



Neutral Citation Number: [2020] EWHC 3313 (Admin)

Case No: CO/3877/2019

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 04/12/2020

**Before :**

**THE HONOURABLE MR JUSTICE CALVER**

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**Between :**

**MD MARUF AHMED DIAMOND**

**Claimant**

**- and -**

**SECRETARY OF STATE FOR THE HOME  
DEPARTMENT**

**Defendant**

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**Shahadoth Karim** (instructed by **Liberty Legal**) for the **Claimant**  
**Hafsah Masood** (instructed by **Government Legal Department**) for the **Defendant**

Hearing dates: 14 October 2020

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**Approved Judgment**

**Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 4 December 2020 at 10:30 am**

**Mr Justice Calver :***The issue for determination*

1. Fariz Miah was born on 5 April 1933 in Bangladesh. On 11 April 1976 when he was 43 years old he married Anowara Khanom, who was 18 years old, having been born on 17 October 1957. She thereby became his second wife, it being lawful to marry up to four wives in Bangladesh with consent from the first wife. After marrying Fariz, Anowara lived with him and his first wife at his family home at Kachua, Borkapon, Moulvibazar, Bangladesh. Fariz and Anowara had three children, namely Shamsun Nahar Doly (“Doly” or “Doli”), the Claimant, Maruf Ahmed Diamond, and Mithila Farjana Mili (“Mili”). After the birth of her three children, Anowara found the relationship with her husband’s first wife a difficult one and, according to paragraph 6 of her second witness statement dated 11 May 2020, “after some years” (which must have been at least until June 2007) she returned to her brother’s home in Moulvibazar, Bangladesh, and she has lived there ever since with her children.
2. Despite this, Fariz visited Anowara as frequently as he could, around two or three times a year. On 12 April 1989 Fariz was registered as a British Citizen. He told Anowara that he wanted to take her and their children to London to live with him. However, that never happened and Fariz died on 1 February 2011. In the same year, the Claimant’s younger sister, Mili, arrived in the United Kingdom. She also holds British citizenship through birth, being granted on the basis that she was born after Fariz became a British citizen in April 1989.
3. There is no dispute about the fact that the Claimant is indeed the son of Fariz. It follows that if the Claimant were born after 12 April 1989 then he would be entitled to British citizenship through his father, Fariz. The issue in this case is whether the Claimant can discharge the burden which rests upon him to establish that fact on the balance of probabilities: *R (Sinha) v Secretary of State for the Home Department* [2013] EWHC 711 (Admin). The Claimant says he can, being born on 4 October 1990; the Defendant says he cannot and disputes that he was born on that date. The resolution of this simple issue is, in fact, far from simple.

*Factual background to the dispute*

4. The story begins in this case four years before the Claimant first applied for a British passport. On 26 May 2003 the Claimant’s mother, Anowara Khanom, signed a letter sent to the Under Secretary of State, Home Office, Lunar House, Wellesley Road, Croydon (the headquarters of UK Visas and Immigration, a division of the Home Office). The Claimant agreed in cross-examination that this was his mother’s signature and the styling of the capital letters does indeed look strikingly similar to the affidavit sworn and signed by her in 2003. The letter is stated to be sent by “Anowara Khanom, W[ife]/O[f] Fariz Miah, C/O: Abdul Mannan Khan, 40 T.B Hospital Road, Moulvibazar Pourashava, PS. & Dist: Moulvibazar, Bangladesh.”
5. The letter reads as follows:

*“I am the legal wife of Mr Fariz Miah who is a British citizen and living in U.K since a long time. He married me in the year of 1976 after taking permission from his first wife & before me marriage my husband assured me to take me London [sic]. Now I have two daughter & 1 Son living with me. My husband never maintain our daily expenditure. I am*

*passing a poor life here living in my brother's house. He always denied to maintain our expenditure. As a husband & parent he should maintain everything. An inquiry team inquiry into the matter on 7 April 2002. Most probably the inquiry team arranged by your office. My husband using name Fariz Miah in his passport & Registration Certificate. I am giving his address below to take necessary action... I request you to see the matter & relief from me uncertainly. Thanking you.*” (Emphasis added)

6. On 16 June 2003 the Secretary of State wrote to Mrs Khanom thanking her for her letter dated 26 May 2003, and making the following request: *“To help us with your enquiry and to identify any previous correspondence, please supply the answers overleaf. Please return the completed form, along with the original letter aside using the enclosed addressed label.”*

7. Mrs Khanom apparently responded by letter dated 6 August 2003. The letter, which was once again purportedly signed by Mrs Khanom in capital letters, is said to be sent from: *“Anowara Khanom, W[ife]/O[f] Fariz Miah, C/O: Abdul Mannan Khan, 40 T.B Hospital Road, Moulvibazar Pourashava, PO. & Dist: Moulvibazar, Bangladesh.”*

8. The letter stated as follows:

*“With reference to your letter No DMC2/TM 37/GP dated 16-06-2003, I forward herewith a completed form for your action.*

*I submit particulars of myself, and my children. My husband Mr Fariz Miah is a British citizen & living in the United Kingdom since long time. He married me in the year of 1976, now I have 2 (two) daughter & 1 (one) son. And living with me, my husband never maintained our expenditure. Now I am very helpless I am passing my days very hardship I have been living my brother house with my children.*

*In this position I wishes to go To the United Kingdom with my children to join my husband.*

*So I request you kindly contract (sic) my husband and arrange UK entry clearance as soon as possible. Thanking you.*” (Emphasis added)

9. The form enclosed with this letter, which was also signed by Mrs Khanom, provided her personal details – correctly recording her birth date as 17 October 1957 and recording her and her childrens’ address as 40, TB Hospital Road, Moulvibazar, Bangladesh (which this letter and the earlier May letter states is her brother’s house) - and the personal details of her three children, recording their names and dates of birth as follows:

“Shamsun Nahar (Dolly)’ – 22/04/1978

**Maruf Ahmad (Diamond)’ – 12/05/1982**

Nurun Nahar (Mili) – 18/07/1987”

(emphasis added)

10. There is no documentary record as to the fate of this application for entry clearance.

11. If these dates of birth are correct, it would follow that the Claimant is 8 years older than he claims and he would not be entitled to British citizenship, being born before his father registered as a British Citizen (in 1989).
12. These letters are important because if they are genuine (a matter to which I return below), they were sent at a time long before the Claimant made his first passport application and accordingly their sending was uninfluenced by the Claimant's desire to obtain a British passport.
13. Some four years later, in 2007, the Claimant first applied for a British passport. Under cross-examination by Ms Masood for the Defendant, he gave his account of how he went about applying for it as follows.
14. He went to his local births and death registry office in Bangladesh two or three days prior to 24 June 2007. He thinks his mother went with him, although he is not sure. A caretaker was in the front of the office and the Claimant asked if he could make an appointment. The caretaker told him that he could but that he should come back on 24<sup>th</sup> June, to speak about getting a birth certificate. The Claimant did not have a birth certificate because it had not been compulsory to register births in Bangladesh prior to 2006.
15. The Claimant returned on 24<sup>th</sup> June for his appointment. He cannot remember to whom he spoke; it may have been the Secretary of the Union. His mother attended with him. He gave the Secretary his personal details, including his name and date of birth. He thinks his mother may have shown the Secretary some papers from his school, but he is not sure. He gave his date of birth as 4 October 1990 (making him 16 years old). On 24 June his name and date of birth were entered in the Birth Registration Register by the Secretary. The entry was not made in front of the Claimant. In the Register, correction fluid was applied to the last two digits of the Claimant's birthdate and "90" was written over the top. The Claimant said he had no idea why this occurred.
16. At this time, the Claimant was also issued with a Birth Certificate, certified by MD Sundor Miah, Acting Chairman. That states that the date of registration of his birth was 24 June 2007 (the same day that he went to the Registry Office) and the date of issuing the Birth Certificate is stated to be 25 June 2007. His date of birth is stated to be 4 October 1990 and his address is stated to be Kachua, Borkabon, Moulvibazar, Bangladesh, which was his father and step-mother's address.
17. Ms Masood for the Defendant asked the Claimant if he knew MD Sundor Miah personally and he answered "No". In light of that answer, Ms Masood asked the Claimant how he could explain the character certificate in the bundle of documents before the court which is signed by MD Sundor Miah and is dated 24 June 2007, the same date as the date of registration of the birth, in which he states of the Claimant "*He is known personally to me. His moral character is good*". The Claimant did not have a convincing explanation: he said that he is the local chairman and is familiar to everyone. "*He knows my family – he has a record of good people. He has seen me but does not have personal relations with me. He knows my family. It is a small area. He knows everyone.*"

18. Indeed, just one month later, on 25 July 2007, MD. Sundor Miah wrote another letter supporting the Claimant in which he certifies that the Claimant's date of birth is 4 October 1990. He states again that "*he is personally known to me.*" He then states:

*"I have paid a field investigation. I went to the village of Kachua, I collected the information from local informant and found that the real parents of [the Claimant] [are] Mr. Fariz Miah and Mrs Anowara Khanom. I also collected the above persons date of birth is correct. His moral character is good."*

19. Kachua is where the Claimant had been living with his father and step-mother. The Claimant accepted that this document was supplied in support of his British passport application. In all the circumstances, it is right to be very cautious about the truth of the contents of the letters from Sundor Miah; he is not someone who has served a witness statement and no hearsay notice has been served in respect of his letters.
20. At around the same time, the Claimant's mother, Anowara, swore an affidavit on 15 July 2007. She said in it that she now lived at 32, Banani Borshijura T.B. Hospital Road, Moulvibazar, Bangladesh. She then gives the dates of birth of her three children as follows:

*Shamsun Mahar Doly: 05/09/1988*

*Maruf Ahmed Diamond: 04/10/1990*

*Mithila Farjana Mili: 18/07/1993*

Her signature is striking, being composed in capital letters of a certain style.

21. Ms Masood asked the Claimant the obvious question: since he already had a birth certificate issued on 25 June 2007, what was the purpose of his collecting documents such as this affidavit? He could not answer this question. He said he had no knowledge of that; maybe it was on an official's advice.
22. Also around this time, a School Transfer Certificate dated 10 July 2007 came into existence, purporting to be issued by the Principal and Class Teacher of the Flower's K.G. High Junior School, Moulvibazar. It states that he had been a student of that institution from "18.01.1996 to 31.12.2002" and records at the end that "He has paid all the dues of the school up to 31.12.2002" and that "His date of birth is 04.10.1990." Once again Ms Masood asked the Claimant what the purpose of obtaining this document was. He said he was not sure what the purpose was. It was not a certificate needed for High School because he did not go to High School. He had no records from the school pre-dating July 2007; in particular he had no contemporaneous records of his time allegedly spent there between 1996 and 2002.
23. The Claimant's first application for a British passport which he made in 2007 was refused, apparently because of concerns about his claimed age. He then made another application on 9 June 2008 (when he would have been 17 years old). He gave his address as his father's address; he gave his mother's address as 32 Banani Borshijura T.B. Hospital Road, Moulvibazar, Bangladesh. It is fair to say, as Ms Masood for the Defendant pointed out, that the Claimant does not look 17 years old in the photograph which accompanies the 2008 application. However, I place no reliance upon this fact

in reaching my judgment in this case as the photograph is only a small passport size photograph and people can, of course, look older or younger than their actual age.

24. The Claimant had an interview with the Defendant on 28 July 2008, and after he demonstrated that he was his father's son through a DNA report, and after providing his national ID card, birth certificates, school transfer certificate, inheritance certificate and letters from his local authority to establish his date of birth which he says is 4 October 1990, the Claimant was granted a British passport on 29 January 2009 by the British High Commission in Bangladesh. The Claimant agreed in cross examination that he obtained his ID card and his Bangladeshi passport by showing the relevant authority his birth certificate which was issued to him on 25 June 2007.
25. The Claimant then arrived in the UK with his British passport on 13 March 2009.
26. In September 2012 HM Passport Office (then named the Identity and Passport Service) ("HMPO") received a personal data request from the Metropolitan Police in respect of the Claimant who was in police custody. The request was for the HMPO to "verify the validity of the passport in the attached document." The author continued: "Mr. Diamond looks older than the DoB in the passport, has a 7 year old daughter (not biologically impossible) and a woman who claims to be his wife who he inadvertently referred to as his wife." The date in his passport was 04/10/1990. It is common ground that the reference to his having a 7 year old daughter was a mistake; this was his step-daughter.
27. In November 2013, HMPO's Counter-Fraud Team launched an investigation into the issuance of the Claimant's passport. Peter Eberle of HMPO explains, at para 6 of his statement which was admitted under service of a hearsay notice, that: "*A copy of the 2009 application form ... was subsequently obtained as part of this investigation. Hand written notes recorded on the application from the examining officer at the British High Commission in Dhaka, Bangladesh at the time indicated that [the Claimant] had previously been refused passport facilities, and that they had concerns regarding his claimed age. However, passport number [...] was issued after DNA evidence showed a relationship to his claimed father who registered as a British Citizen in 1989. The inference drawn from this information was that if Md Maruf Ahmed DIAMOND was in fact born prior to 1989 then he would have no claim to British Citizenship under the British Nationality Act 1981.*"
28. The decision was made to put an alert on the Claimant's file and review his details when he made an application to renew his passport. The alert was triggered in 2017 when passport applications were received by HMPO for the Claimant's children. The Claimant was asked to attend an interview which took place on 27 April 2017.
29. After the interview, the Home Office file for the Claimant's father, Fariz Miah, was obtained. This contained the two letters sent in 2003 apparently from the Claimant's mother, Anowara Khanom to the Home Office in Croydon, Surrey, which pre-dated the Claimant's first passport application by some 4 years.
30. HMPO decided to revoke the Claimant's passport since HMPO's London Counter-Fraud Team "were satisfied on balance that the Claimant was older than claimed and did not qualify for British citizenship." On 3 August 2017 HMPO wrote to the Claimant informing him that his passport had been revoked. The letter stated: "*checks conducted*

by HM Passport Office confirm you fraudulently obtained the above passport”. The letter went on to say:

*“Passports are issued when the Home Secretary is satisfied as to:*

*i. the identity of an applicant; and*

*ii. the British nationality of applicants, in accordance with relevant nationality legislation, and*

*iii. there being no other reasons for refusing a passport.*

*As the above criteria have, based on the evidence received, not been met, it is deemed that you have no entitlement to a UK passport.”*

31. In a letter dated 21 September 2017, HMPO confirmed that *“Checks conducted with the Home Office confirm your client’s true details are of Marup [sic] Ahmad DIAMOND born 12/05/1982.”*

32. On 3 November 2017 HMPO acknowledged that a full explanation for the decision to revoke the Claimant’s passport had not been provided. The letter therefore provided more detailed reasons for the decision to revoke the Claimant’s passport, including the following:

*“As part of our investigations we requested/reviewed Mr Fariz Miah’s Home Office file. Contained in that file was an affidavit signed by Mr Diamond’s mother naming her children and a date of birth for each child. Mr Diamond’s date of birth is recorded as 12 May 1982. Given Mr Diamond’s appearance, details of his family life and the sworn affidavit of his mother it was determined that the 1982 date of birth was more likely than not his true date of birth. As Mr Fariz Miah was not a British citizen at the time Mr Diamond was born, he is not entitled to British citizenship.”*

33. The reference to the “affidavit” of the Claimant’s mother was a reference to the form completed by her and sent under the cover of a letter dated 6 August 2003 to the Home Office (described above).

34. On 17 August 2018 and 24 October 2018 the Claimant made a request for reconsideration, enclosing a number of documents. These requests were returned without consideration. In a letter dated 12 December 2018, HMPO repeated the reasons for revocation provided in the letter of 3 November 2017, and went on to say:

*“The documents Mr Diamond had subsequently submitted are not contemporaneous with his date and time birth (being issued in 2007) and will therefore not be relevant to the decision we have made on his true date of birth.”*

35. By letter dated 13 December 2018 the reconsideration request was repeated enclosing the same documents that were provided with earlier reconsideration requests.

36. In early 2019, the Claimant made an application to renew the passport issued to him in 2009 (again claiming that his date of birth was 4 October 1990). The application was refused by HMPO on 18 July 2019 on the basis that his passport had been revoked by HMPO for the reasons set out in the letter of 3 November 2017, and there was no entitlement to a passport.

37. On 30 July 2019 the Defendant received a pro-forma letter of claim from the Claimant. A response was provided on 9 August 2019, maintaining the decision to refuse the Claimant's passport application.
38. On 4 October 2019 the Claimant filed this claim challenging the Defendant's decision of 18 July 2019 and seeking a declaration that he was a British citizen by descent. Two grounds were advanced. By Ground 1 the Court was invited to determine the Claimant's nationality as a matter of precedent fact. By Ground 2 it was said that the Defendant's decision of 18 July 2019 was irrational and the reasoning flawed.
39. At an oral renewal hearing on 8 April 2020 the Claimant was refused permission on Ground 2 but granted permission to advance Ground 1. Directions for the final hearing were set down in an order sealed on 21 May 2020.

#### *Law*

40. Since the issue of whether a person is a British Citizen is a matter of precedent fact, if there is a dispute the courts will make a decision on the merits: *R (Harrison) v SSHD* [2003] EWCA Civ 432 at [33]. It is common ground between the parties that the Court's role in a claim such as this is as explained in *Harrison* at [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, as both Mr Richmond and Mr Pannick agree. 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."*

41. Section 3(8) of the Immigration Act 1971 provides as follows:

*"When any question arises under this Act whether or not a person is [a British citizen] ... it shall lie on the person asserting it to prove that he is".*

42. The Claimant must prove this fact on the balance of probabilities: *R (Begum) v SSHD* [2014] EWHC 2968 (Admin). As I have stated, this essentially boils down to a single issue of fact in this case: was the Claimant born after his father became a British citizen as he claims?

43. In *Tanveer Ahmed v SSHD* [2002] UKIAT 00439, the Immigration Appeal Tribunal (Collins J) stated as follows:

*"31. It is trite immigration and asylum law that we must not judge what is or is not likely to happen in other countries by reference to our perception of what is normal within the United Kingdom. The principle applies as much to documents as to any other form of evidence. We know from experience and country information that there are countries where it is easy and often relatively inexpensive to obtain "forged" documents. Some of them are false in that they are not made by whoever purports to be the author and the information they contain is wholly or partially*



*untrue. Some are "genuine" to the extent that they emanate from a proper source, in the proper form, on the proper paper, with the proper seals, but the information they contain is wholly or partially untrue. Examples are birth, death and marriage certificates from certain countries, which can be obtained from the proper source for a "fee", but contain information which is wholly or partially untrue. The permutations of truth, untruth, validity and "genuineness" are enormous. At its simplest we need to differentiate between form and content; that is whether a document is properly issued by the purported author and whether the contents are true. They are separate questions. It is a dangerous oversimplification merely to ask whether a document is "forged" or even "not genuine". It is necessary to shake off any preconception that official looking documents are genuine, based on experience of documents in the United Kingdom, and to approach them with an open mind.*

...

*33. It is for the individual claimant to show that a document is reliable in the same way as any other piece of evidence which he puts forward and on which he seeks to rely.*

*34. It is sometimes argued before Adjudicators or the Tribunal that if the Home Office alleges that a document relied on by an individual claimant is a forgery and the Home Office fails to establish this on the balance of probabilities, or even to the higher criminal standard, then the individual claimant has established the validity and truth of the document and its contents. There is no legal justification for such an argument, which is manifestly incorrect, given that whether the document is a forgery is not the question at issue. The only question is whether the document is one upon which reliance should properly be placed.*

*35. In almost all cases it would be an error to concentrate on whether a document is a forgery. In most cases where forgery is alleged it will be of no great importance whether this is or is not made out to the required higher civil standard. In all cases where there is a material document it should be assessed in the same way as any other piece of evidence. A document should not be viewed in isolation. The decision maker should look at the evidence as a whole or in the round (which is the same thing).*

*36. There is no obligation on the Home Office to make detailed enquiries about documents produced by individual claimants. Doubtless there are cost and logistical difficulties in the light of the number of documents submitted by many asylum claimants. In the absence of a particular reason on the facts of an individual case a decision by the Home Office not to make inquiries, produce in-country evidence relating to a particular document or scientific evidence should not give rise to any presumption in favour of an individual claimant or against the Home Office.*

...

*38. In summary the principles set out in this determination are:*

1. *In asylum and human rights cases it is for an individual claimant to show that a document on which he seeks to rely can be relied on.*

2. *The decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round.*

3. *Only very rarely will there be the need to make an allegation of forgery, or evidence strong enough to support it. The allegation should not be made without such evidence. Failure to establish the allegation on the balance of probabilities to the higher civil standard does not show that a document is reliable. The decision maker still needs to apply principles 1 and 2."*

44. The decision in *Tanveer* was approved by the Court of Appeal in *MA (Bangladesh) v SSHD* [2016] EWCA Civ 175. At [24]-[27] Lloyd-Jones LJ stated as follows:

*"24. The question whether a national authority is under an obligation to take steps to verify documents relied on by asylum seekers arose for consideration by the European Court of Human Rights in Singh v Belgium (33210/11) 2 October 2012. The petitioners alleged that their deportation from Belgium to Russia would entail a risk of repatriation to Afghanistan in breach of Article 3 ECHR. The petitioners' claims for refugee status were refused because they had not proved their Afghan nationality. They appealed and sought to rely on new documents, namely e-mails between their solicitor and a representative of the Belgium Committee for the Support of Refugees, the latter enclosing e-mails from an official of the UNHCR in New Delhi which had as attachments attestations which stated that the petitioners had been recorded as refugees under the UNHCR mandate on their departure from Afghanistan. The e-mails also stated that the second petitioner had asked for naturalisation in India and that she had a valid Afghan passport issued by the Afghanistan Embassy in New Delhi. The Aliens Disputes Board ("CCE") rejected the appeals. It considered that the petitioners had failed to prove their Afghan nationality and that they were in reality under the protection of the UNCHR. It considered that UNHCR documents were easy to falsify and because the petitioners failed to provide originals they were of "no convincing value".*

25. *The Strasbourg Court observed that the original decision-making body (CGRA) had not carried out any investigation as to authentication of the identity documents presented by the petitioners. It did not seem to the Court that the CCE had remedied this failing. The petitioners had presented to the CCE documents which raised doubts concerning the findings of the CGRA. In the Court's view these documents were "not insignificant" because they included attestation that petitioners had been recorded as refugees under the UNHCR mandate and confirmed the dates given by the petitioners to support their claimed journey...*

26. *In MJ (Singh v. Belgium: Tanveer Ahmed unaffected) Afghanistan [2013] UKUT 00253 (IAC) the Upper Tribunal (Immigration and Asylum Chamber) considered Singh and Belgium and expressed its conclusion as follows:*

*"50. [Tanveer Ahmed] is a starred decision of the IAT and we are bound by it. It is relevant however to consider it in the context of what was said in Singh v Belgium. Upon consideration we do not think that what was said in*

*Singh is inconsistent with the quotation we have set out above from paragraph 35 of Tanveer Ahmed. Tanveer Ahmed does not entirely preclude the existence of an obligation on the Home Office to make enquiries. It envisages, as can be seen, the existence of particular cases where it may be appropriate for enquiries to be made. Clearly on its facts Singh can properly be regarded as such a particular case. The documentation in that case was clearly of a nature where verification would be easy, and the documentation came from an unimpeachable source. We do not think that Ms Laughton has entirely correctly characterised what was said in Singh in suggesting that in any case where evidence was verifiable there was an obligation on the decision maker to seek to verify. What is said at paragraph 104 is rather in terms of a case where documents are at the heart of the request for protection where it would have been easy to check their authenticity as in that case with the UNHCR. That is a very long way indeed from the difficulties that would have been involved in this case in attempted verification by the Home Office of documents emanating from Hizb-i-Islami. We do not think that what is said in Singh v Belgium in any sense justifies or requires any departure from the guidance in Tanveer Ahmed which is binding on us and which we consider to remain entirely sound."*

27. *In PJ (Sri Lanka) v Secretary of State for the Home Department [2015] IWLR 1322 this Court (Arden, McFarlane, Fulford LJ) considered the compatibility of Tanveer Ahmed with Singh v Belgium. In his judgment, with which the other members of the court concurred, Fulford LJ provided the following guidance:*

*29. In my judgment, there is no basis in domestic or European Court of Human Rights jurisprudence for the general approach that Mr Martin submitted ought to be adopted whenever local lawyers obtain relevant documents from a domestic court, and thereafter transmit them directly to lawyers in the UK. The involvement of lawyers does not create the rebuttable presumption that the documents they produce in this situation are reliable. Instead, the jurisprudence referred to above does no more than indicate that the circumstances of particular cases may exceptionally necessitate an element of investigation by the national authorities, in order to provide effective protection against mistreatment under article 3 of the Convention. It is important to stress, however, that this step will frequently not be feasible or it may be unjustified or disproportionate. In Ahmed's case [2002] Imm AR 318 the court highlighted the cost and logistical difficulties that may be involved, for instance because of the number of documents submitted by some asylum claimants. The inquiries may put the applicant or his family at risk, they may be impossible to undertake because of the prevailing local situation or they may place the UK authorities in the difficult position of making covert local inquiries without the permission of the relevant authorities. Furthermore, given the uncertainties that frequently remain following attempts to establish the reliability of documents, if the outcome of any inquiry is likely to be inconclusive this is a highly relevant factor. As the court in Ahmed's case observed, documents should not be viewed in isolation and the evidence needs to be considered in its entirety.*

30. *Therefore, simply because a relevant document is potentially capable of being verified does not mean that the national authorities have an obligation to take this step. Instead, it may be necessary to make an inquiry in order to verify the authenticity and reliability of a document depending always on the particular facts of the case when it is at the centre of the request for protection, and when a simple process of inquiry will conclusively resolve its authenticity and reliability: see Singh v Belgium given 2 October 2012, paras 101-105. I do not consider that there is any material difference in approach between the decisions in Ahmed's case and Singh v Belgium, in that in the latter case the Strasbourg court simply addressed one of the exceptional situations when national authorities should undertake a process of verification.*

31. *In my view, the consequence of a decision that the national authorities are in breach of their obligations to undertake a proper process of verification is that the Secretary of State is unable thereafter to mount an argument challenging the authenticity of the relevant documents unless and until the breach is rectified by a proper inquiry. It follows that if a decision of the Secretary of State is overturned on appeal on this basis, absent a suitable investigation it will not be open to her to suggest that the document or documents are forged or otherwise are not authentic.*

32. *Finally, in this context it is to be emphasised that the courts are not required to order the Secretary of State to investigate particular areas of evidence or otherwise to direct her inquiries. Instead, on an appeal from a decision of the Secretary of State it is for the court to decide whether there was an obligation on her to undertake particular inquiries, and if the court concludes this requirement existed, it will resolve whether the Secretary of State sustainably discharged her obligation: see NA v Secretary of State for the Home Department [2014] UKUT 205 (IAC). If court finds there was such an obligation and that it was not discharged, it must assess the consequences for the case." (emphasis added)*

45. This approach was applied in *Kadir v SSD* [2019] EWHC 1332 (Admin) in the context of a claim for British citizenship by a Bangladesh-born Claimant: per HH Judge Jarman QC (sitting as a Judge of the High Court) at [39]-[42]. I consider that it is appropriate to apply the same approach to the evidence in this case.
46. 43. Whilst the issue of whether a person is a British Citizen is a matter of precedent fact, to be determined by the court on the merits, I do also bear in mind in this case that the Claimant was seeking to *renew* his British passport. As Burnett J stated in *R (ota Ali) v SSHD* [2012] EWHC 3379 (Admin):

*"The reality is that having once been satisfied that an individual was entitled to a passport, the Secretary of State would need to advance cogent reasons that stood up to scrutiny why, on a later application, she was taking a different view. The refusal to renew the passport of someone who has enjoyed the benefits of a British passport for a decade is a serious step with serious consequences."*

#### Discussion

47. In these proceedings, the Claimant seeks to rely upon three witness statements of his mother, Anowara Khanom, as well as a witness statement of his eldest sister, Shamsun Nahar Doli (“Doli”). There was no statement from the Claimant’s younger sister, Mili, who lives in England with her husband. The Claimant said in evidence that is because she is controlled by her husband and so she would not come. Neither Anowara nor Doli gave evidence in person. They are in Bangladesh and they both state that because of Covid-19 they are unable to travel to London and there is no fast internet which would enable them to participate by video-link. The nearest town, Sylhet, is 40 miles away. At the hearing I was told that Doli had young children to look after which meant that she could not travel to Sylhet and that Anowara also could not do so because of her age. Neither of these reasons were contained in their respective witness statements and so there was a non-compliance with CPR 33.2(2)(b). However, Ms Masood did not object to the Court having regard to the evidence in their witness statements; rather, she contended that little weight should be attached to their evidence. In her impressive closing submissions, Ms Masood relied for this submission upon section 4(1) and (2)(a), (b), (d) and (f) of the Civil Evidence Act 1995<sup>1</sup> which provides that:

***“4 Considerations relevant to weighing of hearsay evidence.***

*(1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.*

*(2) Regard may be had, in particular, to the following—*

*(a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;*

*(b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;*

...

*(d) whether any person involved had any motive to conceal or misrepresent matters;*

...

*(f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.”*

48. Ms Masood also relied upon the fact that the statements of Anowara and Doli do not comply with the CPR in that, contrary to PD 22, para 2.4, the statement of truth verifying the witness statements are not in the witness’s own language. I was told that Anowara Khanom cannot read or write English; indeed she states in each of her witness statements that the content of the statement has been read to her in Bangla. Similarly, Doli states at the end of her statement that the content thereof has been read to her in Bangla. Furthermore, contrary to PD 32, paragraph 18.1, 19.1 and 23.2 the witness statement does not state the process by which it was prepared, whether face to face, over the telephone or through an interpreter; it does not appear to have been drafted at any stage in the witness’s own language; it is not translated and no foreign language version has been filed with the court, together with a translator’s certificate.

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<sup>1</sup> Judicial review proceedings are a modified Part 8 procedure (CPR 54.1(2)(e)), and the established rules as to reliance upon hearsay evidence apply to such proceedings.

49. Whilst I consider the failing under CPR 32.2(2)(b) to be relatively minor on the facts of this case (as I accept the truthfulness of the witnesses' accounts as to the difficulty which they both faced in giving evidence in person or by video link in this case), I consider the failings under PD 32 and 22 to be significant failings in this case which significantly affect the weight that I should give to these written statements which have not been tested in cross-examination. The breaches of the CPR and its Practice Directions referred to above are not mere technical breaches. They affect the weight which the court should give to that evidence because they concern the extent to which the court can be sure that the contents of the witness statement truthfully reflect the evidence of non-English speaking witnesses.
50. In considering the weight to give to these statements, I also take into account paragraphs 4(2)(b) and (d) of the Civil Evidence Act, but not (a) or (f). I do not consider it would have been reasonable and practicable for the Claimant to have produced either Anowara Khanom or Doli as a witness in view of the fact that they live in a small village in Bangladesh without access to the internet; and so I do not consider that there has been any attempt to prevent proper evaluation of the weight of their statements. However, I do consider that the fact that (i) these statements were not made contemporaneously with the relevant events, in particular the sending of the 2003 letters and the Claimant's obtaining of his birth certificate in 2007, but rather are made in support of his claim to be entitled to a British passport many years later, and (ii) the Claimant's family have an obvious motive to conceal or misrepresent matters to improve his prospects of the renewal of his British passport, taken together are matters which affect the weight that I give to the evidence contained in these witness statements.
51. Lastly on the topic of hearsay evidence, Ms Masood objects to the admissibility of the letter dated 17 August 2020 from Md Abu Sufian, the Chairman of Union Parishad, who purports in that letter to "*clarify the circumstance sounding the birth certificate of [the Claimant]*". No hearsay notice was served with this letter. Referring to the application of correction fluid to the last two digits of the Claimant's date of birth in the office records, which record the Claimant's date of birth as 4 October 1990, he states that "*it would have been impossible for Mr. Diamond to convince us to amend his date of birth without showing any evidence... For an adult to register a birth we always require verification. We look for previous birth records from school records. Where a person not able to provide a birth records we ask a member (elected person) to visit and investigate. Following this investigation, we then register the birth upon satisfaction.*"
52. Mr. Sufian added that so far as the application of the correction fluid to the birth record is concerned, "*it might be the case that at the time of writing the registrar made a mistake. As a result he had to use fluid to correct it. I am not sure what was the mistake. However, it looks like that there was an error in the last digit on the official records book not in his birth certificate... If there was not a writing error, then it would have been impossible for Mr. Diamond to obtain a clean birth certificate on 25<sup>th</sup> June 2007. His birth was recorded in the book on 24<sup>th</sup> June 2007 in our office following investigation. Therefore it is very likely this was a writing error as an employee who was merely completing the records book.*"
53. I should mention here that the application of correction fluid only came to light as a result of an enquiry made by the Home Office. A Document Verification Officer (DVO) at the Home Office sought to verify the Claimant's birth certificate by telephoning the

Secretary of the Union Parishad, Mr. Chowdhury, who was responsible for the Birth and Death Register in the relevant area where the birth certificate was issued. Mr. Chowdhury sent an image of the Bangla birth certificate from the record book by WhatsApp messaging to the Home Office. The DVO filed a report which is exhibited to Ms Nichol's statement. He states that the original birth record book shows the date of birth of the Claimant as 04/10/1990 "*but I found "1990" tempered using fluid.*" The photograph of the record book shows that it is specifically the last two digits which have had correction fluid applied to them. The DVO concludes that "*...an online birth certificate is not a reliable source or record of evidence and cannot be accepted as credible evidence. An online birth certificate can be obtained easily and deceptively*".

54. The Defendant has also drawn the court's attention to the Country Information Note – March 2020 on Bangladesh, produced for Home Office decision makers, in which it is stated as follows:

*"2.3.4 ... Since 2001, the electronic Birth Registration Information System (BRIS) has recorded all births centrally. [The Australian Department of Foreign Affairs and Trade] DFAT understands that people are still able to apply for birth certificates without any supporting documentation (in cases where people have lost their original birth certificate or have never been in possession of one) and there is a high prevalence of document fraud in relation to birth certificates...*

*2.3.7 ... In 2016, during the course of their duties, officers based at the British High Commission Dhaka Bangladesh who worked for Immigration Enforcement International... saw an online application registration office operating in Sylhet in a marketplace, not at the Union Parishad. There was limited monitoring of what was being entered making it very easy to be open to abuse... Given this, it was considered that one should exercise caution when using this online tool and place little reliance on checks conducted via this link. The data is dependent upon the unverified information provided by individuals and the integrity of the person inputting it."*

55. As described above, MD Sundor Miah, the Acting Chairman of Union Parishad, stated in his letter dated 25 July 2007 that he had himself made a field investigation by visiting the Claimant's father's village in Kachua, where he collected information from a local informant and established that the Claimant's date of birth was correct. He does not explain how he did this. But it seems highly unlikely that he could have carried this exercise out on the very same day, 24 June 2007, that the Claimant applied and had registered his date of birth.
56. Before he gave his oral evidence at the hearing before me that his appointment at the Bangladeshi birth registry was on 24 June 2007, the Claimant had previously stated (in paragraph 23 of his first witness statement) that he went to the local registry office in Bangladesh before 24 June; that the local office then investigated his details, i.e. name, date of birth, parents' details and date of birth by visiting his school and neighbourhood; and it was only after that investigation was concluded that the local office issued him with his birth certificate on 25 June 2007. But in the light of the Claimant's oral evidence, that explanation no longer withstands scrutiny.
57. Whilst it is obviously suspicious, it is not possible for me to make any finding one way or the other as to when, why or how correction fluid came to be applied to the entry

concerning the Claimant's date of birth in the office records (it could have been applied at the time of the application; or it could have been applied much later). But I cannot accept that the Claimant's date of birth of 4 October 1990 was entered into the official records *after an investigation had been carried out* by the Bangladeshi authorities. The critical date for the purposes of the Bangladeshi Births and Deaths Registration Act 2004<sup>2</sup>, is *the date of registration*: see for example section 7(1) which provides that "*The Registrar can inquire for verifying the authenticity of information for registration by himself or through any other delegated person.*"

58. In the present case, the Claimant's oral evidence was that he attended an appointment with the registrar on 24 June 2007. On the very same date, 24 June, his birth was registered with a date of birth of 4 October 1990. His birth certificate was issued the next day, 25 June 2007. This left virtually no time for the Registrar to investigate his birth by way of a field investigation (visiting the Claimant's school and his neighbourhood) to verify independently his birth details, including his date of birth. I therefore find as a fact that the date of birth registered on 24 June 2007 was that simply given to the registrar by the Claimant (or possibly his mother) himself (herself) without investigations into its veracity being carried out before the Claimant's birth certificate was issued. Indeed, in closing Mr. Karim for the Claimant realistically accepted that there would indeed have been a "self-declaration" of his birth details by the Claimant to the registrar because in 2007 the registrar "cannot go back in time".
59. Furthermore, there is no contemporaneous documentary record at all of the date or fact of the Claimant's birth; nor are there any contemporaneous documents to support his case as to when he attended his primary school, for example. His birth-date was registered for the first time by him in 2007, at a time when he was not compelled to register it.
60. What the evidence demonstrates is that after the Claimant obtained his birth certificate from the Bangladeshi registrar, recording his "self-certified" birth date as 4 October 1990, he then assiduously went about collecting documentary evidence to support that birth date (in the absence of any supporting contemporaneous documentary evidence), consisting of (i) the school certificate of 10 July 2007; (ii) his mother's affidavit of 15 July 2007; (iii) the character reference of MD Sundor Miah dated 24 June 2007; and (iv) the further character reference of MD Sundor Miah dated 25 July 2007. I find that it is more likely than not, that the Claimant was doing this in order to give credence to the date of birth which he had given to the Bangladesh registrar on 24 June 2007, namely 4 October 1990, in order to support his application for a British passport that he was then making or about to make. It was particularly important for him to do so in view of the fact that in 2003 his mother had informed the Home Office that he was born in 1982, assuming that those two letters sent in 2003 are genuine, which is the matter that I turn to next.
61. In paragraph 16-18 of her second witness statement in particular, Anowara Khanom maintains that the two letters sent to the Home Office in 2003 are not genuine, despite the fact that the signature upon them appears very similar to her signature on her affidavit sworn in 2007. She points out that one letter misspells her name "Anwoara" and she suggests that the signatures in the two letters are not in fact the same. She also

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<sup>2</sup> It was only in 2004 that the registration of the birth of all babies born in Bangladesh became compulsory, with the passing of this Act.



states that the signature in the affidavit has no break between her two names, unlike the letters in 2003. She refers to the fact that the two letters in 2003 have the name of her brother in the address line as “C/O”. Last, she points out that her daughter Mili’s name is misspelled: it is written as Nurun Nahar (Mili), whereas it should be Mathila Farjana Mili.

62. In his oral evidence, the Claimant also suggested that the address – 40 TB Hospital Road was not where he and his mother were living at the time. He accepted, however, that he had never suggested that until he gave his oral evidence, and nor does his mother say that in her witness statement. Furthermore, this suggestion is undermined by another contemporaneous document, which also pre-dates the making of the Claimant’s first passport application and pre-dates the two 2003 letters. That is a character reference dated 14 July 2000 from a Mr Wahid [p. 184] which states as follows:

*“This is to certify that Mr. Firuz Miah ... has been personally known to me since long and he has been settling in the United Kingdom with his 1<sup>st</sup> wife and children. He married 2<sup>nd</sup> time Mrs Anowara Khanom ... Mrs Anowara Khanom 2<sup>nd</sup> wife of Mr. Firuz Miah at present residing at C/O Abdul Mannan, 40 T.B. Hospital Road ... Moulvibazar...”* (emphasis added)

63. This contemporaneous document belies the evidence given by the Claimant orally, and is consistent with the two letters of May and August 2003 in which Anowara Khanom’s address is given at that time as 40 TB Hospital Road, c/o her brother, Abdul Mannan. This strongly suggests that these letters were sent on behalf of the Claimant’s mother by his uncle (with her consent) or by his mother with an address where the response would reach his uncle (and therefore her). It is a point which supports the genuineness of the letters.
64. Anowara Khanom concludes, and the Claimant gave the same evidence at the hearing, that these letters were sent maliciously by an unknown person in 2003, and that that person wanted to stop his family from coming to England. In paragraph 32 of his first witness statement the Claimant says *“It is possible that somebody sent this letter just to ensure that we never qualify for a British passport”*. In closing submissions, Mr. Karim floated the possibility that this was done by the step-children or their mother, because (i) Nurun Nahar is the name of the Claimant’s step-mother and (ii) the birth-date ascribed to the Claimant of 12 May 1982 is also the birth-date of his step-sister, Dezi Begum.
65. I recognise that there are some unexplained “loose ends” in the two 2003 letters, such as the incorrect spelling of Mili’s forenames and the fact that the birth-date given for Doli does not match the birth-date in her Bangladeshi passport or her Bangladeshi marriage certificate, which is consistent with the birthdate given by Anowara Khanom in her affidavit in 2007 in support of the Claimant’s passport application. Ultimately, however, I am concerned with the circumstances concerning the Claimant’s date of birth, not those of his sister, and these loose ends could only sensibly be explored and possibly cleared up in evidence with Anowara Khanom herself, but of course she was not able to attend the hearing either in person or remotely and her witness statements are unsatisfactory for the reasons given in paragraphs 44-47 above.
66. I would add that the misspelled reference to “Anwoara” on the letter dated 26 May 2003 is, however, not such a loose end as it is obviously a typographical error as the name is

correctly spelled at the top of the page. The very fact that both the Claimant and his mother seek to rely upon this obvious typographical error as a reason for suggesting that this letter is not genuine itself lends weight to the conclusion that they both recognise that this is a highly material and genuine letter which they need to disown.

67. Looking at the matter in the round, I reject the suggestion that these letters were sent maliciously by an unknown person in 2003. I reach that conclusion for a number of reasons:
- (1) First and crucially, although in her witness statement Anowara denies it, the Claimant accepted in his oral evidence that the distinctive signatures on the letters were indeed his mother's signatures.
  - (2) Second, I take into account in determining this issue the limited weight which I give to Anowara's witness statements for the reasons I have set out above.
  - (3) Third, consistently with the content of the letters, the contemporaneous documents do suggest that Anowara was living with her brother at the time when these letters were sent (as they record) and they accurately record details of her own personal circumstances, such as when she married her husband (1976).
  - (4) Fourth, I consider that the Claimant's and Anowara's attempt to explain these letters away as having been sent maliciously is not credible. If a person unknown wished, maliciously, to prevent the Claimant's family from coming to England in 2003, this would be a very odd and unreliable way indeed to go about achieving that end. Why seek to do it in two letters? The first letter is not remotely malicious; rather it is a straight-forward request for entry clearance to come and live in the UK, referring to an inquiry back in 2002. That letter prompted the Home Office to request further details of the family members in a form which it enclosed with its response. But a malicious sender of the first letter obviously could not have expected that to occur. It was only in response to that letter, that the second letter was sent, supplying details of Anowara's children and their birth-dates. If the true author of these letters were seeking to prevent the family from settling in the UK, why would he or she not have provided the supposedly false birth-dates in the first letter? Indeed, why do it in this rather obscure way at all, rather than directly informing the Home Office that they had no entitlement to come to the UK? It makes no sense at all and I reject the suggestion.
  - (5) Fifth, neither the Claimant nor his mother have suggested that the dates of birth given in the schedule to the second letter were mistaken; instead they have felt compelled to suggest that the letters, although – according to the Claimant – signed by her, were not sent by her at all. As I have said, that is implausible. This leads one to ask the obvious question: why would they feel compelled to put forward such an implausible account? The answer, I conclude, is because they know that the letters fatally undermine the suggestion that the Claimant was born in 1990.
  - (6) Sixth, these documents were sent before the Claimant made his first passport application and were therefore uninfluenced by the need to establish that the Claimant's birthdate post-dated the date upon which his father was registered as a British citizen. They are in that sense, the most reliable form of evidence before the court.

68. Aside from the matters discussed above, Mr. Karim for the Claimant advanced a number of further submissions in an attempt to persuade the court to accept that, on the balance of probabilities, the Claimant had proved his entitlement to a British passport.
69. First, he submitted that the burden was upon the Defendant to show that the birth certificate was a forgery, if that is what she is alleging. I reject that submission. The correct approach to this dispute is set out in the authorities summarised above. It is for the Claimant to show that the birth certificate can be relied upon, and the question is whether the document is one upon which reliance should properly be placed after looking at all the evidence in the round. The Defendant does not need to prove that the document is a forgery. I am satisfied that the document is not a reliable record of the Claimant's date of birth in the light of all of the evidence discussed above.
70. Second, Mr. Karim submitted that as a result of the Home Office checking the birth certificate (via the DVO) with the Bangladesh authorities and seeking confirmation of its correctness, which led to their confirming the Claimant's date of birth as being 4 October 1990, that the truth of the birth certificate has been demonstrated. I reject that submission. The Home Office was entitled to view the matter in the round. The response to the enquiry was, as I have said above, suspicious (by reason of the application of correction fluid in the documentary record). But there was no requirement for the Home Office merely to accept the genuineness of the date contained in the birth certificate on its face as a result of its initial enquiry. The outcome of any further enquiries was highly likely to be inconclusive in terms of establishing the reliability or otherwise of the Bangladeshi birth certificate.
71. Third, Mr. Karim submitted that if the Defendant were correct, the Court would have to find there to have been an extensive conspiracy between the Claimant, the current Secretary of the Union and a previous Secretary of the Union, and that that would be far fetched. I do not agree. Once the birth date was wrongly entered into the Bangladeshi electronic and documentary record as being 04/10/1990, it became fixed, and thereafter it would be defended by the Bangladeshi authorities as being true.
72. Fourth, Mr. Karim asked rhetorically why Anowara did not falsify the birth dates of all of the children, if she falsified the birth date of the Claimant. But there has been no investigation into the circumstances of the other two children; the court knows nothing about their personal circumstances and whether they had any interest at the relevant time in settling in the United Kingdom.
73. Fifth, Mr. Karim again asked rhetorically why the Claimant would have felt the need to falsify his birth date at all because he could apply in any event to remain here as the father of British children and that he was "*bound to succeed on the current state of the authorities*". It was said that the reason he has gone to the trouble of expending time and money on these proceedings is because he "*wants to get to the truth*". But again, the Court has heard no argument on whether the Claimant would or would not have good grounds to remain in the United Kingdom on this basis. Moreover, as Ms Masood said in reply, having the status of citizenship is far preferable to having a limited leave to remain.
74. In conclusion, looking at the matter in the round and in the light of all of the evidence which I have discussed above, I am not satisfied that the Claimant has discharged the burden which rests upon him to establish on the balance of probabilities that he was

born after the date when his father was registered as a British citizen, namely after 12 April 1989. In the circumstances, I dismiss the Claimant's application for judicial review of the Defendant's decision dated 18 July 2019 to refuse his application for the renewal of his passport issued in 2009.