



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

Appeal Number: OA/05826/2013

THE IMMIGRATION ACTS

Heard at Field House

On 11th February 2015

**Determination
Promulgated**

On 23rd February 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE FRANCES

Between

**ALTERA BEGUM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M K Mustafa, Kalam Solicitors

For the Respondent: Mr M Shilliday, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh born on 22nd February 1963. She appeals against the determination of the First-tier Tribunal dated 6th July 2014 dismissing her appeal against the Respondent's decision to refuse her application for a certificate of entitlement to right of abode dated 23rd January 2013.
2. Permission to appeal was granted by First-tier Tribunal Judge Simpson on 19th September 2014 on the basis that the Appellant submitted a copy of

the certificate of nationality obtained from the National Archives and a DNA report at the appeal before the First-tier Tribunal. Those documents together with the evidence of the Appellant's brother should have been determinative of the issue. However, the Judge considered both the certificate and the DNA report to be post-decision evidence and ruled them inadmissible despite the fact that they both related to the facts appertaining at the date of decision. The Judge clearly misdirected himself as to the implications of DR Morocco* [2005] UKIAT 00038 and the determination therefore contained an arguable error of law.

3. At the hearing, Mr Shilliday accepted that the Judge had erred in law in failing to consider the DNA evidence and the certificate of nationality obtained from the archives. He submitted that the issue before me was whether the certificate from the archives was genuine. There was no evidence to show that it was not and the original was produced by the Appellant's representatives.
4. Mr Mustafa submitted that under Section 5 of the British Nationality Act 1948 and Section 14 of the Nationality Act 1981 the Appellant was a British citizen by descent and so was entitled to a right of abode. The Respondent's decision to refuse the Appellant's application was therefore unlawful. Mr Shilliday submitted that the appeal could only be allowed to the extent that the decision was not in accordance with the law.
5. I find that the Judge erred in law at paragraph 12 of the decision in finding that he could not rely on the DNA evidence or the certificate of nationality obtained from the archives. There was no issue as to whether these documents were genuine and therefore, I find that the Appellant was a British citizen by descent and entitled to a right of abode. Accordingly, the Respondent's decision of 23rd January 2013 was not in accordance with the law.
6. The First-tier Tribunal erred in law in finding that the certificate of nationality and DNA report were inadmissible having misdirected himself following DR Morocco. I set the decision dated 6th July 2014 aside and remake it as follows: The Respondent's decision of 23rd January 2013 was not in accordance with the law and I allow the appeal.

Notice of Decision

The appeal is allowed.

No anonymity direction is made.

Signed

Date 20th February 2015

Deputy Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid or may be payable.

Signed

Date 20th February 2015

Deputy Upper Tribunal Judge Frances