it is subsequently discovered that the basis on which it is issued, namely that the claimant's father was a British citizen, was mistaken. It is not suggested in the present case that it has been discovered that Suroth Ali was not a British citizen. In my judgement therefore, the grant of the certificate in 2004 is relevant and is to be weighed in the balance. It is far from conclusive. In December 2006, the regulations governing the issue of certificates of entitlement of right of abode in the UK were revised, and thereafter every application for such a certificate was treated as a new application and required to be supported with the necessary documents to prove the entitlement
38. There are a number of documents relied upon by the claimant in the name of Abdul Kadir, such as his Bangladeshi passports, national identification card and birth certificates. These contain his date of birth as 28 April 1975 and his parents' names as Suroth Ali and Mortuza Bibi.
39. Before the passing of the Births and Deaths Registration Act 2004 in Bangladesh, it was not compulsory to register births in that country. A further birth certificate was issued to Abdul Kadir on the 5 April 2015 by the Jagannathpur district office of the

registrar of birth and death. It gives a registration date of 10 March 2015 and a different registration number to the 2001 certificate. It too is stamped and signed by the chairman and gives a date of birth of 28 April 1975. It states that it is issued pursuant to Rule 9 of Birth and Death Registration (Union Parishad) Rules 2006. When asked in cross-examination why there is a second certificate, the claimant said that changes in 2006 brought in computerised records and his brother Taiyeb Ali paid the fee for a new certificate and sent it to him. There is some support for the reference to computerisation, because on the 2015 certificate there is a line of boxes in which the registration number is given, and another line of boxes for a personal identification number where 17 digits are inserted. Such boxes are not present on the 2001 certificate.

40. Mr Makin made a general submission on the reliability of the documentation emanating in Bangladesh. In *MA (Bangladesh) v Secretary of State for the Home Department* [2016] EWCA Civ 175, Lloyd Jones LJ, as he then was, giving the lead judgment dealt with the reliability of documents emanating from Bangladesh in an asylum case. The Court of Appeal applied the approach adopted in *Tanver Ahmed v Secretary of State for the Home Department* [2002] UK 1AT 00439 by Collins J (President) delivering the judgment of the Immigration Appeal Tribunal, as follows:

“21...The Tribunal noted from experience and country information that there are countries where it is easy and often relatively inexpensive to obtain “forged” documents. Some are false in that they are not made by whoever purports to be the author and the information they contain is wholly or partially untrue. Some are “genuine” to the extent that they emanate from a proper source, in the proper form, on the proper paper, with the proper seals, but the information they contain is wholly or partially untrue. Courts and Tribunals need to differentiate between form and content i.e. whether a document is properly issued by the purported author and whether the contents are true. It is necessary to shake off any preconception that official looking documents are genuine, based on experience of documents in the United Kingdom, and to approach them with an open mind.

22. Referring to r 39(2) of the Immigration and Asylum (Procedure) 2000 the Tribunal stated that it is for the individual claimant to show that a document is reliable in the same way as any other piece of evidence which he puts forward and on which he seeks to rely. There is no legal justification for an argument that if the Secretary of State alleges that a document relied on by an individual claimant is a forgery and the Secretary of State fails to establish this on the balance of probabilities or even to the higher criminal standard, then the individual claimant has established the validity and truth of the document and its contents. Such an argument is manifestly incorrect, given that whether the document is a forgery is not the question at issue. The only question is whether the

document is one upon which reliance should properly be placed. Collins J. continued

“35. In almost all cases it would be an error to concentrate on whether a document is a forgery. In most cases where forgery is alleged it will be of no great importance whether this is or is not made out to the required higher civil standard. In all cases where there is the material document it should be assessed in the same way as any other piece of evidence. A document should not be viewed in isolation. The decision-maker should look at the evidence as a whole or in the round (which is the same thing).

36. There is no obligation on the Home Office to make detailed enquiries about documents produced by individual claimants. Doubtless there are costs and logistical difficulties in the light of the number of documents submitted by many asylum claimants. In the absence of a particular reason on the facts of an individual case, a decision by the Home Office not to make enquiries, produce in-country evidence relating to a particular document or scientific evidence should not give rise to any presumption in favour of an individual claimant or against the Home Office.”

23. In conclusion he set out the following principles:

“(1) In asylum and human rights cases it is for an individual claimant to show the document on which he seeks to rely can be relied on.

(2) The decision-maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round.

(3) Only very rarely will there be the need to make an allegation of forgery, or evidence strong enough to support it. The allegation should not be made without such evidence. Failure to establish the allegation on the basis of abilities to the higher civil standard does not show that a document is reliable. The decision-maker still needs to apply principles (1) and (2).”
(at [38])

These principles have been consistently applied since 2002 by courts and tribunals in a host of decisions.”

41. In *PJ (Sri Lanka) v Secretary of State for the Home Department* [2015] 1 WLR 132, the Court of Appeal considered whether that approach was compatible with the decision of the European Court of Human Rights in *Singh v Belgium* (33210/11) 2 October 2002 and decided that there is no material difference in approach, and that in the latter case the court simply addressed one of the exceptional cases when national

authorities should undertake a process of verification. It is not suggested that such a process should have been undertaken here.

42. Mr Karim, whilst accepting that it is for the claimant to prove his case, pointed out that the observations of Lloyd Jones LJ were made in the context of asylum cases. However, *Singh v Belgium* involved issues of nationality and a similar approach was adopted. That approach is appropriate in the present case, in my judgment.
43. Mr Malik also submitted that little if any weight should be attached to the evidence of the claimant or Abdun Noor, on the basis of internal inconsistencies in the evidence, inconsistencies with other evidence, lack of plausibility and asserting things in oral evidence which did not feature in their statements. There is some force in each of these points.
44. The most marked inconsistency in the evidence of the claimant is that in his witness statement he gave the reason for different dates of birth as a mistake on the part of his father. As he was uneducated and illiterate he got someone else to fill in the 1982 application form. That form was used when the lawyer completed the 1991 application form and so the same mistake was made. When he was referred to the affidavit of Mortuza Bibi and to his own answers given in interviews in 2001 and 2002, he said that it was a long time ago, and that either his mother said something about income tax or his father made a mistake. He said there were some things which he could not remember, and his mother said that there were some things she could not remember. This was the least impressive part of his evidence.
45. In his statement, Abdun Noor, in seeking to make the point that he and the claimant were born some 9-10 months apart, said that people used to refer to them both as twins, and that he was born prematurely. He also said that they used to wear similar shirts. When he was cross-examined about these points, he had some difficulty in understanding the term "twin." He said he could not remember people saying this, but he did recall people saying "same, same" when referring to himself and his brother. He also had difficulty with the term premature, but eventually said that that was possible, but he did not know. He then said that the witness statement was correct, but he had a tendency to forget, although he accepted that he had no medical condition that would explain this. That was the least impressive part of his evidence.
46. It is clear also that each of them in his witness statement downplayed difficulties which each has had with various application. For example, the claimant said that the defendant was always happy about his citizenship status when he applied for British passports for his children. In cross-examination, he readily accepted that an application by his wife for such a passport was refused in 2014 and that the defendant is holding his son's passport because of uncertainty over the claimant's status.
47. Abdun Noor in his witness statement said that he had no issues with his nationality, but in cross-examination readily accepted that he had applied for a British passport on two occasions and had been refused.
48. However, these and other unsatisfactory parts of their evidence must be put in context. On any view the 1982 application was made a very long time ago, when the children of Suroth Ali were very young and not involved in the application process. How the original mistake was made, if mistake it was, could only come to them later

on from Mortuza Bibi. Moreover, it was clear to me when each gave his evidence that each had difficulty understanding some of the questions, and the interpreter, who was clearly proficient had difficulty in understanding some of their answers, as he told me. This was particularly noticeable when they were being asked about documentation. Mr Malik submitted that it is implausible that the claimant had only two years schooling, as he claims, but in the absence of other evidence to contradict this I do not find it inherently implausible that the children of poor rural farmers in Bangladesh in the aftermath of the war should have so little education.

49. Their demeanour in giving evidence was what may be expected of poorly educated and illiterate witnesses giving evidence through an interpreter. Both gave their evidence in a somewhat diffident and clipped manner. In my judgment these factors go some way to explain the inconsistencies and other points of credibility of the witness. It is likely that in each case, the process of taking a statement from him in the English language gave rise to some misunderstanding.
50. When the witnesses were being asked about events rather than documentation, each gave his evidence in a more fluent and confident way. The claimant's evidence about the death of Suroth Ali, his conversation with Mortuza Bibi about his birthday, and about accompanying her to make her affidavit came across vividly. So too did Abdun Noor's account of people saying "same,same." In the absence of medical evidence, I do not find the claimant's account of the death of Suroth Ali to be significantly inconsistent with the cause of death given on the certificate as paralysis.
51. The unsatisfactory aspect of their evidence is such that I am cautious about taking their evidence at face value, but the evidence of each is deserving of some weight.
52. So too is the written evidence of their siblings and the affidavit of Mortuza Bibi. In respect of the siblings, Mr Malik made the point that these could have given oral evidence by link. Given their circumstances and location, I do not find it that surprising that they did not. I accept of course that their written evidence has not been tested by cross examination and accordingly carries less weight than if it had, but it is entitled to be given due weight.
53. Returning to the documentation, apart from that which relates to the date of birth of Abdul Kadir, there are no indications that should not also be given due weight. There is no reason to doubt the documentation regarding the marriage of Suroth Ali and Mortuza Bibi. Furthermore, as Mr Karim submitted, it would be somewhat surprising if a Muslim couple living in a small rural community in Bangladesh (as it became) in the 1960s or 1970s should have children out of wedlock.
54. Accordingly, taking the documentation in the round with the oral and written evidence of those claiming to be their children, it is likely in my judgment that the claimant is Abdul Kadir, the son of Suroth Ali and Mortuza Bibi who were married in 1953, and the brother of those siblings who have provided statements.
55. The real issue in the case it seems to me, is whether he was born before or after his father became a British citizen. Because of the contradictory contemporaneous documentation as to that date, a similar conclusion cannot be so readily arrived at upon it.

56. However, notwithstanding that documentation and the unsatisfactory aspects of the evidence of the claimant and his brother, I have come to the conclusion after weighing up all the evidence, pointing as it does in different directions, that it is likely that he was born in 1975.
57. My reasons are as follows. The evidence of the claimant about his father's death, his mother calculating his age by reference to the war, and accompanying her to make her affidavit had the ring of truth to it. So too, did his brother's evidence of people referring to them as "same, same." That evidence has the support of their other siblings. All these family members would have to be lying about the family structure and the claimant's place within it if he was born in 1971. It is not something that siblings are likely to be mistaken about. That each is lying is possible, but not very likely.
58. The age assessments carried out in 2003 also lend some support to that conclusion. The one carried out in 2001 does not say on what the conclusion was based and puts the claimant's age too high on any view. Those carried out in 2003 involved x rays and bony age assessment and are consistent with one another. In view of the difficulties of accurate assessment, these are by no means conclusive, but they lend support.
59. The fact that a certificate was granted in 2004, again while not conclusive, also lends some support for the conclusion. The documentation giving the claimant's date of birth as 1975, including his passport, does not take matters very much further as these appear to emanate from the birth certificate and/or his mother's affidavit in 2001. However, the fact that the chairman wrote to the High Commission in 2001 in the terms that he did adds some, albeit limited, weight
60. The evidence as to why the 1971 date was given in the 1982 and 1991 applications is unclear, but that is not highly surprising for the reasons I have indicated above.
61. Accordingly, the claimant has proved on the balance of probabilities that he is a British citizen. He is entitled to a declaration to that effect and to have the challenged decisions quashed.