Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/16330/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 20th June 2018	**On 12th July 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

MR MASUD MIAH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Ali, Solicitor, Biscoes Solicitors
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Skehan, sitting at Hatton Cross, when by way of a determination promulgated on 12th February 2018 the judge had dismissed the Appellant's application for entry clearance whereby the Appellant had contended that he had right of abode by virtue of Section 2(i) of the Immigration Act 2014 on the grounds that he is the son of the late Mr Abdul Subahan, a British citizen.

2. When granting permission to appeal, Designated First-tier Tribunal Judge McCarthy said that it was arguable that the judge had erred in law by:

"failing to take account of the contents of the Appellant's supplementary witness statement of 10 January 2018, which responded to the Tribunal's directions of 4 August 2017. The bundle containing the statement was received by the Tribunal on 16 January 2018, well before the appeal was heard on 23 January 2018 and determined on 20 February 2018. The possibility that Judge Skehan overlooked this supplementary statement is potentially material to the outcome, given the negative findings the judge expresses at paragraphs 10 and 11."

3. At paragraphs 10 and 11 the FTT Judge had said as follows:

"10. I note the directions issued by the Tribunal on 4th August 2017, and in particular the direction to the Appellant to explain why he has two [birth] certificates [which] were registered on 25/03/2014 and another on 01/04/2003, the circumstances in which each was obtained giving evidence of the information which was produced to obtain them. While I note the additional evidence-in-chief provided by Mr Hoque, the Appellant has not addressed the question as requested by the directions.

11. The inconsistencies noted above between the evidence provided during this application with the evidence provided by the Sponsor during the previous application in front of Judge Sykes have damaged the Appellant's credibility. Further, the Appellant has failed to provide the additional evidence as requested within the directions. In the circumstances taking the evidence as a whole, I find that the Appellant has not shown that it is more likely than not that he is the son of the deceased Mr Abdul Subahan [sic]."

4. Ms Ali in her submissions today states that she relies on the grounds of appeal, which are detailed and set out what, in effect, has been encapsulated in the grant of permission.

5. Mr Kotas in response said that he accepted that there was a material error of law. At paragraph 10 the judge said there was no explanation in relation to the two birth certificates but in fact there clearly was within the supplementary witness statement. The issue of whether or not the judge accepted the explanation which had been provided was another matter but the fact that no decision had been made on that aspect did not affect whether or not there was a material error of law. There was a material error of law.

6. In response Ms Ali clearly agreed but she also said there were other issues which the judge had erred on, for example issues relating to the discrepancies in the names.

7. It is clear, in my judgment, that the judge did materially err in law. The judge had the supplementary bundle, or at very least the Tribunal did, on 16th January. The Appellant had complied with the directions and he had proffered an explanation as to why there were two birth certificates and indeed in his witness statement he had set out other aspects and explanations as well. The fact that the judge has not dealt with

those matters and instead made adverse findings shows that there is a material error of law.

8. In the circumstances, having canvassed this with Ms Ali and without the disagreement of Mr Kotas, because the Appellant has not had a fair hearing due to the procedural error (but which was not the fault of the FTT Judge) it is appropriate for the matter to be remitted to the First-tier Tribunal at Hatton Cross for there to be a complete rehearing. I have considered Part 3, paragraph 7 of the Practice Statement in making this decision.

9. For the avoidance of doubt, none of the current findings shall stand. The matter will be heard afresh on all issues. The First-tier Tribunal shall provide such further directions as appears appropriate to it.

Notice of Decision

The decision of the First-Tier Tribunal contains a material error of law. It is set aside in its entirety.
There shall be a re-hearing at the First-tier Tribunal.

No anonymity direction is made.

Signed: A Mahmood Date: 20 June 2018

Deputy Upper Tribunal Judge Mahmood