Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/20296/2016
HU/20300/2016, HU/20302/2016
& HU/20304/2016

THE IMMIGRATION ACTS

Heard at Field House
On 15 October 2018

Decision & Reasons Promulgated
On 1 May 2019

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

NARGIS BEGUM First Appellant
MARUFA BEGUM Second Appellant
SABINE BEGUM Third Appellant
RUGINA BEGUM Fourth Appellant
(anonymity direction not made)

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondent

Representation:
For the Appellants: Mr B Danial, Solicitor from Chancery Solicitors
For the Respondent: Ms E Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of the First-tier Tribunal dismissing the appeal of the appellants against the decision of the respondent by the Entry Clearance Officer New Delhi refusing them a Certificate of Entitlement to the Right of Abode in the United Kingdom under Section 2 of the Immigration Act 1971.

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2. The appellants are sisters. They were born in 1973, 1985, 1988 and 1992. It is their case that they are the daughters of one Abdul Bari who was a British citizen and who is now dead.

3. It is not doubted that a Mr Abdul Bari who was born on 15 March 1939 had registered as a British citizen. Neither is it doubted that *if* these appellants are in fact his daughters then they are entitled to the certificate of entitlement that they seek.

4. Their cases depended primarily on DNA evidence. There is evidence provided to the Secretary of State which shows that the appellants are sisters and also that their brother is one Jahad Ahmed who on a different occasion satisfied the First-tier Tribunal that he was a British citizen by descent. The appellants' case before the First-tier Tribunal was very simple. They maintained that the DNA evidence was entirely satisfactory which meant they were related as the full sisters of Jahad Ahmed and that their appeals should be allowed like his. The respondent's only reason for refusing the applications is that he was dissatisfied with the DNA evidence. It came from a respected source but was not subject to the strict procedures that apply to tests organised by the respondent and the respondent had no confidence that the samples supplied to the laboratory were what they purported to be.

5. As far as I can see the First-tier Tribunal made no findings on the respondent's reasons for refusing the application. It is right to acknowledge the appellants' solicitors went to some trouble to explain fully in the evidence how the samples were taken and why they should be relied upon. However the First-tier Tribunal dismissed the appeal because of difficulties in the case of the appellants' brother. His appeal had been allowed by First-tier Tribunal Judge Gibb (Immigration Judge Gibb) in a decision promulgated on 6 April 2010. Judge Gibb was undoubtedly satisfied on the balance of probabilities *on the evidence before him* that Mr Jahad Ahmed was indeed the son of Abdul Bari but it is also right to say that Judge Gibb's decision was made on an unsatisfactory evidential basis. He began his deliberations at paragraph 15 stating:

   > "In making findings in this appeal I am aware of being in the unenviable position of having limited evidence before me."

6. He was particularly critical of not having the benefit of an earlier decision of the First-tier Tribunal in which the appeals against similar decisions of the first appellant and others were dismissed. Judge Gibb had given directions that a copy of the determination be produced but the Secretary of State ignored the directions and failed to attend the hearing before Judge Gibb to give him any help. Judge Gibb's decision, with respect, is a careful and considered decision on limited evidence but, as he was quick to explain, the evidential basis was limited and that is something to be considered.

7. The earlier decision is a decision of an Adjudicator Ms R Meates. There are several findings in that decision that cause the present appellants difficulties. The appellants had been represented by the Immigration Advisory Service but on 21 April 2004 they withdrew their representation. The Home Office produced papers suggesting that the putative father, Mr Bari, died in 1978. If that is right then he clearly could not be the father of the second, third and fourth appellants. A main reason for thinking that the appellants' putative

father died in 1978 is a letter from solicitors, Coode Kingdon Somper & Co, who practised from an address in the Temple. In a letter dated 6 October 1978 they wrote to the widow of Mr Abdul Bari referring to his will dated 10 October 1975 and asking her if she knew of a later will and also asked for a copy of the death certificate.

8. Clearly those solicitors had good reason to think that Mr Abdul Bari had died. The most likely explanation for them thinking that is that is what they had been told and the most likely explanation for being told that someone has died is that someone has died.

9. I note that according to the Adjudicator's decision Mr Bari's widow was born on 8 June 1940. If that is right then I do not think she could possibly be the mother of the fourth appellant. However I also note that on the certificate of confirmation of registration as a citizen of the United Kingdom and Colonies Mr Bari's wife was said to have been born on 16 May 1946 (I think, the photocopying is poor). This is a date relied upon in the present case. However although the photocopying is poor I cannot make the name of Mr Bari's wife into Asmatun Bibi which is the spelling used on the letter from Coode Kingdon Somper & Co. The woman's name in the bundle prepared for the appeal in the First-tier Tribunal is given as Asmotun Bibi Tula but the name on the confirmation of registration looks to me like Asmoten T Bibi. These could be phonetic attempts at the same name but the inconsistency is puzzling.

10. There are, broadly, two challenges in the grounds of appeal to the Upper Tribunal and the skeleton argument.

11. It is contended that the First-tier Tribunal Judge was wrong to entertain the line of argument that decided the case.

12. I cannot agree with that. It is settled law as long ago as 1981 in R v IAT and another ex parte Kwok On Tong [1981] Imm AR 214, and affirmed in **RM (Kwok On Tong, HC 395 para 320) India** [2006] UKAIT 00039, that a judge must be satisfied that each of the required elements of a case must be met beore an appeal can be allowed. Very often this is uncontroversial because matters are not in dispute but unless they are clearly established they have to be considered.

13. The second contention is that the judge should have adjourned the case but there was no application for adjournment and, more significantly, no material disadvantage has been identified. The appellants have not explained what they would have done if they had more time and have not tried to introduce further evidence at this stage. Any error there was immaterial because it would have made no difference.

14. Here the First-tier Tribunal Judge felt he had to choose between two conflicting decisions of the First-tier Tribunal. That is not right. He had to decide the appeal before him. Intriguingly, although the judge appeared to think that he had to choose between two decisions, when it came to his conclusions it is clear that he appraised the evidence as a whole and reached a conclusion on that evidence. He directed himself, correctly, that he was dealing with a human rights appeal and compliance with the Rules merely illuminated an Article 8 balancing exercise. He identified the statements that were before him

and particularly saw a copy of the death certificate showing that Mr Bari died in August 2000.

15. He also saw the witness statement of Mr Bari's widow confirming the death was in August 2000. I note that in her witness statement she said she was born in May 1946. The judge also acknowledged there was a photocopy of Mr Bari's passport. The judge said it was issued on 15 July 2015 but that is plainly a mistake. It is obvious from inspection it was issued on 15 July 1994. The judge also acknowledged DNA evidence proving that the appellants are sisters but the judge noted correctly that the DNA evidence cannot assist with paternity. The judge clearly identified with the weight given by Ms Meates to the evidence from the London solicitor and Ms Meates finding it preferable to the evidence from Bangladesh. He noted too, correctly, that the decision of Judge Gibb was not a decision involving these parties but involving the brother and noted that the decision was based on the evidence before the judge (as it should have been) and Judge Gibb was very critical of the failure of the Secretary of State to provide evidence that appeared to be with his control.

16. The judge was also alert to the possibility of unfairness by points being raised on the morning of the hearing. He dealt with that at paragraph 39. He noted there was no request for an adjournment. It was also his view that the appellants would have known of the decision of Ms Meates and should have dealt with it but chose to make no comment on it in their statement. That it an entirely reasonable position to adopt. He noted, again correctly, that the decision in Ms Meates' case related to the same parties and issues. The DNA evidence was clearly new but of limited value. It showed the appellants were sisters and also sisters of someone who had been recognised as entitled to a certificate of entitlement but only on a particular basis.

17. He concluded expressly that Mr Bari died in 1978. It followed that the second, third and fourth appellants were born after his death. He said there was no unfairness. Rather the appellants' representatives had not given the whole story to the Immigration Officer. That of course is not necessarily the fault of the representatives but it was the judge's point that it was not unfair to rely on things that the appellants should have known about.

18. The grounds of appeal are full and were relied upon.

19. The first point taken is that there was no notice but no indication is given of how the points would have been answered and there was plenty of time to deal with that. It is not a question of the solicitors being caught out by not asking for an adjournment. Rather the reality is that there was no point in adjourning. They were in as good a position to deal with the point then as they were later.

20. The point was reworked saying that the appellants should have had an opportunity of dealing with the letter from Coode Kingdon Somper & Co but this meets the same answer. There was no advantage in having notice. The judge was perfectly aware of the British passport being issued to the reputedly dead man. He factored that into his analysis. It must be that he thought the passport was issued wrongly and that decision was entirely open to him.

21. There is nothing perverse or irrational in considering the evidence of the letter from Coode Kingdon Somper & Co as very significant. Apparently independent

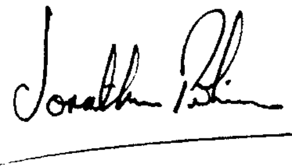
solicitors do not write letters about administering an estate unless they have a proper reason to think that somebody is dead. The fact that there is subsequent correspondence from Bangladesh that tends to suggest he was not dead is not something that need have weighed heavily in the judge’s mind. The reality is that it was all a very long way from the United Kingdom and little chance of imposing any sanction on any dishonest witness.

22. There is no **Devaseelan** error here. The judge correctly took the first Adjudicator’s determination as the starting point. He was perfectly prepared to depart from it and considered the additional evidence but found it unimpressive. That is the kind of decision he was there to make and he made it lawfully. Nothing turns on whether or not the appellant sisters are related to the alleged brother that is claimed. They may well be. There has been inconsistent evidence given about the nature of the family relationship. Not necessarily from these appellants. The position is unclear. I simply make the point the fact that the four appellants are related and have a brother is not evidence that they are the son of the purported father. I have reviewed my notes of the submissions as well as the documents. I appreciate from the appellants’ point of view it is greatly disappointing because they thought they had done what was required.

23. However what they had not done is address the deficiencies in an earlier decision that must have been known at least to the first appellant. There is no irrationality or other unlawfulness on the part of the First-tier Tribunal Judge dismissing the appeal and I uphold this decision. It follows therefore this appeal is dismissed.

Notice of Decision

24. These appeals are dismissed.



Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 26 April 2019