



Neutral Citation Number: [2019] EWHC 340 (Admin)

Case No: CO/3709/2016

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 February 2019

Before :

MRS JUSTICE LANG DBE

Between :

THE QUEEN
on the application of

SHUKRI HASSAN OTHMAN
- and -
SECRETARY OF STATE FOR THE
HOME DEPARTMENT

Claimant

Defendant

Adrian Berry (instructed by **Aden & Co**) for the **Claimant**
Sarabjit Singh QC and Jo Moore (instructed by the **Government Legal Department**) for the
Defendant

Hearing dates: 5 & 6 February 2019

Approved Judgment

Mrs Justice Lang :

1. The Claimant applies to quash the decision of the Defendant, made on 11 April 2016, to refuse his application for a passport as a British Overseas citizen (“BOC”).
2. The Claimant claims to be a BOC on the basis that he is a person of Somali heritage, born in the former Crown Colony of Aden, prior to 14 August 1968, who did not acquire South Yemeni nationality on or before that date.
3. The Claimant applied for a passport in April 2012. In April and May 2013, the Defendant asked for further documentation. The Claimant attended an interview on 30 August 2015. A letter of refusal followed on 11 April 2016.
4. Thereafter there was pre-action protocol correspondence and the claim was issued on 25 July 2016. Permission to apply for judicial review was granted by a Judge on the papers on 5 October 2016. On 12 December 2017, I dismissed the Defendant’s application to strike out this claim, together with other similar claims.
5. On 27 June 2018, I gave judgment in a lead case involving four claims by members of the Nooh family (“the *Nooh* litigation”) in which I had the benefit of considering detailed submissions on the law and some generic evidence, relevant to this case.

Legal framework

6. The parties were in agreement as to the legal basis upon which a Somali born in Aden may be a BOC and entitled to a passport accordingly.
7. Under s.1(1)(a) of the British Nationality and Status of Aliens Act 1914, any person born within His Majesty’s dominions and allegiance was deemed to be a natural-born British subject.
8. Section 4 of the British Nationality Act 1948 (“the 1948 Act”) materially stated that:

“.....every person born within the United Kingdom and Colonies after the commencement of this Act shall be a citizen of the United Kingdom and Colonies by birth.”

The term “citizen of the United Kingdom and Colonies” is commonly abbreviated to “CUKC”.

9. By virtue of s.12(1)(a) of the 1948 Act, a person who was a British subject immediately before the commencement of the 1948 Act became a CUKC on commencement if he was born within the territories comprised at commencement in the United Kingdom and Colonies and would have been a CUKC if section 4 of the 1948 Act had been in force at the time of his birth.
10. The Colony of Aden was a Crown colony as at 1 January 1949, which was the date of commencement of the 1948 Act. So from 1 January 1949, every person born in the Colony of Aden became a CUKC.

11. The Colony of Aden became the State of Aden within the British Protected Federation of South Arabia on 18 January 1963. It continued to be a British colony until independence.
12. The State of Aden became part of the independent state of the People's Republic of Southern Yemen (also known as South Yemen) on 30 November 1967. In 1989, South Yemen unified with the former Yemen Arab Republic (North Yemen) to create the Republic of Yemen.
13. The Aden, Perim and Kuria Muria Islands Act 1967 ("the 1967 Act") provided for the relinquishment of UK sovereignty over inter alia Aden. Paragraph 1(1) of the schedule to the 1967 Act headed "Change of citizenship" stated that:

"Except as provided by the following provisions of this Schedule, any person who, on such date as may be specified in an order made by the Secretary of State -

(a) in consequence of his connection with a territory designated by the order, possesses any such nationality or citizenship as may be specified by the order, whether he acquired that nationality or citizenship before that date or acquires it on that date, and

(b) immediately before that date is a citizen of the United Kingdom and Colonies,

shall on that date cease to be a citizen of the United Kingdom and Colonies."

14. The relevant "order" referred to in the 1967 Act that was made by the Secretary of State was the British Nationality (People's Republic of Southern Yemen) Order 1968 ("the 1968 Order"), which provided that:

"For the purposes of paragraph 1 of the schedule to the Aden, Perim and Kuria Muria Islands Act 1967 (which provides, subject to exceptions, for the loss, on such date as may be specified by order, of citizenship of the United Kingdom and Colonies by a person possessing on that date such nationality or citizenship as is so specified by reason of his connection with a territory designated by the order) -

(a) the People's Republic of Southern Yemen shall be a designated territory;

(b) in relation thereto the specified nationality shall be Southern Yemeni nationality, and;

(c) in relation thereto the specified date shall be 14th August 1968."

15. The effect of the 1968 Order was that any person who possessed South Yemeni nationality in consequence of his connection with the People's Republic of

Southern Yemen on 14 August 1968, and was a CUKC immediately before 14 August 1968, ceased to be a CUKC on 14 August 1968.

16. The question whether a person possessed Southern Yemeni nationality on 14 August 1968 has to be answered by reference to Southern Yemen nationality law. Article 1 of the People's Republic of Southern Yemen 'South Yemen' Law of Nationality 1968 (No 4), which came into force on 4 August 1968, materially provided that:

“The following expressions in this law shall have the following meanings...

(b) ‘Republic’: the People’s Republic of Southern Yemen...

(e) ‘Arab’: any person belonging to the Arab nation and holding the nationality of any Arab state.”

17. Article 2 of Southern Yemen's nationality law provided that:

“The following shall be considered Southern Yemeni by birth...

(b) any Arab born in the Republic, provided that one or both of his parents has resided in the Republic for at least five years.”

18. Following the settlement of the judicial review claim in *R. (Botan) v Secretary of State for Foreign and Commonwealth Affairs* CO/1484/2009, the Defendant did not dispute that Somalis born in Southern Yemen were not considered Arab under Articles 1(e) and 2(b) and so did not automatically become Southern Yemenis from 14 August 1968, the date Southern Yemen's nationality law was applied by the 1968 Order. That meant that for the purposes of the 1968 Order, they did not, as a matter of birth, possess Southern Yemeni nationality on 14 August 1968. Therefore, unless they acquired Southern Yemeni nationality some other way, such as by registration on or before 14 August 1968, they did not cease to be CUKCs on 14 August 1968.

19. A CUKC who lacked a right of abode in the UK or equivalent right in a remaining British Dependent territory became a BOC from 1 January 1983 by virtue of s.26 of the British Nationality Act 1981. Accordingly, all Somalis born in Aden on or before 14 August 1968 who had not acquired Southern Yemeni nationality on or before that date became BOCs from 1 January 1983. As they did not meet the requirements of section 11 of the British Nationality Act 1981, they were not eligible to become British citizens.

20. BOCs are entitled to a British passport and to request consular protection from the UK Government when travelling abroad. However, they have no right of abode in the UK. Acquisition of citizenship of another country, in this case Somalia, does not result in the loss of British Overseas citizenship.

21. The Claimant claims to be a BOC by operation of law and applies for a declaration to that effect. The Defendant has no discretion to refuse a passport to a person who has the legal right to BOC status. The question whether each Claimant is a BOC is a question of precedent fact for the court to determine on the basis of the evidence before it. The analysis by Keene LJ in *R. (Harrison) v Secretary of State for the Home*

Department [2003] EWCA Civ 432 in respect of British citizens under section 11 of the British Nationality Act 1981 is also applicable to these claims:

“31. What is striking about the present case is that, if the appellant could establish the facts as he alleges them to be, he would have a legal right to be a British citizen. The statutory provisions to which I have earlier referred confer on such a person the status of a British citizen automatically. There is no discretion vested in the Secretary of State. One notes a sharp contrast between those provisions, especially section 11(1) of the 1981 Act, and others in the same Act dealing with applications for naturalisation and registration as a British citizen, such as section 6(1) and section 6(2). In both the latter cases the statute requires the Secretary of State “to be satisfied” of certain matters before he may “if he thinks fit” grant a certificate of naturalisation. In those circumstances, the Secretary of State is in the position of making a decision or a determination. Yet the legislation confers no jurisdiction on the Secretary of State to determine in any authoritative way whether a person is a British citizen by virtue of section 11(1). He is simply not empowered to decide that issue. Nor is there any mechanism or process laid down by statute or regulation whereby he decides whether a person is entitled as of legal right to British citizenship under the 1981 Act. That is perhaps not surprising, because one is here dealing with whether or not that person has a legal right. The contrast is with such processes as registration or naturalisation, where the Secretary of State is empowered by section 41(1)(b) to make provision by means of regulations.

.....

33. Of course, the Secretary of State is very much involved in related matters, such as the issue of passports; and for that reason, as well as for obvious practical ones, it is sensible for any person asserting that he is entitled to the status of a British citizen to raise the matter first with the Home Office. But even on a passport application, the issue of whether a person is a British citizen is a matter of precedent fact where the courts, if there is a dispute, would be prepared to make a decision on the merits.

34. If, therefore, there is a dispute as to whether a person has the legal right under the 1981 Act to the status of a British citizen, that dispute is something which can be resolved in the courts. Such a person can bring proceedings for a declaration that he is entitled as of right under that Act to British citizenship... In determining that matter the court will itself resolve any issues of fact as well as any issues of law. This is not, in truth, judicial review of a decision taken by any administrative body or person, but the more conventional resolution of a dispute with which the courts are very familiar. That being so, the court would not afford to the Secretary of State any margin of appreciation or degree of

deference where the resolution of issues of fact is concerned. It will find the facts for itself according to the evidence before it.”

22. It is clear from *Harrison* that the court does not consider whether, applying public law principles, the Defendant was entitled to find that the Claimant had not proved that they were the holders of their claimed identity, but instead considers for itself whether the Claimant has established the claimed identity.
23. The burden of proof rests upon the Claimant to establish that he is a BOC, applying the civil standard of the balance of probabilities: see *R. (Bondada) v Secretary of State for the Home Department* [2015] EWHC 2661 (Admin) per Walker J. at [11]. That is the burden and standard of proof which I have applied in making my findings of fact and reaching my conclusions.

The Defendant’s guidance

24. In 2013¹, the Defendant issued Guidance to civil servants making a decision on an application by a BOC based on birth in Aden. It provided, *inter alia*:

“Detailed Guidance – Evidence

5.9 When considering an application for a BOC passport from an applicant with connection to Yemen, examiners need to assess whether the applicant became Yemeni on the basis of his own and his parent’s place of birth. If the applicant is of Somali or South Asian descent, examiners should not now assume that the person became Yemeni automatically on independence. However, they should expect to see contemporaneous (documentary) evidence of the parent’s birth in Somalia – normally the birth certificate or passport. Examiners should also request to see evidence of the parents’ marriage. In general, the following should be requested when considering BOC applications with connection to South Yemen (colony of Aden):

- An original birth certificate indicating that the applicant was born in Yemen, preferably with the contemporaneous official translation;
- A passport for the father, if the applicant’s birth certificate does not state his place of birth. If the applicant’s father is born in Yemen, we need proof that they did not become Yemeni on independence, such as naturalisation certificate or a Somali passport issued after independence.
- A range of identity documents for the applicant from different years (preferably different decades) to

¹ The 2013 Guidance has now been replaced by revised Guidance issued in April 2018.

demonstrate that they are the person that the birth certificate relates to.

5.10 In addition to the documents, examiners should look for consistency of name, date and place of birth in the documents provided. Examiners should also look for a range of photographic identity documents from different times that would give added confidence about the identity of the person applying for the passport.”

25. In my view, it is clear that the Guidance provides examiners with suggested tools and techniques to assist them in reaching a conclusion on the question they have to determine, namely, the identity, nationality, date and place of birth of the applicant. It is not a tick-box exercise. The examiner has to evaluate the evidence and exercise his judgment in each individual case. Thus, it is possible that an examiner may be satisfied as to an applicant’s claimed identity etc. even if not all the documents listed in the Guidance are available or even if the details shown in those documents are not entirely consistent.
26. I consider that my analysis is supported by the judgment of the High Court in *Bondada*, which concerned an application for British citizenship. The Court accepted Mr Berry’s submission, which was not disputed by counsel for the Secretary of State for the Home Department, that there were no mandatory requirements as to the evidence that can be relied upon in support of a claim to British citizenship (per Walker J. at [74]).

The Defendant’s decision

27. The letter from HM Passport Office, dated 11 April 2016, gave the following reasons for refusing the Claimant’s application for BOC passport:

“We have undertaken checks to establish your clients’ entitlement to a British passport, the reason for refusal is as follows;

- During this process it has been established there are discrepancies with personal details (name and date of birth) on the documents provided

Dates of birth differs on documents submitted –

Laminated copy Aden birth certificate – date of birth 1960, name Shukree Hassan OTHMAN

Somali passport 109811 – date of birth 1962, name Shukri Hassan OSMAN

Somali passport A0117043 – date of birth 1962, name Shukri Hassan OSMAN

Somali passport A0118135 – date of birth 1962, name Shukri Hassan OSMAN

Somali passport A01071335 – date of birth 1962, name Shukri Hassan OSMAN

Somali Travel Document 150/75 – date of birth 1964, name Mohamed Hassan OSMAN

Fathers Somali passport 176893 – date of birth 1964

Fathers Somali passport 176893 – shows evidence that fathers date of birth has been amended from 1928 to 1940 and shows in Somali passport A0117897 as 1940

- Aden birth certificate has not been embossed nor does it bear any seal, either of which is normally expected on this type of document.
- Aden birth certificate shows evidence that gender has been altered to male from female
- You confirmed at interview that Shukri is a feminine name in Somalia
- Following inconsistent responses when your client was interviewed, which did not alleviate the concerns surrounding the discrepancies in relation to the documents, your client's identity and subsequent claim to British Citizenship is in doubt. HMPO are unable to establish if your client is genuinely the rightful holder of these documents.

British Nationality is a matter of law, enacted by Parliament and we do not have the discretion to vary its provisions in individual cases nor to issue passport facilities to someone who is not eligible.”

Evidence and findings

28. I heard oral evidence from the Claimant by video link from Kuwait, with the assistance of an interpreter in Arabic. A substantial amount of documentary evidence was also adduced.
29. In summary, the Claimant's case was that he was born in Aden in 1960 to parents who were of Somali origin and nationality, but were residing in Aden. He lived in Aden until 1975 when his mother died, and he then moved to Kuwait to live with his father, who had left Aden at an earlier date. The Claimant has lived in Kuwait ever since, though he has always retained his Somali nationality. He has two brothers (Mohamed and Abdurashid) and one sister (Aasha), who lived with him in Aden and then in Kuwait.

Expert evidence on the spelling of names

30. At the hearing, the Claimant adduced expert evidence on Somali culture which addressed the variations commonly found in the spelling of names.

31. Dr Martin Orwin, Senior Lecturer in Somali and Amharic, at the School of Oriental and African Studies, provided a report on the writing and spelling of Somali names. The Latin alphabet was introduced as the official writing system for Somali in 1972; prior to that different writing systems were used. He explained that the Somali language has no standard form. It comprises a set of dialects, and there are variations in the ways in which words are spoken and written. In addition, grammatical and spelling errors are commonplace in written Somali. Dr Orwin observed that the “fact that such spelling errors are common means that at times the spelling of names reflects these, and I have seen people use incorrect spelling consistently and inconsistently for their name”. He said, at [30]:

“Whereas in English it is customary to stick to one spelling of a name, in Somali this is not necessarily the case. My own name, Martin, is spelt by some people with a ‘y’: Martyn. Given consistency of spelling in the UK I would never write my name with a ‘y’ and for official purposes such consistency is well established....This is not to say they are not the same name though. When spoken, there is no difference in pronunciation and the etymology of the name, whether written with ‘i’ or ‘y’ is the same. They are two ways of spelling the same name. Consistency of spelling is not something which has permeated Somali writing and written culture generally. The added complications of Anglicizing Somali-written names, the Romanization of Arabic names, Romanising the spelling of the name in an Arabic-speaking country, etc. can all lead to inconsistent spelling of Anglicizations.”

32. Thus, the problem of inconsistent spelling is exacerbated when Somali or Arabic names are spelt in an English-speaking context, because of the representation, or lack of representation, of sounds found in Somali and/or Arabic, but not in English. Dr Orwin gave the example of the spelling of the Arabic name Muhammad which is spelt in a number of different ways in English e.g. Muhamad, Muhammad, Mohamad, Mohammad, Mohamed, Mohammed, Mahamad, Mahamed etc. He explained that these are not different names, but simply different anglicised spellings of the same name.
33. Moreover, Somali is not an Arabic language and since 1972 it has been written in the Latin alphabet, not in Arabic script. So when Somali names are written in Arabic, in the Republic of Yemen and in the UAE, different spellings may be given for them.
34. This report was supported by a document from the CJK Dictionary Institute on the various ways in which Arabic names may be romanised (ARAN document) and a note from John Wedderburn on Arabic transliteration. Romanisation is the process of converting a different writing system, such as Arabic, into the Latin alphabet. Transliteration is the representation of one writing system into a different writing system, sign by sign. Transcription refers to the representation of the sounds of language in a recognized writing system.
35. Dr Markus Hoehne, University of Leipzig, who is an anthropologist with expertise in Somali culture, also provided a report. Dr Hoehne explained that there are no family names in Somali culture. Names are constructed in the following order: a person’s first name, father’s first name, grandfather’s first name. For example, in the case of the

Claimant, Shukri was his first name; Hassan was his father's first name; and Othman/Osman was his grandfather's first name (according to the Claimant's father's passports). The Claimant's father's name was Hassan Othman Magan. Othman was his father's first name and Magan was his grandfather's first name.

36. When European authorities register Somali names, they tend to adopt the last name as the family name or surname of the person, in an attempt to adjust them to a European taxonomy of naming. As Dr Hoehne explained, from a Somali perspective, this does not make sense, and gives rise to confusion.
37. The Claimant accepted that his third name – Othman - was spelt inconsistently in the documents. It appeared as Othman in the Colony of Aden birth certificate; his school certificate in 1984 and other educational certificates; his employment documents and his Kuwait identification card. However, the Claimant's name was spelt as Osman in his passports and his driving licence. His brother's name appeared as 'Osman' in the 1975 travel document issued by the Somali Embassy in Aden (his own name was partially obliterated). Although the Colony of Aden birth certificate recorded his father's name as Othman, the letter from the Somali Embassy in 1975 referred to him as Osman, as did his father's two passports and the declaration of his death.
38. The Claimant explained that the name Othman is pronounced as Osman by Egyptians and African Arabic speakers and so sometimes the name is written as Osman in English. In Arabic, the name is written and pronounced as Othman. I accepted that this was a possible explanation of the variations in spelling of the Claimant's third name. However, it also appeared to me that the Claimant's father may have himself adopted the name Osman from 1975 onwards. In the Claimant's passports, his father's name was recorded as Hassan Osman. This may explain why the Claimant's first passport, obtained by his father on his behalf in 1981, recorded the Claimant's name as Osman, not Othman, and subsequent passports then repeated the same spelling. On the balance of probabilities, I am satisfied that they all related to the Claimant and his father, despite the inconsistent spelling of the name Othman.
39. The Claimant's first name was spelt Shukree in the Colony of Aden birth certificate but thereafter spelt Shukri in identity and educational documents. In a supplementary report, Dr Martin Orwin gave expert evidence that the name Shukri (also spelt Shugri) is given to Somali males and females, though the sources cited suggest it is mainly a female name. In Arabic, the masculine name Shukri may be written in the Latin alphabet as Shoukri, Shoukry, Shukry. The feminine form of the name may be written as Shukria. According to the Claimant, in Arab countries Shukri is a boy's name. It is possible that the different spelling of the Claimant's first name occurred because of the variety of spellings in use for this name, in both Somali and Arabic, especially when translated into the Latin alphabet. It is also possible that his mother who was illiterate, and his father who was illiterate in Somali and Arabic, though literate in English, did not give the correct spelling of the name to the Registrar, or did not adopt the spelling in the birth certificate thereafter.
40. In my judgment, these inconsistencies in the recording of names did not call into question the Claimant's identity, and indeed Mr Singh QC did not seek to support this aspect of the Defendant's reasons for refusing the Claimant's passport.

Expert evidence on dates

41. Discrepancies in birth dates were a feature of the evidence in this case, which Mr Singh QC did place reliance upon. Dr Hoehne's evidence concerning the lack of importance of dates of birth and birthdays in Somali culture was relevant. He said:

“The lack of importance of birthdays and dates of birth to most Somalis.

7. Dates of birth are usually not registered in Somali culture. Before the advent of colonialism and also during the colonial period, Somalis, most of whom reside in the countryside, were born “under the tree”. There was no citizen registry covering the population. This only gradually changed in the postcolonial period. Most Somalis were still born without official registration. But when they applied for a passport, a birth date was fixed in the document. However, this date represented an approximation of a person's age. Usually, the 1 of January was taken as date and month; the year indicated roughly the age of the person. Somalis normally would reckon birth dates according to certain specific phenomena that occurred around their birth. Older people I interviewed myself in northern Somalia for instance mentioned that they were born around ‘the time of the measles’ or around the time of a certain drought. Through oral history research, one could find out when, approximately, this would have been. Or people would say ‘I was born in the year when Somalia became independent’ (i.e., 1960).

8. More recently, since the 1980s, many people would at least know the year in which they were born. One reason was that many Somalis had moved to urban settlements in the post-colonial period, received formal education and began to note down important events in books. Therefore, educated parents would note the year in which a child was born. But confusion about this matter has again increased with the outbreak of civil war in the late 1980s. Private property was destroyed, books and files were lost. Families were dispersed, and often the father or the mother was killed, died of a disease or fled and the children were left on their own or with relatives. During my research in northern Somalia from 2002 onward, I met many young Somalis who had only a vague idea about the year in which they were born. A year or two difference were considered normal (e.g.: ‘I was born 1982 or 1983...’).

9. Birthdays play, according to my insights, no important role in Somali society up until today. Birthdays are not celebrated. And if officials need to register a person with a concrete birthday, a date is given by many people which often is but a rough estimation (as outlined above). Of course, if a person knows his/her exact birthday since the parents had noted it and the notes

were preserved, this correct date is given. Beyond that, birthdays play no role in Somali society.”

The Claimant’s birth certificates

42. The Claimant produced a Colony of Aden birth certificate recording the birth of “Shukree” in 1960, which he relied upon as the primary evidence that he was born in the Colony of Aden prior to 14 August 1968. The place of birth was recorded as “Wooden Cabin No 334, Section A, Masbeh Area, Sheikh Othman”. Sheikh Othman was a district in the Colony of Aden.
43. The father’s name was recorded as Hassan Othman Magan. The particulars of “race, religion and occupation” were “Somali”, “Mohammadan” and “cook”. The mother’s name was recorded as Haleema Yassin, her race as “Somali” and her religion as “Mohammadan”.
44. The certificate had a number of curious features, which gave rise to doubts about its authenticity. First, it did not have an embossed seal. In the *Nooh* litigation, each birth certificate had a raised embossed seal, with the words “Township Authority Little Aden” and a crest, over the Registrar’s signature, which was clearly visible and could be discerned by touch on all four certificates. The *Nooh* certificates were issued in the same era as this one, and it seems anomalous that this certificate was not sealed in the same way.
45. Because of the absence of a seal, I adjourned the last hearing to give the Claimant the opportunity to obtain a scanned copy of his Colony of Aden birth certificate from the Republic of Yemen, as other claimants in the Colony of Aden litigation had done. The Claimant’s evidence was that he had approached Mr Abdulrahman Mohamed Dualeh, who lives in Yemen, to obtain a copy of his birth certificate from the Civil Registry. This is the same individual who has obtained copies of birth certificates for other claimants in the Aden litigation, but he has never given evidence. I accept that, because of the war in Yemen, it is unsafe for claimants to travel to Yemen themselves. However, the second-hand evidence of the way in which these certificates are obtained is highly unsatisfactory. On this occasion, Mr Dualeh was unable to obtain a copy of the Colony of Aden birth certificate. The explanation given was that, when the birth certificate was issued, the Registrar wrote on the original and used carbon paper between the original and a copy in a book. The Registrar’s writing on the copy was so faint as to be illegible. Only the registration number could be clearly seen. This account may have been true, but without seeing a copy of the document it was not possible to decide.
46. A further anomaly was that only the year of birth was recorded in the certificate, not the day or month. Although I accept Dr Hoehne’s evidence concerning the lack of importance of dates of birth and birthdays in Somali culture, it was not in dispute that the Colony of Aden was operating a birth registration system similar to that in the UK, in which the precise date of birth is considered to be important and recorded as a matter of course. In the other Colony of Aden cases which I have heard, the days and months of birth of Somali children have been recorded, despite the lack of importance of dates in Somali culture. I accept that the parents may have been uncertain about the date of birth, as up to two years had elapsed since it took place, and they would not have written it down because birth dates were not important to Somalis, and they were illiterate. In

those circumstances, I would expect the Registrar to have registered a notional day and month on their behalf, rather than leave the date blank. I see that notional dates have been inserted into other identity documents, such as his most recent passport (1 January 1960) and his school certificate (21 January 1960).

47. His sex was originally recorded as “F” for female but “M” for male was written over it. The amendment was not stamped or initialled. As the Claimant’s parents are deceased, he could not provide any explanation for this, but he speculated that the official who was completing the certificate may have mistakenly believed he was female because Shukree is a name given to girls. However, the Claimant’s own evidence was that Shukri was a boy’s name in Arab countries. The expert evidence was that it was a boy’s name in Somalia too, as well as a girl’s name.
48. Although the year of birth was recorded as 1960, the birth was not registered until 30 January 1962. My attention was drawn to the provisions of the UK legislation at the relevant time – the Registration of Birth and Deaths Act 1874 - which provided, in section 1, that a birth should be registered within 42 days. Section 5 imposed additional procedural safeguards where a birth was registered more than 3 months after the date of birth, and a birth was not to be registered more than 12 months after the date of birth without the written authority of the Registrar-General, which had to be recorded in the Register. It seems likely that similar provisions operated in the Colony of Aden at the relevant time (reference is made to the Births, Deaths and Marriages Registrations Ordinance 1955 on the certificate).
49. In my judgment, authorisation for late registration was the likely explanation for the entry in the final column of the certificate, headed “Remarks”, which states “Approved by the Registrar-General”, which has not appeared in the other Colony of Aden certificates I have seen. Although initially I was concerned by the absence of any seal or signature confirming the Registrar-General’s approval, on reflection I consider that the certificate was merely recording the existence of the Registrar-General’s approval, which had been formally recorded in the Register of Births. It was not the original record of the Registrar-General’s approval.
50. Despite the curious features of this certificate, I have concluded that it was an authentic Colony of Aden certificate (albeit unsealed), and not a forgery, for the following reasons. First, it was on an official printed form, identical to the form which I have accepted as authentic in the *Nooh* litigation, and it was printed on similar paper, now worn with age, consistent with it being nearly 60 years old. The entries were written with pen and ink. There were two official numbers stamped on the certificate: “No. 144” in the left hand column and A37983 in the top right hand corner, identical to those seen on other Colony of Aden birth certificates. In my view, it would be extremely difficult to forge a certificate with these features.
51. On the top of the certificate, there was a hand-written note that recorded a fee of “Shi. 2.50” had been paid and a receipt issued. This was evidence that the certificate was paid for, presumably by the Claimant’s parents. Again, it is unlikely that such a detail could or would have been forged.
52. The certificate was signed by the Registrar of Births and Deaths on 31 January 1962, who certified that it was a true extract from the entry in the Register of Births, including presumably the Registrar-General’s approval in the Register. It looks to me as if the

signature is in a different handwriting to the entries. However, I do not consider that there is anything suspicious about that; indeed, the same feature has been seen in other Colony of Aden birth certificates. A more junior official in the Registry may well have entered the particulars on the form and then submitted it to the Registrar for signature. I have no reason to believe that the signature is anything other than genuine.

53. Thus, the certificate, and the entries on the certificate, appear authentic, and I am satisfied that this document is not a forgery. Contrary to the finding in the Defendant's decision letter, based on the Claimant's answers in interview, the certificate was not laminated and so it was possible to conduct authentication tests on the original document if the Defendant wished to do so.
54. I am unable to determine why the certificate did not have an embossed seal. It could be due to an administrative error. Mr Berry submitted that a seal was not a legal requirement under the UK birth registration legislation. I accept that the absence of a seal on the certificate (which is only a copy of the information held on the Register) would not affect the validity of the Claimant's birth registration, which would have been recorded in the Register. But a birth certificate issued by the Registrar in the Colony of Aden may well not have been valid unless it was sealed, under the relevant law and practice in Aden at the time. However, even if the lack of a seal means that this birth certificate was technically invalid, it is still admissible in these proceedings as evidence of the Claimant's date and place of birth. In my judgment, it is evidence that he was born prior to 14 August 1968, in the Colony of Aden, though I do not give it the same evidential weight as a sealed birth certificate.
55. The Claimant's Colony of Aden birth certificate was supported by a Republic of Yemen birth certificate issued by the Ministry of Interior, Civil Status and Civil Registry in Sirah, Aden on 2 January 2019. Mr Dualeh obtained this certificate, at the Claimant's request, after he was unable to obtain a scanned copy of the Colony of Aden birth certificate from the Civil Registry.
56. In the English translation, its title is "Copy of Birth Register". It set out the Claimant's name as Shukri; his date of birth as 1960; and his place of birth as Sheikh Othman, Aden. His father's name was recorded as Hassan Othman Magan. His religion was recorded as Muslim and his nationality as Somali. His mother's name was recorded as Halima Yassin. Her religion was given as Muslim and her nationality was given as Somali. The entry number 144 and the date of birth registration (30 January 1962) corresponded to the entries on the Colony of Aden birth certificate.
57. There was some discussion at the hearing as to the source of the information recorded on the Republic of Yemen birth certificate. Was it taken from the copy or photograph of the Claimant's Colony of Aden certificate produced by Mr Dualeh, or was it taken from the Register of Births? The certificate stated that the birth entry transcript was copied from "the Births Record No. ... recorded under No. 144 on 30.1.1962 AD in the Civil Status Department of: Directorate: Sirah, Governorate: Aden". I take that to be a reference to the Register of Births. The certificate was issued and signed by the "Manager of the Civil Status Department & Civil Register". The signature was stamped or sealed with the words "Republic of Yemen Ministry of Interior Department of Civil Registration Aden". It was also stamped and sealed on the reverse side by the Aden Office Ministry of Foreign Affairs, Republic of Yemen (for use overseas).

58. The Claimant's second-hand account from Mr Dualeh was as follows:

“He said he got this from the same department, i.e. the Civil Registry. This was his second visit, after I asked him to look for the Republic of Yemen version. He told me there is a book containing details of all the births for a particular month or months....The details are the same as those contained in the Register of Births. The officer in the Registry copied the details onto a Republic of Yemen birth certificate.”

Although I am not able to give much weight to this hearsay evidence, I have taken it into account. It confirms that the certificate was based on central records held by the Civil Registry, not just the copy of the Colony of Aden birth certificate.

59. In my judgment, the certificate was plainly authorised by the Civil Registry and it seems unlikely that the Civil Registry would agree to issue an official birth certificate merely on the basis of a copy of a Colony of Aden certificate produced by Mr Dualeh, without also checking the Births Register. There was no evidence of corruption in the Civil Registry and so it would be wrong for me to assume it.

60. The entries on the Republic of Yemen certificate were made on a pro forma document and they were not identical to the pro forma Colony of Aden certificate. The house and street of his place of birth was not included, only the village and region. The Claimant's name was spelt differently. There was no reference to the father's occupation. I do not consider that these minor variations cast doubt on the authenticity of this certificate. In the *Nooh* litigation and the case of *R. (Suleiman) v Secretary of State for the Home Department* [2018] EWHC 2273 (Admin), there were also minor variations between the information entered on the Colony of Aden certificate and the Republic of Yemen certificate.

61. I repeat the observations I made in *Suleiman* at [47]:

“In my view, it would be unreasonable for the Defendant or this Court only to accept as valid the original birth certificate which was issued when the birth was first registered. Inevitably, birth certificates are sometimes lost or destroyed. Duplicates are frequently issued. In the UK, it is possible for duplicate birth certificates to be issued in precisely the same format as the first certificate. However, there was a change of regime in Aden as long ago as 1967, and it would be unrealistic to expect the Republic of Yemen still to reproduce duplicate birth certificates in the British format and language, merely because it was the former colonial occupier. A scanned copy of the Colony of Aden birth certificate, accompanied by the Republic of Yemen birth certificate based upon the Colony of Aden birth register, is in my view sufficient, provided they are authentic documents. Indeed, as the Claimant pointed out, the Defendant granted a BOC passport to her brother Ali on the basis of a scanned copy of his Colony of Aden birth certificate, not the original one.”

62. In my judgment, the Republic of Yemen birth certificate is an authentic document which corroborates the information in the Colony of Aden birth certificate. It is evidence that the Claimant was born prior to 14 August 1968, in the Colony of Aden.

The Claimant's passports and other identity documents

63. The Claimant is a national of the Somali Democratic Republic. All his passports were issued by the Embassy of the Somali Democratic Republic in Kuwait.
64. His first passport (no. 109811) gave his name as Shukri Hassan Osman. His year of birth was given as 1962 (without any month or day). His place of birth was given as Aden. This passport was valid from 17 March 1981 to 16 March 1984. His parents' names were recorded as Hassan Osman and Kali Yassin. According to the Claimant, his father obtained this passport for him, and the Claimant did not even attend the Embassy with him. The Claimant's explanation for his date of birth being recorded as 1962 when his birth certificate recorded it as 1960 was that it was an error, based upon a misreading of his birth certificate. 1962 was the date when his birth was registered, and this was wrongly taken to be the date of birth. This explanation seems plausible to me, as the Somali consular section in Kuwait may well not have been familiar with UK-style birth certificates and were translating from a foreign language. The Claimant's father should have noticed the error and had it corrected, but the falsification of entries in his own passports showed that he had little regard for truthfulness or accuracy in these matters.
65. The entries were the same in his subsequent passports. Passport, no. A0117043 was valid from 31 July 1990 to 30 July 1993. Passport no. A0118136 was valid from 12 January 1992 to 11 January 1995. Passport no. A01071335 was valid from 19 January 2004 to 18 January 2007.
66. Passport no. P00251416 was valid from 23 January 2013 to 23 January 2018. It recorded his date of birth as 1 January 1962 and his place of birth as Aden. Because of the inconsistency with the date of birth in his birth certificate, the Claimant applied to the Somali Embassy to amend his date of birth. However, the Somali Embassy required sight of his original birth certificate, which he had already submitted to the UK authorities with the application for his BOC passport.
67. On the Claimant's own evidence, he became aware that his date of birth could be 1960, not 1962, when he received his school certificate in 1984. His father kept control of the Claimant's personal papers even after he became an adult. But after his father's death in 1992, the Claimant had access to his father's safe where they were kept. This was the first occasion upon which he saw his Colony of Aden birth certificate. Thereafter he did not take any steps to amend the date of birth in his passport until he made his application for a BOC passport. Whilst he was at fault in not correcting the error, I formed the view that he failed to do so because of inertia and incompetence, rather than any deliberate dishonesty.
68. The Claimant's State of Kuwait civil identity card gave his date of birth as 1962. I accepted the Claimant's evidence that the identity card information was based on the information contained in a resident's passport, and therefore the Kuwaiti authorities

would only amend his date of birth in his civil identity card if it corresponded to the date of birth in his passport.

The Claimant's parents

69. Haleema Yassin was recorded as the Claimant's mother in his birth certificates. Her race was recorded as Somali. The Claimant's evidence was that she was born in Hargeisa Somaliland in about 1930 or 1940 and she died in Aden in 1974 or 1975. The Claimant was not able to provide any documentary evidence of his mother's identity or Somali heritage.
70. In his passports, his mother's name was recorded as Kali Yassin, not Haleema. His evidence was that her full name was Haleema Kali Yassin, but that only two names could be entered in the passport for each parent, and Kali was the name which she used. I accept that appears to be the case, from perusing the passports, but it did not explain why her full name did not appear in the birth certificate.
71. Hassan Othman Magan was recorded as the Claimant's father in his birth certificates. His race was recorded as Somali. He was also recorded as the Claimant's father in his passports, though with the name Osman. I have set out above the evidence relating to the inconsistency of names, and my conclusion that Hassan Osman Magan was the same person as Hassan Othman Magan, the Claimant's father.
72. According to the Claimant, his father was born in Hargeisa, Somaliland in approximately 1928. The Claimant did not know when his father moved to Aden or when he left Aden, but he was living and working in Aden at the time of the birth of the Claimant, and his birth registration, as evidenced by the birth certificates. I am aware from other cases that many Somalis migrated to Aden to find work. The Claimant recalled that the family left Aden and went to Somalia in the 1960s, to escape the war of independence against British rule, and then returned to Aden after about 2 years.
73. At some point the Claimant's father moved to Kuwait and took up residence there, leaving his wife and 4 children behind in Aden. Following the death of his mother in 1974 or 1975, the Claimant and his siblings left Aden to live with their father in Kuwait. This was confirmed by a letter from the Embassy of the Somali Democratic Republic in Aden dated 21 April 1975 which read as follows:

“We hereby validate that the children hereunder written are currently present in Aden and their mother passed away here on March 3rd 1975.

1. Aasha [Female] was born 1958
2. Shukri was born 1960
3. Mohamed was born 1964
4. Abulrashid was born 1965

The children's father named Hassan Osman Magan, domiciled in Kuwait has asked for this validating letter."

74. The Claimant, in his oral evidence, disputed that his father asked for this letter, and instead said his maternal aunt applied for it, as she was in Aden, and was caring for the children after her sister's death. The Claimant suggested that the translation of the letter was incorrect. I concluded that the translation was accurate. On the balance of probabilities, whilst the Claimant's father was the person who made the formal request, as their legal guardian, as he needed to obtain Kuwaiti residence permits and make travel arrangements for them, it is highly likely that the maternal aunt attended the Embassy and facilitated the letter and the travel documentation as she was in Aden, and the father was not.
75. The Somali Embassy Consular Section issued the children with travel documents to enable them to travel to Kuwait as they did not have passports. The travel document which was issued to the Claimant and his brother Mohamed Hassan was unsatisfactory as it was partially torn, so that the Claimant's details could not be seen, beyond the names Shukri Hassan. Curiously the younger brother Mohammed was the lead traveller. On the back of the document there were entry and exit stamps from Yemen and into Kuwait.
76. I accept Mr Berry's submission that the letter from the Somali Embassy was evidence in the Claimant's favour, confirming his date of birth as 1960; his residence in Aden as a child; his Somali nationality; his mother's residence in Aden and her death in Aden; and the reason for his move to Kuwait. Although this information emanated from the Claimant's family, and probably was not independently verified by the Somali Embassy, the document came into existence long before the Claimant would have considered applying for a BOC passport, and so there was no motive to mislead in respect of his date of birth and place of residence.
77. There was clear evidence that the Claimant's father was a Somali national, from his two Somali Democratic Republic passports which were adduced in evidence. Passport no. A0117817 was issued on 15 November 1991 and was valid until 14 November 1994. It recorded his father's date of birth as 1940. I accept that the Claimant was not named as a dependant in that passport because he had his own passport by then.
78. Passport 176893 was issued on 29 November 1982. It also recorded his father's date of birth as 1940, but that was an amendment, officially confirmed with a seal. The previous entry was obliterated. The Claimant's suggested explanation for the change in the date of birth from circa 1928 to 1940 was that his father wanted to extend his working life beyond the official retirement age of 60.
79. The list of dependants in passport 176893 began with Zulekha who was born in 1962. She was the Claimant's father's fourth wife, and much younger than him. Six children were then listed, including the Claimant and his three siblings and his father's children by other wives. The Claimant's date of birth was recorded as 1964; his brother Mohamed's date of birth was recorded as 1968; his brother Abulrashid's date of birth was recorded as 1967 and his sister Aasha's date of birth was recorded as 1972. Some of the dates appear to have been amended. None of these dates was consistent with the evidence in the letter from the Somali Embassy in 1975. There is no other evidence to

indicate that the Claimant's date of birth was 1964. In my view, these dates were falsified.

80. The Claimant's suggested explanation was that his father wanted the children to appear younger than his wife, who was born in 1962. I note that dependants listed in that section of the passport were "authorized to travel with the holder", which presumably meant that the father did not have to incur the expense of obtaining separate passports for the children. According to the printed guidance in the passport, only children up to the age of 14 could be listed as dependants. But this restriction appears not to have been enforced by the Somali Consular section as even the falsified ages of the older children, including the Claimant, exceeded the limit of 14 years of age.
81. The Claimant's father clearly had little regard for the truth and was willing to falsify official documents and travel on passports with false details. The Somali Consular section in Kuwait appears to have been lax, bordering on corrupt, allowing him to alter his date of birth in his passport by some 12 years, and not seeking any proof of the dates of birth of his children. However, this did not lead me to question the identity of the Claimant's father, nor his Somali heritage. Regrettably, there has been repeated evidence in these cases that the Somali Consular section was authorising amendments to passports without verification.
82. The Claimant's father died in June 1992 in Hargeisa, Somalia. A declaration of death was issued by the Somali Embassy in Kuwait.

The Claimant's education

83. According to the Claimant's evidence, he started primary school in Aden at age 8 years, 2 years later than usual, because his family had moved temporarily to Somalia to escape the war of independence in Aden. He did not attend school in Somalia. When he left Aden in 1975, he had completed grade 6 of intermediate school (his seventh year of schooling), he was 2 years behind for his age.
84. The Claimant commenced school in Kuwait in 1976. He missed a year of schooling in Kuwait because he did not arrive in time to enrol at the beginning of the academic year. He then had to repeat two years because he failed the exams, as standards of education were more advanced in Kuwait than in Aden. By the time he graduated, he was 5 years behind for his age. When he graduated in 1984, he was aged 24. According to his evidence, there were other pupils who were in their 20s and it was not unusual to repeat years. I accepted his evidence on this issue.
85. The Claimant produced a "General Secondary Education Examination Certificate" issued by the Ministry of Education in 1984. It gave his name as Shukri Hassan Othman, and his school as the El Asmay Secondary School for Boys. It gave his place of birth as "Sheikh Othman – Aden South Yemen" and his date of birth as 21.01.60. The information was verified by an official from the school. The Claimant's evidence as to how this section of the certificate was completed was confused and he gave several differing accounts during the course of his evidence. He also claimed that during the overnight adjournment he had spoken to school friends about the manner in which they had completed their school certificates, which was unfortunate.

86. On considering his oral evidence and the contents of the form, I found it likely, on the balance of probabilities, that the Claimant was asked to write his name on the form, in Arabic and English, which he did. He entered “Aden (Somal)” for his place of birth; “Somal” representing his nationality. He did not make any entry for his date of birth, because he was not sure of the date. The verifying official then amended the form by crossing out the word “Somal” as that was not his place of birth, and entering the details of the place and date of birth. Those details could only have been based on information obtained from the Colony of Aden birth certificate, which was most likely provided to the school by the Claimant’s father when he enrolled the Claimant. The day and month of birth was given as 21 January, which was probably a notional date, as the year alone was insufficient. The Claimant would not have been able to provide these details as he was not aware of the Colony of Aden birth certificate until 1992. The Claimant’s father was not able to read or write Arabic and so could not play any part in completing the form.
87. After leaving school, the Claimant obtained a Diploma in Applied Commercial Sciences from the Public Authority for Applied Education and Training, in June 1988.

Conclusions

88. Despite the variations in the spelling of his name, I am satisfied that the Claimant is Shukri Hassan Othman, also known as Osman. I am also satisfied that his parents were Hassan Othman (also known as Osman) Magan and Haleema Kali Yassin.
89. It is not in dispute that the Claimant is of Somali heritage and nationality. He has had a succession of Somali passports and he was granted travel documentation by the Somali Embassy in Aden when he was a child. His parents were both born in Hargeisa Somaliland, and they were of Somali heritage and nationality.
90. The Claimant has adduced sufficient evidence to establish, on the balance of probabilities, that he was born in Aden, namely, the information in the unsealed Colony of Aden birth certificate, the Republic of Yemen birth certificate, his Somali passports, and the General Secondary Education examination certificate issued in Kuwait. Different dates of birth have been recorded. On the balance of probabilities, I consider that he was born in 1960, as the birth certificates record, and the passport authority confused the date of birth with the date of registration. But even if I am wrong about that and he was born in 1962, as his passports record, he was still born before the relevant date of 14 August 1968.
91. Although after 1992 the Claimant may have knowingly used a passport with a false date of birth, which may be an offence in the country in which he resides, or in countries to which he has travelled, that does not in law disqualify him from the status of BOC to which he is otherwise entitled.
92. Therefore I conclude that the Claimant is entitled to a declaration that he is a BOC.