



Neutral Citation Number: [2019] EWHC 2196 (Admin)

Case Nos: CO/662/2018; CO/1364/2018

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 05/09/2019

**Before :**

**UT JUDGE A GRUBB**  
**(SITTING AS A DEPUTY HIGH COURT JUDGE)**

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**Between :**

**THE QUEEN**  
**(on the application of**  
**SHAMSUN NAHAR BEGUM**  
**and MEHERUBA RAHMAN)**

**Claimants**

**- and -**

**THE ENTRY CLEARANCE OFFICER, DHAKA**

**Defendant**

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**Mr M S Gill QC (instructed by MQ Hassan, Solicitors) for the Claimants**  
**Mr E Brown (instructed by Government Legal Department) for the Defendant**

Hearing dates: 29 January and 19 June 2019  
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**APPROVED JUDGMENT**

## **UT JUDGE GRUBB:**

### **INTRODUCTION**

1. The Claimants, Shamsun Begum and Meheruba Rahman (“C1” and “C2”) seek judicial review of the Defendant’s decisions to refuse their applications for Certificates of Entitlement to the Right of Abode (“CoE”) taken on 18 August 2017. They are mother and daughter respectively who were born on 11 August 1955 and 7 February 1984.
2. The basis of C1’s claim is that she was married to a British citizen, Fazlur Rahman (“FR”) on 21 August 1975. He was a Bangladesh citizen by birth but became a Citizen of the UK and Colonies (“CUKC”) by registration on 29 November 1972. Following the commencement of the British Nationality Act 1981 (“the 1981 Act”) on 1 January 1983, FR became a British citizen. He died on 17 December 1994. C1 is a Bangladesh national and, as such, a Commonwealth citizen. She claims that, as a Commonwealth citizen who was married to a British citizen before 1 January 1983, she has the right of abode in the UK.
3. C2 claims to be FR’s daughter and to be a British citizen by descent when she was born in Bangladesh on 7 February 1984. As such, she has a right of abode in the UK.
4. It is accepted that if C1 and C2 are related to FR as they claim, then both have a right of abode in the UK.
5. The Defendant, however, does not accept they are related to FR as they claim. The Defendant concluded that C1’s marriage certificate (a Nikah Nama) purporting to show her marriage in Bangladesh to FR on 21 August 1975 is not genuine or authentic. Equally, C2’s birth certificate purporting to show the registration on 12 February 1984 of her birth on 7 February 1984 is not genuine or authentic. In short, the Defendant’s position is that neither C1 nor C2 were, or are, able to establish the factual basis for their respective claims to a CoE.

### **THE HISTORY OF THE CLAIMS**

6. The history of these claims is lengthy and not always straight-forward and uncontentious. What follows is a relatively brief summary. The history begins in 2013.
7. The Claimants first applied for CoEs on 9 June 2013 at the British High Commission in Dhaka. On 21 August 2013, the Entry Clearance Officer (“ECO”) rejected the Claimants’ applications. The refusal was based on two grounds: first, the original of FR’s nationality registration certificate was not provided; and second, untranslated documents had been submitted.
8. The Claimants exercised their rights of appeal against those refusals on 19 September 2013. With that appeal, further documents were submitted and, before the hearing, a review by an Entry Clearance Manager (“ECM”) was undertaken. On 16 June 2014, the ECM maintained the refusals. The basis of that decision was three-fold; first, the original of FR’s nationality registration certificate was not submitted although said to be held by the Claimants’ solicitors; second, C1’s marriage certificate (now provided)

was not a reliable document; and third, C2's birth certificate (now provided) was not reliable. The Claimants had not, as a result, established that they each had a right of abode.

9. The appeal to the First Tier Tribunal was heard on 22 October 2014. In a determination sent on 5 November 2014, FtTJ Russell dismissed the Claimants' appeals. Although he accepted that FR's nationality certificate "appears to" establish his British nationality ([11] of the determination), he dismissed the appeal as the "required documents or other cogent evidence" had not been produced to the ECO to prove FM was a British citizen or that C1 was his wife or that C2 was his daughter ([13] of the determination).
10. On 16 December 2014, the FtT refused the Claimants permission to appeal FtTJ Russell's decision.
11. Although Mr Manjit Gill QC, who represented the Claimants, raised a number of points in his initial skeleton argument (at paras 29-35) as to why FtTJ Russell's decision was wrong, not least because the judge should have looked at the evidence available at the hearing to determine whether the right of abode had been established albeit at the date of the ECO' decision, FtTJ Russell's decision stands.
12. The Claimants then each made second applications for CoEs on 21 October 2015. On 4 November 2015, the ECO again refused the applications. This time his reasons were that the origin of the marriage certificate was unclear (unattested and no official seal) and the qualifications of the translator of that certificate were also unclear.
13. By this time, the rights of appeal in the Nationality, Immigration and Asylum Act 2002 (s.82) had changed as a result of the Immigration Act 2014 (s.15) and now neither C1 nor C2 had a right of appeal against the decisions refusing each of them a CoE. Judicial review was now the only available judicial remedy. Consequently, on 18 November 2015, a pre-action protocol letter was issued. On 2 December 2015, the Defendant replied to that PAP letter in the form of a review by the ECM.
14. Judicial review proceedings were the lodged by C1 and C2 separately on 10 December 2015 and 22 February 2016 respectively challenging the ECO and ECM's decisions.
15. Consent orders were agreed in respect of C1 and C2's claims on 19 April 2016 and 6 June 2016 in which the Defendant agreed to reconsider both Claimants' applications for a CoE.
16. On 23 August 2016, the ECO reconsidered and again refused C2's application on two bases: first, a "naturalisation (*sic*) certificate" in respect of FR had not been provided; and second, the birth certificate was unreliable given that it had been obtained in 2012, 28 years after C2's claimed birth.
17. On 6 September 2016, a PAP letter was sent in respect of the decision of 23 August 2016 in relation to C2's claim. A reply to that letter was sent on 23 September 2016.
18. On 31 October 2016, C2 lodged a further judicial review claim challenging the decision of 23 August 2016.

19. On 28 December 2016, the ECO reconsidered and again refused C1's application for a CoE. Although the decision letter is dated 7 June 2016, it was only sent and received by e-mail on 28 December 2016.
20. On 6 February 2017, C1 sent a PAP letter challenging the reconsidered refusal decision received on 28 December 2016. A response was made by the Defendant on 17 February 2017, again in the form of a review by the ECM. The refusal was on the basis that the ECO was not satisfied C1's marriage certificate was an "original" marriage certificate, i.e. it was not genuine or authentic.
21. On 15 March 2017, C1 issued judicial review proceedings challenging the decisions by the ECO and ECM to refuse her application. On 27 January 2017, the Upper Tribunal (UTJ Finch) granted C1 permission to bring judicial review proceedings.
22. On 30 March 2017, a consent order was agreed in the case of C2 and the Defendant again undertook to reconsider C2's application. Thereafter, and without the permission application being decided, by a consent order dated 24 May 2017, the Defendant also undertook to reconsider C1's application.
23. On 18 August 2017, the ECO reconsidered both C1 and C2's applications and refused both. The refusal was based upon a Document Verification Report following a field visit by two of the Defendant's officers. As a result, it was concluded that both the marriage certificate of C1 and the birth certificate of C2 were not genuine or authentic. These proceedings are brought as challenges to the decisions of 18 August 2017.
24. A PAP letter was sent on 10 October 2017. A response was sent on 16 October 2017.
25. On 16 November 2017, the Claimants issued these proceedings in the Upper Tribunal challenging the decisions of 18 August 2017. C1's application was transferred to the High Court on 29 January 2018 as it raised nationality issues outside the jurisdiction of the Upper Tribunal. For reasons that I need not go into, C2's claim was not transferred to the High Court until 4 April 2018. In the meantime, C1's application for permission to proceed was refused by the Administrative Court (Michael Kent QC sitting as a Deputy High Court Judge) on 6 March 2018. C2's application for permission was adjourned to an oral hearing by the Administrative Court (Martin Chamberlain QC sitting as a Deputy High Court Judge). C1 sought to renew orally her application for permission.
26. Following an oral hearing on 4 October 2018, UTJ Markus QC (sitting as a Deputy High Court Judge) granted both C1 and C2 permission to challenging the decisions refusing each of them a CoE.

## **THE GROUNDS**

27. The Claimants' grounds as set out in the "Substituted Grounds" of claim fall under two principal heads:
  - (1) 'precedent fact', namely that on the evidence the court should factually conclude that C1's marriage certificate and C2's birth certificate are genuine

and/or they have each established they are related as they claimed to FR, namely his wife (C1) and his daughter (C2); and

(2) public law grounds, namely that the Defendant has reached an irrational decision; failed properly to consider all the evidence; failed to give adequate reasons; and acted unfairly including failing to apply the FtT's earlier decision that had accepted the authenticity of the certificates.

28. The focus of the case at the adjourned hearing on 19 June was upon the 'precedent fact' ground which, if made out, means that the Claimants will have succeeded in establishing their relationships with FR and their entitlement each to a CoE. Mr Manjit Gill QC, however, maintained reliance on the narrower public law grounds upon which he primarily addressed me in his oral submissions at the 29 January hearing.

### **THE LAW**

29. The applicable law is as follows.
30. C1's claim is derived from s.2 of the Immigration Act 1971 ("the 1971 Act") which (as now in force) provides as follows:

#### **"2. – Statement of right of abode in United Kingdom**

(1) A person is under this Act to have the right of abode in the United Kingdom if –

(a) he is a British citizen; or

(b) he is a Commonwealth citizen who –

(i) immediately before the commencement of the British Nationality Act 1981 was a Commonwealth citizen having the right of abode in the United Kingdom by virtue of section 2(1)(d) or section 2(2) of this Act as then in force; and

(ii) has not ceased to be a Commonwealth citizen in the meanwhile."

(2) In relation to Commonwealth citizens who have the right of abode in the United Kingdom by virtue of subsection 1(b) above, this Act, except this section and section 5(2), shall apply as if they were British citizens; and in this Act (except as aforesaid) 'British citizen' shall be construed accordingly."

31. C1 relies upon s.2(1)(b). She seeks to derive her right of abode through FR by virtue of s.2(2) of the 1971 Act in force immediately prior to the commencement of the 1981 Act on 1 January 1983.
32. Sections 2(1) and (2) of the 1971 Act then in force were as follows:

“(1) A person is under this Act to have the right of abode in the United Kingdom if –

(a) he is a citizen of the United Kingdom and Colonies who has that citizenship by his birth, adoption, naturalisation or (except as mentioned below) registration in the United Kingdom or in any other Islands; or

....

(2) A woman is under this Act also to have the right of abode in the United Kingdom if she is a Commonwealth citizen and either –

(a) is the wife of any such citizen of the United Kingdom and Colonies as is mentioned in subsection 1(a), (b) or (c) above or any such Commonwealth citizen as is mentioned in subsection 1(d); or

....”

33. Section 2(1) applied to FR such that he had the right of abode as a citizen of the UK and Colonies by registration prior to 1 January 1983. His right of abode, now as a British citizen, continued by virtue of s.2(1) of the 1971 Act as in force from 1 January 1983.
34. C1 is a Commonwealth citizen who was, she claims, married to FR a Citizen of the UK and Colonies by registration immediately before 1 January 1983 and so then had the right of abode in the UK by virtue of s.2(2) of the 1971 Act in force prior to 1 January 1983 and which continued from 1 January 1983 by virtue of s.2(1)(b) of the 1971 Act in force from that date.
35. C2’s claim is based upon s.2(1) of the 1981 Act and that she is a British citizen by descent derived from FR who is her father and who, at the time of her birth in Bangladesh in 1984, was a British citizen. As a British citizen she had a right of abode under s.2 of the 1971 Act now in force.
36. Section 2(1) of the 1981 Act provides as follows:

**“2 – Acquisition by descent**

(1) A person born outside the United Kingdom and the qualifying territories after commencement shall be a British citizen if at the time of the birth his father or mother is –

(a) a British citizen; or....”

37. The application procedure for a person seeking a CoE recognising a person has a right of abode in the United Kingdom is set out in the Immigration (Certificate of Entitlement to Right of Abode in the United Kingdom) Regulations 2006 (SI 2006 No 3145 as amended) (“the Regulations”).

38. Regulation 3 requires, so far as relevant to this case, that the application must be made to the Secretary of state for the Home Department (reg 3(a)). The application must be accompanied by documents specified in reg 4 read with the Schedule to the Regulations. Regulation 4 provides as follows:

**“4. Form of application**

(1) Subject to paragraph (2), an application for a certificate of entitlement must be accompanied by –

(a) the applicant’s passport or travel document;

(b) Two photographs of the applicant taken no more than 6 months prior to making the application; and

(c) The additional documents which are specified in the right-hand column of the Schedule in respect of an application of a description in the corresponding entry in the left-hand column.

(2) The requirement in paragraph 1(c) may be waived in relation to a particular document if the appropriate authority –

(a) is satisfied that it is appropriate to do so in light of the facts of the particular case; and

(b) is otherwise satisfied that the applicant has a right of abode in the United Kingdom.”

39. The relevant parts of the Schedule requiring an applicant to provide “additional documents” under reg 4(1)(c) are as follows.

40. In respect of C1:

“Applicant is a Commonwealth (not British) citizen born before 1<sup>st</sup> January 1983 to a parent who was born in the United Kingdom” (left-hand column)

“(i) Applicant’s marriage certificate; and

(ii) Evidence of applicant’s husband’s right of abode, eg passport or UK birth certificate” (right-hand column)

41. In respect of C2:

“Applicant was born outside the United Kingdom and the Falkland Islands on or after 1st January 1983....” (left- hand column)

“(i) Applicant’s full birth certificate showing parents’ details;

(ii) Parents' marriage certificate (if claiming through father);  
and

(iii) Parents' full birth certificate, registration or naturalisation certificate" (right-hand column)

42. Whilst reg 4(1) states that the required documents "must" accompany the application, reg 4(2) permits the Secretary of State, in his discretion, to waive that requirement in relation to the documents required under the Schedule if, in summary, it is appropriate to do so and the Secretary of State is otherwise satisfied the individual has a right of abode.

43. Regulation 6 deals with the issue of as CoE. It provides, so far as relevant, as follows:

**"Issue of certificate of entitlement**

6. A certificate of entitlement will only be issued where the appropriate authority is satisfied that the applicant –

(a) has a right of abode in the United Kingdom under section 2(1) of the 1971 Act:...."

44. Regulation 6(2) goes on to exclude the issuance of CoE in certain circumstances, for example where the individual already holds a British passport or a CoE.

45. While Mr Brown, who represented the Secretary of State did, to some extent, contend that CoEs could not be issued if C1's marriage certificate and C2's birth certificate were not authentic, I am not sure that he necessarily maintained that position by the end of the hearing. Certainly reg 4 requires certain documents to accompany an application for a CoE such that such an application *might* not be valid without them. But, in relation to the documents at issue in this case, as they are required by the Schedule, reg 4(2) allows the Secretary of State to waive the requirement that they be provided if appropriate and he is otherwise satisfied that C1 or C2 has a right of abode. That strongly suggests that, failure to provide these documents does not necessarily render an application invalid, and also that when other evidence establishes the right of abode, the absence of the documents does not prevent the Defendant issuing a CoE. Regulation 6, dealing with "issue", is in general terms requiring only that the Secretary of State be "satisfied" that an individual has a right of abode.

46. In this case, the Secretary of State has not suggested that either C1 or C2's application is invalid on the basis that they have not submitted a genuine marriage certificate or birth certificate respectively. Rather, the Secretary of State's position is that, because the documents are not genuine or authentic, neither C1 nor C2 has established their right of abode. It seems to me that if satisfied, as a result of my judgment, that C1 or C2 has a right of abode, even if their respective documents are not genuine, there is nothing in the Regulations to prevent them being issued with a CoE.

47. One final legal matter I should mention. Although Mr Gill QC raised a number of public law grounds of challenge, the focus of the hearing before me was the factual issue of whether the two documents relied upon were genuine or authentic. That



arose because it is accepted by the parties that I must decide as a matter of precedent fact whether the Claimants are entitled to a CoE and, as a result, whether the marriage certificate and birth certificate relied upon are genuine or authentic.

48. On the issue of whether the Claimants each have a right of abode, the burden of proof lies upon the Claimants to establish that entitlement on a balance of probabilities (see, s.3(9) of the 171 Act; R(Othman) v SSHD [2019] EWHC 340 (Admin) at [23]; and R(Matthews) v SSHD [2018] EWHC 2026 (Admin) at [10]). However, to the extent that the Secretary of State contends that the documents are not genuine, i.e. are fraudulent documents, the burden of proving that lies on the Secretary of State again on a balance of probabilities but, in assessing the evidence, having due regard to the seriousness of that allegation (see, Re B (children) [2008] UKHL 35 and R(N) v MHRT [2005] EWCA Civ 1605).

### **THE EVIDENCE**

49. I first set out the essential parts of the evidence relied upon by the parties which is primarily the evidence collected on behalf of the Defendant and on behalf of the Claimants during field visits to the relevant Registrar's offices (and elsewhere) in Bangladesh to investigate whether the marriage and birth certificates are genuine.
50. Between August 2017 and the hearing there were two visits made by officers of the Defendant and three visits by a Barrister (Mr Mohammed Monwar Hossain) based in the UK and instructed on behalf of the Claimants to travel to Bangladesh to carry out investigations. The evidence has emerged piece-meal during the course of the proceedings and formed the focus of the parties' respective arguments in support of their cases.
51. The challenged decisions were based essentially upon the Defendant's conclusion that C1's marriage certificate and C2's birth certificate are not genuine or authentic documents. That conclusion was initially reached by the ECO in the challenged decisions on the basis of a DVR dated 2 August 2017 (hereafter "DVR1"). DVR1 followed a field visit by two of the Defendant's officers in Bangladesh on 1 August 2017. In summary, it reported that C1's marriage certificate could not be located at the Registrar Office visited for "7, 8, 9 No Word, Rangunia, Pouashava, Chittagong". Instead, the only record of a marriage on the claimed date of their marriage (21 August 1975) was, in fact, between two other individuals. The responsible Kazi (Kazi Alam) at that Registrar's Office annotated the copy of C1's marriage certificate provided by her with the words "I confirm this is a fraudulent document".
52. In relation to C2's birth certificate, a visit took place on 1 August 2017 to the relevant Registrar's Office for "No 3 Sikalbaha Union Parishad, Chittagong". C2's birth certificate showed her birth on 7 February 1984; that her birth was registered on 12 February 1984 and the birth certificate was issued on 2 July 2012. However, the records showed her birth was registered on 2 July 2012 (not 12 February 1984) and the responsible official (Secretary Abdul Kaiyum) annotated the birth certificate as being a "fraud". DVR1 states that, following the verification checks, it is "confirmed Fraudulent as registration of birth was 02/07/2017 (*sic*) and not 12/02/1984". There is an obvious typographical error as the former date should have been 2 July 2012. There was also a supporting handwritten letter from a Secretary Assistant at that office which reported a visit on 29 July 2017 by an unknown person seeking to

change the date C2's birth was registered. He was told that was not possible, indeed it would be a criminal offence, and he then left.

53. In response to DVR1, the Claimants instructed Mr Hossain to make a field visit which he did travelling to Bangladesh in September 2017. On 20 September 2017, he visited the marriage registry office at "82, Sirajud-Doula Road, Dewan Bazar, Chattagong". This is not the same office which the Defendant's officers visited. Mr Hossain was directed to meet the Kazi at a different office again. The Kazi confirmed that he had no record of any marriage which took place before 1976 and was, therefore, unable to help further. The old records before 1976 were located elsewhere and he would try to find out.
54. I should interpolate here – as it became clear during the course of the hearing – that C1's marriage and any marriage certificate related to "No 5, Dewan Bazar" ward and the records for that ward had indeed been transferred to the Registrar's office at which the Defendant's officers attended. Mr Hossain had attended the wrong Registrar's office.
55. As regards C2's birth certificate, Mr Hossain showed it to the Kazi who indicated, in effect, that his office had no jurisdiction in respect of birth certificates. They are issued by local authorities and C2's states it was issued by "No 3 Sikalbaha Union Council" in "Potia, Chittagong". Mr Hossain states that the Defendant's officers had both attended the wrong Registrar's office in respect of the marriage certificate and there was no explanation why the Kazi had commented on the birth certificate as it was not within his jurisdiction.
56. It is now apparent both of these points are not well taken. The transfer of pre-1976 marriage records for the "Dewan Bazar" ward was made to the Registrar's office attended by the Defendant's officers. And, in respect of the birth certificate, they had attended the correct "No 3 Sikalbaha Union Council".
57. Mr Hossain's misunderstanding over these issues may well arise from the fact that the Defendant did not serve DVR1 on the Claimants or their representatives. Instead, a summary document was served. This only became apparent at the hearing on 29 January 2019 when, during the course of Mr Gill QC's submissions, it emerged that the full DVR1 had not been provided to the Claimants or indeed the court. A copy was provided at the hearing and, as a result, it was necessary to adjourn the hearing in order to give the Claimants an opportunity to consider it. In my directions dated 29 January 2019, I directed that by 5 February 2019 the Defendant should serve a witness statement explaining the circumstances surrounding the failure to provide the DVR1 and submissions why it should be admitted and giving the Claimants a further 21 days to file any evidence (and submissions) in response and finally the Defendant's to have a further 7 days to file any evidence or submissions in reply.
58. In the result, the parties took full opportunity to file further evidence and submissions, albeit not wholly within the time scale contemplated. On 4 February, the Defendant served the full DVR1 and a witness statement from Caroline Tully, a lawyer in the GLD who has conduct of the case explaining that the failure to serve it earlier was due to oversight and "human error".

59. On 26 March 2019, in response to DVR1, and out of time, the Claimants filed a further report from Mr Hossain following a field to Bangladesh, in particular a visit on 24 March 2019 to the Registrar's Office in Rangunia, Chittagong where he spoke to Kazi Alam.
60. In that report, in summary, Mr Hossain states that Kazi Alam confirmed that the officers paid two visits but they looked at a volume which did not relate to the "Dewan Bazar" ward where C1's marriage took place. The Kazi confirmed that "[t]here is no volume available for the Dewan Bazar area". They looked at "volume 5 for 4 no. Jamalkhan area" but C1's marriage certificate was for "No. 5 Dewan Bazar area". They had taken a copy of "page 14 of the volume 5 which is for a different person in a different area". The Kazi again looked through all his records for the relevant period and found nothing. Mr Hossain looked at, and exhibited pictures of, the relevant page (page 14) of vol 5 for no 4 area. It relates to a marriage between different individuals and has a different serial number than on C1's certificate – C1's is serial number "125" and the page examined (page 14) has serial number "21". When asked specifically, Kazi Alam stated that he had not told the Defendant's officers that the marriage certificate of C1 was not genuine. He stated that he believes C1's certificate to be genuine and that the signature of Kazi Haque, with which he is familiar, to be genuine. (Kazi Haque is sometimes referred to as "Kazi Hoque" in the evidence. For convenience, I will use the former throughout this judgment.) Attached to Mr Hossain's report is a witness statement from Kazi Alam (dated 20 March 2019) signed before a practising advocate of the local court. It confirms what Mr Hossain reports occurred on his visit and what the Kazi told him. Paragraphs 5 and 6 are as follows:
- "5. I never said to the BHC officials that the Kabin Nama of [FR] and [C1] was not genuine.
6. I have had the opportunity to see many Kabin Namas signed by the same Kazi A M Muhuil Haque whose signature also appears on the Kabin Nama shown by Mr M M Hossain. The signature is of (*sic*) Kazi is familiar to me as I have records of many Kabin Namas signed by the same Kazi. Also the quality of the document demonstrates the age of the document and date on it. Therefore, I sincerely believe this to be a genuine document."
61. Mr Hossain also reports his visit to the village of Sikalbaha where he reports meeting six individuals who knew FR and that C2 is one of his two daughters. Three individuals confirmed that they attended the wedding of C1 and FR. One individual, although not able to recall the date of the wedding, confirmed it definitely took place after "the liberation war of the country in 1971". He also confirmed that he knew C1 and the other daughter of FR whom, he says, died more than 25 years ago in hospital in Dhaka. He attended his funeral. He confirmed he knows C1 who lives in Sikalbaha in FR's home and in Dhaka. Another individual confirmed the same information.
62. This evidence was served on 26 March 2019, shortly before the adjourned hearing was relisted for 2 April 2019. As a consequence, and by consent, on 1 April 2019 the

hearing on 2 April 2019 was adjourned as the Defendant wished to have seven days to carry out further investigations in the light of Mr Hossain's evidence.

63. That evidence consists in a further DVR (dated 2 June 2019) and witness statement (dated 12 June 2019) from Nazmul Huda, a Counter Fraud Official at the British High Commission in Dhaka. In fact, it was not served until 13 June 2019 shortly before the new listing date for the hearing on 19 June 2019. I will refer to this DVR as "DVR2". DVR2 is based upon first, a visit by Mr Huda on 27 May 2019 first to the Register office "No 7, 8 & 9 wards" in Rangunia, Chattagram where he met Kazi Alam and carried out enquiries in respect of C1's marriage certificate, and second, a visit to the Birth and Death Registrar Office for "No 3, Sikalbaha Union" Chattagram where he met Secretary Abdul Kaiyam and carried out enquiries in respect of C2's birth certificate.
64. In relation to C1's marriage certificate, DVR2 sets out the enquiries carried out with Kazi Alam and the records he held. The search was again fruitless. The volumes of the marriage register books for 1973-1976 were identified. In particular, the volume "Vol 5, No 4 Jamal Khan" for the period 31 October 1975 to 14 October 1975 was examined. That did not contain the marriage certificate of C1. On the date of their marriage, only one certificate was found and it related to a marriage between two different individuals. Likewise, on the relevant page of the register as found on C1's marriage certificate, (page 14) a differently numbered certificate ("21" rather than "125") was found and relating to a marriage again between different individuals.
65. Mr Huda, however, goes on to express his view that there are "discrepancies" between the English and Arabic signatures of Kazi Haque on C1's marriage certificate when compared with his known signatures on an original Nikah Nama in the Kazi's record book. Those discrepancies are not explained other than by reproduction of the relevant signatures.
66. A photocopy of C1's marriage certificate is part of DVR2 (pp.12-13). Both pages have been annotated and signed by Kazi Alam. The first page states:

"Record not found. But the signature of Kazi Abu Md Mohimul Haque both the English and Arbi (*sic*) is [not] matched. But date of marriage was not."
67. The second page is annotated likewise. I have put the word "not" in brackets because its placement on both pages appears to be an addition – clearly forced in between the words "is...matched". It also appears to stand inconsistently with the sense of both annotations which is (1) C1's marriage certificate was not found; (2) Kazi Haque's signatures did match those known by Kazi Alam; but (3) C1's certificate did not match the marriage certificate for that date in the records. If (2) is correct, it stands in stark contrast to Mr Huda's view of Kazi Haque's signatures on C1's marriage certificate.
68. DVR2 ends, in respect of C1's marriage certificate, with Mr Huda's view that "Document verified and record found non-genuine."
69. In relation to C2's birth certificate, Mr Huda reports on his inspection of the original register record book and, when comparing it with C2's certificate, he identified

“discrepancies” in the dates when it is said C2’s birth was registered. Mr Huda considered two “original” documents: first, a birth certificate obtained from the Bangladeshi authorities (the “official certificate”); and second, a ‘grid’ entry from the original record book. Only the latter was consulted, and relied upon, in DVR1. The official certificate is said to be from the “Register record book”. There was some discussion before me as to whether this was, in fact, a digitalised version of a birth certificate in C2’s name or a ‘hard copy’ in a book. There was no officially sourced evidence one way or the other but Mr Hossain’s evidence in his witness statement of 18 June 2019 is that it is a computerised record following digitalisation of records in Bangladesh (see para 9). I see no reason not to accept Mr Hossain’s evidence on this issue. It was not challenged by any contrary evidence. Undoubtedly, the certificate shown in DVR2 at pages 15 (left-hand side) and 19 is an official record of a birth certificate in C2’s name held by the Bangladeshi authorities.

70. What, then, are the claimed discrepancies? First, C2’s certificate states her birth was registered on 12 February 1984 whilst the official certificate states the date of registration was 27 June 2012. Second, the “grid” record states that the birth was registered on 1 July 2012 - a date which is, of course, even inconsistent with the official certificate itself. A copy of C2’s certificate is annotated by Secretary Kaiyum as follows:

“Record found. But date of Registration not matched.”

71. Mr Huda concludes in DVR2:

“Document verified and record found non-genuine.”

72. In response to DVR2, and in the short time available before the re-listed hearing on 19 June 2019, the Claimants instructed Mr Hossain again. He produced a further statement dated 18 June 2019. To the extent it engages in argument with Mr Huda’s evidence, it is unnecessary for me to set it out. It is argument not evidence. However, it does confirm that Mr Hossain has again spoken to Kazi Alam who confirmed what he had told Mr Hossain on his visit in March and that he (Kazi Alam) had told Mr Huda the same on his most recent visit in May. Kazi Alam again confirmed to Mr Hossain that the relevant marriage register volume for Dewan Bazar (vol 5, No 5 ward) was missing from his office but the Kazi’s signature on C1’s certificate was genuine. In relation to Mr Huda’s view that there are discrepancies between the signatures, Mr Hossain reports that the Kazi would, unlike the average person in Bangladesh, be able to write in Arabic and would be able to confirm the genuineness of the signatures with his “more specialised knowledge”.

73. Mr Hossain also relates a recent conversation with C2 by telephone on 17 June 2019. In that conversation, she explained that, following her father’s death, documents (including her birth certificate and his naturalisation certificate) were dispersed and neither could be found when she and C1 applied for their CoEs. In mid-2012, she went to the local Union Chairman who, after 4 or 5 days, issued her with a handwritten birth certificate and confirmed that her birth had been registered in 1984. About a year later, her father’s naturalisation certificate was found part damaged. In relation to the certificate used as a comparison by Mr Huda, Mr Hossain maintains that it is a computerised record and that the 27 June 2012 date may be a mistake reflecting the date the record was computerised.

74. In addition, the principal other pieces of evidence are the witness statements of C1 and C2 each dated 5 August 2018.

**OBJECTIONS TO, AND ADMISSIBILITY OF, THE EVIDENCE**

75. A number of objections were raised over the course of the proceedings to the admission of (or proper approach to) much of this evidence.
76. First, there is a statement of Ms Anika Ahmed dated 26 November 2018. This exhibits the summary DVR which was originally provided by the Defendant. In his skeleton argument for the original hearing on 29 January 2019, Mr Gill QC contended this was not admissible as it had not, as required by the directions of UTJ Markus when granting permission, been served as evidence with the Detailed Grounds of Defence (“DGD”) by 8 November 2018. Whilst that is true, an extension of time to file the DGD was granted on 14 January 2019. That order implicitly or by variation extended time for filing the evidence and, as I indicated at the 29 January hearing, it is accordingly admissible. I would, in any event, admit it as the Claimants have had ample opportunity as the case has developed in the subsequent 6 months to obtain any evidence they wished in response.
77. Of course, this point is somewhat academic, in the sense that the summary DVR was, subsequently, replaced with DVR1. That was served and filed on 4 February 2019 together with a witness statement from Carolyn Tully explaining the “mistake” in not providing the full DVR1 to the Claimants and, indeed, the court. I accept the explanation and I also accept that DVR1 should be admitted. Clearly again, given the progressive development of the evidence in this case, the Claimants have had a fair and full opportunity to deal with DVR1 both by obtaining any evidence in response and by way of submissions.
78. Second, there is the evidence from Mr Hossain in response to DVR1 filed on 26 March 2019. Albeit that was done outside the time limit set in para 3 of my order of 29 January 2019, I did not understand the Defendant to raise any objection to its admission. The hearing listed for 2 April 2019 was adjourned by consent in order that the Defendant could have the full 7 days to obtain further evidence. I admit the Claimants’ evidence; again there is no prejudice to the Defendant in doing so as he has had, and indeed taken, full opportunity to seek any evidence in response in the shape of DVR2.
79. Third, in relation to DVR2 that was filed on 14 June 2019. By para 4 of my order of 29 January 2019 it should have been filed and served within 7 days of the Claimants’ evidence being filed on 26 March 2019. Mr Gill QC contended I should not admit DVR2 as it was out of time and filed only 5 days before the adjourned (and final) hearing on 19 June 2019. Further, there was gross delay which was unexplained. In the result, however, even given the immediacy of the hearing, the Claimants were able to instruct Mr Hossain who produced his statement dated 18 June 2019. Whilst the delay is regrettable, the Claimants were, in my judgment, able to deal with DVR2 both in Mr Gill QC’s full submissions on the merits and in obtaining further evidence from Mr Hossain. Weighing up all the circumstances, I consider it just and fair to admit Mr Huda’s statement and DVR2 and, of course, Mr Hossain’s evidence in reply.

80. One final matter I should deal with that was raised at the hearing on 29 January 2019 and in the skeleton arguments of counsel. This addressed the fact that there was to be no cross-examination of the Claimants or any witnesses. The detailed arguments are set out by Mr Gill QC at paras 2-10 of his “Speaking Note” and by Mr Brown at paras 25-33 of his skeleton argument together with the pre-hearing correspondence. I will not set out the detail correspondence and exchanges between the parties so as unduly to lengthen this judgment. What is said may be summarised as this. For the Claimants: since there has been no application to cross-examine them, their evidence should be accepted as it stands (para 6 of Mr Gill QC’s skeleton argument). Added to this is the contention that the Claimants offered to give evidence but requested the Defendant to pay their costs and grant entry clearance to do so. The Defendant contends there was no obligation to grant entry clearance to the Claimants and pay their costs in order to give evidence and it is not agreed that their evidence should be taken as read. By contrast, the Defendant contends that it was agreed by Claimants’ representatives that the Defendant’s witnesses (at the time, Ms Ahmed and any overseas officers) would not be cross-examined (see paras 29-32 of Mr Brown’s skeleton argument). I do not consider that either party is entitled to say that the other side accepts evidence given by their witnesses simply because there was no cross-examination. That is, and never has been, the respective position of the parties. The practical realities have been that none of the witnesses were able to be tendered for cross-examination. Some aspects of a witnesses’ evidence may be unchallenged but other aspects are. I must draw reasonable inferences as to the reliability of the evidence. As I indicated at the 29 January hearing, the correct and sensible approach to the written evidence of all witnesses was to recognise that, in the absence of cross-examination, their evidence had not been subject to forensic analysis at the hearing and that went to what weight it would be appropriate to give it. The evidence has to be seen as a whole and reasonable findings reached on it.

## DISCUSSION

### The ‘Precedent Fact’ Ground

81. Mr Gill QC submitted that the evidence established that both C1’s marriage certificate and C2’s birth certificate were genuine. That, he submitted, was sufficient for both C1 and C2 to succeed. But, in addition he relied upon the evidence from villagers and the photographs together with the presumption of marriage based upon cohabitation (for C1) and the presumption of legitimacy (for C2).
82. Mr Brown accepted that if the relevant certificates were authentic then the Claimants were each entitled to a CoE. However, if they are not authentic then the Claimants could not succeed but, if the court was satisfied that the Claimants were nevertheless related as claimed, then the Secretary of State would take that into account in determining whether to issue a CoE to each of them. Mr Brown submitted that I should be satisfied on the basis of the evidence (i.e. DVR1 and DVR2), that the documents are not genuine or authentic. He accepted that I must look at the documents together and any finding in relation to one was relevant to the genuineness of the other.
83. I take first C1’s marriage certificate. The Defendant’s case that it is not genuine rests upon a number of points in the evidence.

84. First, there was no record of the certificate found in the Registrar's office in the marriage register books. That is the conclusion reached in DVR1 and DVR2. That is undoubtedly correct. C1's marriage certificate was not found. But, as Mr Gill QC submitted, that is not relevant as the officers looked in the wrong volume. I agree. They looked at the register book Vol 5 for No 4 ward both at the relevant page reflecting what is on C1's certificate (p.14) and at the relevant date of marriage (21 August 1975). As I have set out above, on page 14 the officers found a marriage between different two individuals (not C1 and FR) and likewise a marriage between different individuals for the only recorded marriage for 21 August 1975. But, "vol 5" for "No 4 ward" was the wrong ward: C1 claims to have been married in the "Dewan Bazar" ward. The correct book would, therefore, be "vol 5, No 5 ward". The evidence clearly establishes that the officers looked in the wrong book. It is no wonder, therefore, that C1's marriage certificate was not found there. Kazi Alam's evidence is that the books for "No 5 ward" were transferred to his office sometime ago. On searching, the relevant one for C1's certificate was "missing". He does not know how it was not available and it would be pure speculation to infer any nefarious reason for its absence. That C1's certificate could not be found, therefore, does not assist to establish it is not genuine.
85. Second, the Defendant relies on what Kazi Alam annotated on the copy of C1's certificate as set out in DVR1, namely that "I confirm this is a fraudulent document". On the face of it, this is potentially telling evidence in the Defendant's favour. It has, however, to be seen in the light of what Kazi Alam told Mr Hossain during his visit in March 2019 and what is said in his witness statement sworn before a Bangladeshi lawyer. He denies that he told the officers that C1's marriage certificate was not genuine. Indeed, unless he too fell into the error into which the officers seem to have fallen, of assuming the volume consulted (Vol 5, No 4 ward) was the correct one, it is difficult to see how he could form such a view simply because C1's certificate was not found in that particular volume. He certainly offers no other basis in DVR1 for concluding it is a 'fraud'. In his statement, he states clearly that he "could not find the volume for this document" when the officers visited.
86. Third, in DVR2 Mr Huda seems to me to persist with the fallacy that C1's marriage certificate can be found in the volume consulted which it could not. Kazi Alam confirms in DVR2 that the "record not found" but that the signature of the Kazi Haque is authentic in both the English and Arabic. This is some evidence that C1's marriage certificate is genuine if it is signed by the appropriate Bangladeshi official. Mr Huda claims in DVR2 that there are "discrepancies" between the signatures on C1's marriage certificate and a known example of Kazi Haque's signatures in another document held by Kazi Alam. Mr Brown invited me to take this evidence into account as Mr Huda is an experienced and trained officer in fraud detection. Mr Gill QC submitted there was no evidence of this. Even on Mr Brown's basis, there are problems with accepting Mr Huda's view. First, Mr Huda offers no actual explanation of what are the perceived discrepancies. He simply includes 'blow-ups' of the signatures which to the untrained eye do not obviously seem significantly different. An unreasoned assertion is entitled to be given little weight. Second, Kazi Alam, who states he is familiar with Kazi Haque's signature from his work, attests that the signatures on C1's certificate are genuine. He is best placed to recognise Kazi Haque's signature and in the absence of any reasoned explanation from Mr Huda, I prefer his evidence to that of Mr Huda. There is the oddity that I identified earlier of



the word “not” appearing between the words “is...matched” in Kazi Alam’s annotation on C1’s marriage certificate in DVR2. It is inexplicable how this has occurred. It has somehow been ‘squeezed in’, looking very much like an after-thought. Mr Brown initially asked for 7 days to clarify how this occurred. I refused to grant permission to do so both because the history of the case called for an end to further evidence when both parties had ample (and multiple) opportunities to produce what they wished to rely on and also because Mr Brown accepted that Kazi Alam had accepted the signatures were matched. He confirmed in his oral submissions that this was the Defendant’s position and it is also set out at para 9.3 of Mr Brown’s “Supplementary Note” prepared for the hearing on 19 June. In my judgment, the proper inference is that Kazi Alam confirmed the genuineness of Kazi Haque’s signatures. Not least because of the sense of what Kazi Alam says: contrasting, on the one hand, his view on Kazi Haque’s signatures with, on the other hand, the *non-match* of the marriage dates by the use of the word “but” in relation to the latter. I do not, therefore, express any view on how the word “not” came to be part of Kazi Alam’s annotation.

87. Fourth, Kazi Alam in both his witness statement dated 20 March 2019 and in his subsequent phone call with Mr Hossain confirmed that he “sincerely believe[s] [it] to be a genuine document.”
88. As Mr Brown submitted, there is not a complete or compendious and, I would add, harmonious body of evidence. However, Kazi Alam’s evidence – at least since DVR2 – has been consistent that C1’s marriage certificate is not held in his office as the relevant book is missing; Kazi Haque’s signatures match known genuine examples of them; and he believes C1’s marriage certificate to be genuine.
89. Mr Brown accepted that Mr Hossain has done what he says in his evidence and I accept his evidence of what Kazi Alam told him to be reliable.
90. One final point on C1’s marriage certificate. Mr Brown raised, for the first time in the DGD, the contention that FR’s CUKC registration certificate (dating from 1972) showed he was married to someone other than C1 – namely, Zohura Begum. He did not pursue that point in his oral submission as it is now accepted that FR was at that time married to Zohura Begum but that she died on 15 July 1975, after the date of the registration certificate and before his claimed marriage to C1 on 21 August 1975 (see death certificate of Zohura Begum, Claimants’ supplementary bundle, p.4). His former wife being named on it, therefore, casts no doubt on C1’s claim that she was married to FR on 21 August 1975.
91. For the reasons I have given, I am not satisfied that C1’s marriage certificate is not genuine. In fact, I am satisfied on a balance of probabilities that C1’s marriage certificate is genuine and that at the relevant date she was married to FR and she has a right of abode in the UK. Accordingly, she is entitled to a CoE.
92. In reaching that conclusion, I have not had to take into account the surrounding evidence from villagers and other evidence that supports C1’s marriage to FR. I bear in mind that it is given second-hand by Mr Hossain but nothing before me calls into question his integrity as a reporter of events in Bangladesh. Suffice it to say that that evidence is wholly consistent with my findings, in particular that C1 and FR were married at claimed.

93. I turn now to consider C2's birth certificate.
94. The Defendant's case in respect of C2's birth certificate is a simple one. That certificate records a date of registration as 12 February 1984 and a date of issue of 2 February 2012. The official records interrogated by the Defendant's officers on their visits show that C2's birth was registered on 2 July 2012 (DVR1, p.10) or, alternatively, on 27 June 2012 or 1 July 2012 (DVR2, pp.14-19). Secretary Kaiyum confirms the registration dates do not match on C2's certificate and the official certificate obtained from the records (DVR2, p.17). Mr Huda states that the certificate is "non-genuine" (DVR2, p.19). Further, Mr Brown relies upon the evidence from the Secretary Assistant that on 29 July 2017 an unknown person attended the office and enquired about changing the birth registration date of C2 but was told it could not be done and was a criminal offence (DVR1, p.12). It is, therefore, not a genuine certificate.
95. Mr Gill QC submitted that the only point now taken on C2's birth certificate itself is that it shows a different date of registration to the records. Relying on Mr Hossain's observations in para 9 of his statement of 18 June 2019, Mr Gill QC submitted that all other details, including the register/volume and the 17 digit national number and the year of birth, were correct. Secretary Kaiyum had not stated that C2's certificate was a fraud or not genuine. The comparator certificate in DVR2 is a digitised certificate derived from a computer database. It may be, Mr Gill QC submitted, that there had been a mis-transcription of the date of registration when the certificate was digitised. The date of 2 July 2012 on that certificate was the date of issue. In any event, he submitted I could rely upon the digitised certificate to be satisfied, on a balance of probabilities, that C2 is FR's daughter and was born on 7 February 1984.
96. I accept the substance of Mr Gill QC's submissions. The date of registration of C2's birth is unclear in the Bangladeshi official documents. It is given as 2 July 2012 in the handwritten "grid" having been registered by recording an individual's thumb print and who is unknown (DVR1, p.10). Whereas it is given as 27 June 2012 on the 'computerised' certificate (DVR2, p.15) and said to be 1 July 2017 on the 'grid' (DVR2, p.16). The latter contrasts with what is said in DVR1. Whilst none of the dates goes back to 1984, the inconsistency does little to instil a sense of security in the official records' assertion of the true date of registration. C2's explanation, as relayed by Mr Hossain in his witness statement (para 10), is that:
- "In 2012, when she and her mother wished to apply for UK right of abode, they could not find her birth certificate and the Naturalisation Certificate of her father. In mid 2012 she went to the local Chairman for her birth certificate. After four/five days, he issued her the hand-written birth certificate. The chairman confirmed that her birth was registered in 1984 as per the Union record and he gave her this certificate as per the details of the official registration."
97. I bear in mind that is second-hand evidence and, obviously, has not been the subject of forensic challenge. Nevertheless, it is consistent with an explanation that the date of registration may have been mis-transcribed or that the records may mistakenly confuse that date with a date of issue of a certificate in 2012.

98. More telling, however, is that Secretary Kayium at no point states that C2's birth certificate is a fraud or not genuine. Nor does he doubt any of the information that is contained within C2's birth certificate. Indeed, apart from the registration date, C2's certificate reflects all the relevant facts about C2 upon which she relies and are reflected in the official certificate viewed by Mr Huda and reproduced in DVR2. That, in my judgment, is significant. The only discrepancy identified by Mr Huda in DVR2 is the date of registration of C2's birth (DVR2, p.14). That was accepted by Mr Brown in his oral submissions. Indeed, Mr Brown accepted that it was open to me to find that C2 has established her relationship with FR and her date of birth based upon the 'computerised' certificate even if I did not accept C2's birth certificate was genuine.
99. The evidence in relation to C2's birth certificate is not all one way. The official records themselves do not speak with one voice as to the date of registration of C2's birth. The official records do, however, confirm (1) every other material matter set out in C2's certificate including details such as the register/volume number and 17 digit national number; and (2) every other fact relied upon by C2 to establish her relationship with FR and her entitlement to a CoE. These are significant correlations with C2's claim that the certificate is genuine and that she is related to FR as claimed. The unknown visitor who attended the officials on 29 July 2017 to request a change in the registration date remains an unsolved mystery. It does not, however, given the correlation in the evidence and bearing in mind the other matters I have identified above and relied upon by Mr Brown, lead me to reject C2's case.
100. As Mr Brown accepted in his oral submissions, my finding that C1's marriage certificate is genuine and that she was married to FR as claimed is relevant in assessing C2's birth certificate and her claim to be their daughter.
101. Again, the evidence from Mr Hossain as to C2's family history derived from his village visit is consistent with, and supports, C2's claimed relationship with FR (witness statement dated 24 March 2019, p.3).
102. I am not satisfied that it is established that C2's birth certificate is not genuine. In fact, I am satisfied, on a balance of probabilities, that C2's birth certificate is genuine.
103. Even on the basis of the official records alone, I am also satisfied that C2 is FR's daughter as she claims and was born on 12 February 1984.
104. Consequently, C2 is a British citizen by descent and has a right of abode in the UK. Accordingly, she is entitled to a CoE.
105. For these reasons, C1 and C2's judicial review claims succeed.

#### The 'Public Law' Grounds

106. In the light of my findings above, that C1 and C2 have succeeded in establishing on a 'precedent fact' basis their claimed relationships with FR, it is unnecessary to reach any conclusions on the public law grounds challenging the Defendant's decisions. They could, even if established, only offer at best a lesser remedy of quashing without any factual findings being made on the relationships between FR and, C1 and C2.

## **DECISION AND DISPOSAL**

107. The Claimants' applications for Certificates of Entitlement have a protracted history. In the light of my findings, the Claimants' wait should come to an end as swiftly as practicable.
108. C1 and C2's judicial review claims are allowed. The ECO's decisions of 18 August 2017 refusing C1 and C2's applications for a certificate of entitlement based upon their respective right of abode in the UK are unlawful. Those decision are, therefore, quashed. I invite counsel to seek to agree the terms of any declaratory or other relief.