



**Upper Tribunal
(Immigration and Asylum Chamber)
OA/01623/2014**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 30 March 2016**

**Decision & Reasons Promulgated
On 20 May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

**LOVELY BEGUM CHOWDHURY
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Hafiz, of Counsel, of A1 Law Chambers
For the Respondent: Mrs N Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

Background

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Fletcher-Hill (hereafter “the Judge”). On 26 August 2015 the Judge dismissed the Appellant’s appeal against a decision of the Entry Clearance Officer (“ECO”) dated 19 December 2013 refusing her application for a Certificate of Entitlement to the Right of Abode in the UK as a child of a deceased person who had become a British citizen prior to the Appellant’s birth.
2. There is some history behind this application. It is not necessary to refer to that history in detail. It is germane that this is the Appellant’s third application for a Certificate of Entitlement. The first two applications were

refused on 6 May 2009 and 9 February 2010 respectively. The refusals were the subject of appeals before the First-Tier Tribunal before Judge Sharp and then Judge Clayton. Evidently, the appeals were dismissed. In this application the Appellant submitted additional evidence not hitherto considered by the ECO or the First- tier Tribunal.

The Decision of the First-tier Tribunal

3. The appeal first came before the Judge on 10 February 2015. The Tribunal was unable to conclude the hearing and the appeal was adjourned to 31 March 2015. At both hearings the parties were represented and, Mr Hafiz – who appears before me – represented the Appellant below. It is apparent that a considerable amount of documentary evidence was placed before the Judge [14]-[15]. This included inter alia copies of two previous appeal decisions promulgated by Judge Sharp and Judge Clayton and the statements of four witnesses, three of which had given evidence before Judge Sharp. All four witnesses gave evidence before the Judge. The Judge made reference to the evidence given by the witnesses who all purported to confirm the relationship between the Appellant and her alleged father and the submissions of the representatives.
4. The Judge found that whilst DNA evidence showed a familial relationship between the Appellant and her claimed mother it was not conclusive. She observed that there was no evidence of the father's presence in Bangladesh at the time of the Appellant's conception, and that, his passports for the relevant period were not available for inspection. The Judge found that there were no reliable or satisfactory documents or photographs that linked the Appellant to her alleged father [68]. The Judge attached little weight to the documentary evidence as many of the documents relied on came into existence many decades after the period to which they relate [70]. The Judge thus concluded that the Appellant had failed to prove that she qualified for a Certificate of Entitlement. The Judge finally concluded that there was no evidence to substantiate a human rights claim contrary to Article 8 of the ECHR. Accordingly she dismissed the appeal.
5. The Appellant lodged an appeal. Her pleaded case sets out a litany of grounds of error of law and procedure on the part of the Judge. First-tier Tribunal Judge Colyer found those grounds arguable and granted permission on 25 January 2016.
6. Following the grant of permission, the Respondent lodged a reply of 16 February 2016 pursuant to Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008, opposing the appeal on the basis that there was no error of law and that the grounds amounted to a disagreement with the Judge's findings that were otherwise open to her on the evidence.
7. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the First-tier Tribunal had erred in law such that the decision should be set aside.

Decision on Error of Law

8. I am satisfied that the decision of the First-tier Tribunal involved the making of errors of law such that it must be set aside.
9. There are difficulties in the Judge's approach to the issues in this case, the most significant of which I set out below.
10. Whilst the Appellant has a history before the First-tier Tribunal in relation to her claim that she is entitled to a right of abode as the daughter of her alleged late father, neither the decision of Judge Sharp or Judge Clayton was determinative of this application or appeal. Their respective decisions were promulgated some time hence, following which a considerable amount of further evidence was procured including, DNA evidence, dealing with previous shortcomings in the evidence to support this third application. It was incumbent on the Judge to assess that evidence and to reach a reasoned decision. I am satisfied the Judge failed in that duty. The Judge had before her the written and oral testimony of four witnesses. The first three witnesses had previously given evidence before Judge Sharp in 2010, but the fourth witness - the Appellant's paternal first cousin - did not. Whilst the Judge set out in some detail the evidence given by each witness at [19]-[43], she failed to make any findings in respect of it. Indeed during the course of the Judge's deliberations at [61] to [75] there is no reference to the witness evidence and nor is there any analysis or findings as to the credibility of that evidence. That was a manifest error particularly in respect of the fourth witness who was a material witness of fact and whose evidence had not been the subject of previous judicial scrutiny.
11. There is a further troubling feature of the decision of the First-tier Tribunal. A significant amount of documentary evidence was placed before the Judge of which her predecessors did not have the benefit of considering. That evidence included numerous letters written by the Appellant's father since 1991 with reference to the Appellant; family photographs; land documents; remittance receipts; the Appellant's birth and school certificates; witness statements of the Appellant and her mother and the affidavit evidence of three witnesses. The following passages of the Judge's decision illuminate the extent of her consideration of this evidence:

"62. The respondent was concerned as to the lack of relevant supporting documents. I find that nothing in the documents lodged or the evidence relied on indicates on a balance of probabilities that the documents are sufficient to establish the appellant's case."

Next, the Judge stated:

"68.Furthermore, there are no reliable or satisfactory photographs or documents of any kind to link him to the appellant."

In a later passage the Judge said:

“70. I find that many of the documents relied on came into existence many decades after the period to which they relate and I find that I can give little weight to this evidence.”

The Judge’s omnibus conclusion is expressed at [72] in these terms:

“I find that there is no credible relevant documentary evidence to support the appellant’s claim to be eligible for a certificate of entitlement of the right of abode.”

12. These passages are the sum of the Judge’s consideration of the documentary evidence. In my judgement they amount to conclusions about the evidence that are not adequately supported by reasons. As Mr Hafiz pointed out, some of the documents were not dated decades after the period to which they related and, that in itself, was not sufficient to reject the reliability of all the documentary evidence. Whilst the Judge is not required to go through each and every item of documentary evidence in a piecemeal fashion, I am satisfied that Mr Hafiz has identified a number of documents that were central to the issue before the Judge, which did not receive the consideration required or the rejection of which was not sufficiently reasoned. I am satisfied that this is a further fundamental error on the part of the Judge.
13. Whilst I have taken into account the submissions of Mrs Willocks-Briscoe in reaching my conclusions, I find that it matters not that the Judge had others reasons for reaching her conclusion. A manifest error of law is demonstrated in consequence of the above errors. I have thus not found it necessary to make findings in relation to the remaining grounds of appeal.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. The decision of the First-tier Tribunal is set aside. Having considered the submissions of the parties, I find that the appropriate course in this case is for the matter to be remitted for hearing de novo by the First-tier Tribunal by a judge other than Judge Fletcher-Hill, Judge Sharp and Judge Clayton.

No anonymity direction is made.

Signed:

Date: 20 May 2016

Deputy Upper Tribunal Judge Bagral