



IAC-AH-SAR-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: HU/15343/2019**

**THE IMMIGRATION ACTS**

**Heard remotely by Skype for Business**

**On 27 January 2021**

**Decision      &      Reasons  
Promulgated**

**On 09 February 2021**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**SAAD MOHAMMED  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant:      Not present or represented

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, a citizen of Pakistan born 29 December 1990, appeals to the Upper Tribunal against a decision of the First-tier Tribunal which was promulgated on 28 November 2019. The First-tier Tribunal (Judge Rothwell) dismissed the appellant's appeal against the decision of the Secretary of State dated 3 September 2019 refusing his human rights claim (private life).
2. Mr Diwnycz, a senior Presenting Officer, appeared for the Secretary of State at the initial hearing held remotely on 27 January 2021. There was no appearance by the appellant or his representatives, Expert Law Solicitors.
3. I find that the decision of the First-tier Tribunal is flawed by legal error and should be set aside. My reasons for reaching that decision are as follows. The appellant had lost an appeal against a refusal of a claim for international protection to an Immigration Judge (Judge Khawar) in March 2006. Judge Rothwell relied upon the findings of the previous Tribunal as a starting point for his own decision under the principles of *Devasseelan* [2002] UKIAT 00702\*. At [26], Judge Rothwell records that 'Judge Khawar found that [the appellant] had submitted a false birth certificate and there is nothing before me that goes behind this finding of fact.' At [28], he wrote, 'Therefore, my starting point on my consideration of the appellant's case is that he is someone who has been found not to be telling the truth *and who has submitted false documents.*' [my emphasis]
4. The judge was correct in seeking to apply *Devasseelan*. However, the finding of Judge Khawar concerning the birth certificate is by no means as clear or unequivocal as it should be or as Judge Rothwell seems to have believed it to be. At [15(ii)] of his determination, Judge Khawar wrote:

I do not find the production of this birth certificate as persuasive given the ease with which such documents are available in Pakistan. It is relatively easy to obtain fraudulent documents or documents which are fraudulent but authenticated by apparent bona fide stamps for a given fee. Consequently, the appellant has not produced any evidence to rebut the allegation made by the screening officer in this case. The appellant could well have simply done so by appearing at court and giving evidence. In consequence thereof, I do not accept that the appellant is merely 15 years of age.
5. It is unhelpful when judges seek to cast doubt on evidence without making unequivocal findings of fact. To suggest that evidence may be false ('*not persuasive...*') and to refer in general terms to the ease with which false documents might be obtained is not same as making a clear and unambiguous finding that a particular document is false. As for the screening officer, it seems from [15(i)] that he/she 'having regard to the appellant's physical appearance, took the view that the appellant was over 18.' The respondent in the earlier appeal does not seem to have alleged that the birth certificate produced by the appellant was fraudulent but only that the appellant appeared to be an adult. I am aware of the danger of entertaining a collateral appeal against a determination promulgated more than nearly 15 years ago; the outcome of that appeal and the findings of the judge must stand. However, if a subsequent Tribunal seeks to rely on

such findings, then it needs to look very carefully at precisely what has been found as a fact. Judge Khawar did not find in terms that the appellant had produced a fraudulent birth certificate but only that the certificate was of insufficient probative value to rebut the screening officer's opinion that the appellant was an adult as it had been issued in the country where false documents are commonplace. For Judge Rothwell to proceed on the basis that the appellant was a person who 'has submitted false documents' was, in my opinion, wrong in law.

6. The error of law in this case has infected the entirety of the fact-finding exercise. There will need to be fresh fact-finding and that is better conducted in the First-tier Tribunal to which the appeal is returned to remake the decision following a hearing *de novo*.

### **Notice of Decision**

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo*. **(Taylor House; not Judges Khawar or Rothwell; 1.5 hours; No interpreter; first available date; First-tier Tribunal to determine whether face to face or remote hearing)**

Signed  
January 2021  
Upper Tribunal Judge Lane

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