Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

Evidence and Misspelling in Documents: Taher, R (on the application of) v Secretary of State for the Home Department [2018] EWHC 2274 (Admin)

Question(s) at stake:

Whether the applicant was entitled to a British Overseas Citizen (BOC) passport on the basis of the evidence provided concerning his identity.

Outcome of the ruling:

The applicant was not entitled to a BOC passport on the basis of the evidence provided as he failed to submit the required documents concerning his identity.

Topic(s):

- Nationality and Citizenship

Keywords:

- Quasi-citizenship
- External citizenship
- Spelling

Tag(s):

- Somali heritage
- British Overseas citizen
- Transliterations
- misspelling

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Link to the decision:

https://www.bailii.org/ew/cases/EWHC/Admin/2018/2274.html

ECLI:

No ECLI number / ECLI number unknown

Date:

31 August 2018

Jurisdiction / Court / Chamber:

High Court of Justice, Queen's Bench Division, Administrative Court

Remedy / Procedural stage:

Judicial review

Previous stages:

- High Court, grant of permission in the applicant's claim (16 February 2018)
- Secretary of State (28 September 2016)

Subsequent stages:

None

Branches / Areas of law:

Immigration and Asylum

Facts:

The claimant claimed to be of Somali heritage, to have been born in the former British colony of Aden before 14 August 1968, and not to have had "South Yemeni nationality on or before that date" (para. 2). As such, he claimed to be a British Overseas Citizen (BOC) and to be entitled to a British passport. Thus, he made an application to the Secretary of State to that end on 22 February 2013 (para. 3). The Secretary of State refused the application on 28 September 2016 (para. 4). According to the Secretary of State, the claimant did not provide the required documentation, the evidence he submitted contained inconsistencies concerning his parents' identity, and he failed to prove that he had not become a Yemeni citizen (para. 28).

On 28 September 2016, the claimant applied to the High Court to quash the decision of the Secretary of State "to refuse his application for a passport as a" BOC (para. 1). The claimant claimed to be a BOC by operation of law and applied for a declaration to that effect. In the claimant's view, "[t]he 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" (para. 22). He argued that this view was supported by *R (Harrison) v Secretary of State for the Home Department* [2003] EWCA Civ 423.

The main issue for the High Court to decide in the present case was whether the applicant met the burden of proof (civil standard of the balance of probabilities) to establish his identity and thus whether he was a BOC (paras. 25, 26).

Ruling:

The High Court dismissed the appeal by the claimant, holding that he failed to provide enough evidence of his identity.

Legislation and guidance

Concerning the legal framework, the High Court noted that the case of *Nooh, R (on the application of) v Secretary of State for the Home Department* [2018]

EWHC 1572 (Admin) presented similar facts to the case under consideration and therefore was particularly helpful to clarify the applicable legal framework. In this regard, both parties agreed on the legal basis for a Somali born in Aden to be considered a BOC and thus eligible for a passport (para. 7). Aden became part of the independent People's Republic of Southern Yemen on 30 November 1967 (para. 15). In 1989, South Yemen merged with the former Yemen Arab Republic (North Yemen) to establish the Republic of Yemen (para. 15).

According to the British Nationality (People's Republic of Southern Yemen) Order 1968, individuals who possessed South Yemeni nationality due to their connection with the People's Republic of Southern Yemen on 14 August 1968, and were a CUKC (Citizen of the United Kingdom and Colonies) immediately before that date, ceased to be a CUKC on 14 August 1968 (paras. 11–15).

Whether or not a person received Southern Yemeni citizenship was assessed in light of Southern Yemen's nationality law, which required as one of its conditions that the person be Arab (paras. 17–18). The Secretary of State accepted that Somalis born in Southern Yemen were not considered to be Arabs. As such, they did not have Southern Yemeni nationality (para. 19).

According to the Court, a "CUKC who lacked a right of abode [that is, the right to live and work in the UK without restrictions] 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" (para. 20).

The Court continued that "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" (para. 21).

The claimant did not meet the requirements of section 11 of the British Nationality Act 1981 and was not eligible to become a BOC. Whether or not he is a BOC must be assessed in light of the Secretary of State's Guidance to its decision-makers. According to this Guidance, in making decisions on applications for a BOC passport, examiners are required to assess whether "the applicant became Yemeni on the basis of his own and his parents' place of birth" (para. 25). To this end, "they should expect to see contemporaneous (documentary) evidence of the parents' birth in Somalia – normally the birth certificate or passport", as well as the parents' marriage certificate and other documents concerning the applicant, to corroborate that they are the same person as the one named on the birth certificate (para. 25).

The Secretary of State's refusal letter stated that the applicant failed to prove his identity as he did not provide his original birth certificate nor his parents' birth certificates and passports (para. 28). In addition, the applicant submitted five Somali passports showing inconsistencies about his identity. In these passports, the father's name was not spelled consistently (ibid.). Also, the death certificate of his mother showed a different spelling of her name. Finally, he once stated a different date of birth and provided no evidence that he did not become a Yemeni citizen (ibid.).

Expert reports

The High Court heard the appellant's testimony and considered "expert evidence on Somali culture which addressed the variations commonly found in the spelling of names" (para. 31). The High Court took into consideration the expert report on the orthography of Somali names by Dr Martin Orwin of the School of Oriental and African Studies. According to the expert, the Latin alphabet was adopted as the official script for Somali in 1972, replacing previous writing systems. He noted the lack of a standardized form in the Somali language, which consists of various dialects leading to differences in pronunciation and spelling. Moreover, he highlighted the prevalence of grammatical and spelling mistakes in written Somali, affecting the accuracy of names (para. 32).

Inconsistent spelling becomes even more challenging when Somali or Arabic names are written in an English-speaking environment due to the difficulty in representing sounds unique to Somali and/or Arabic languages. The expert illustrated this issue with the name Muhammad, which has various English spellings like Muhamad, Mohamad, Mohammad, Mohamed, Mohammed, Mahamad, Mahamed, etc. These variations are not distinct names but different ways of anglicizing the same name (para. 33). Additionally, it is important to note that Somali is distinct from Arabic and has been written in the Latin alphabet since 1972. Consequently, when Somali names are transcribed into Arabic in countries like the Republic of Yemen and the United Arab Emirates (UAE), there may be variations in spelling (para. 34).

Moreover, Dr Markus Hoehne at the University of Leipzig provided an expert report stating that Somali names are structured differently than in European cultures. In Somali culture, names are composed of a person's first name, father's first name, and grandfather's first name, with no family name. When European authorities record Somali names, they often assign the last name as the family name or surname, which can lead to misunderstandings and does not align with the traditional Somali naming system (para. 36). Dr Hoehne also discussed the habit of using nicknames within Somali society, as well as that of parents addressing their child with various names (para. 37).

The High Court noted that the claimant's passport was denied due to doubts about his identity. This was because there were inconsistencies in the spelling of his father's name, "Omer", which was spelled with an "e" in some passports and with an "a" in others. Moreover, there were discrepancies in the spelling of the claimant's parents' names in his passports. His father's name was recorded as Omer Taher and then Omar Tahir, while his mother's name was recorded as Fatima Osman Egeh and Fatima Osman. However, on her death certificate, her name was recorded as Fadumo Osman Ige (para. 38).

Taking into consideration the two experts' reports, the High Court concluded that it is probable that the spelling differences arose due to translations into various languages and the absence of standardized spelling in Somali culture, resulting in

multiple spellings for the same name. These variations in names, on their own, did not raise doubts about the claimant's identity (para. 39).

The claimant's date of birth in the documents showed notable inconsistencies. Dr Hoehne's testimony highlighted the cultural perspective of Somalis, emphasizing that birthdays and dates of birth hold little significance to most individuals (para. 40).

Birth certificates, passports, and proof of residence

In any case, the claimant encountered difficulties in acquiring a scanned version of his Colony of Aden birth certificate, along with his Republic of Yemen birth certificate (paras. 41–50). Three out of the four passports he submitted indicated his date of birth as 1949 and one as 1947. The Secretary of State raised questions about this discrepancy, prompting the claimant to provide a statement on 4 July 2013 (paras. 53–58). The claimant explained that he modified his date of birth for professional reasons. At the time, he held a position as a clerk and it was suggested that his prospects for career advancement would be enhanced if he appeared slightly younger (para. 58). Later on, the claimant provided another explanation, namely that he changed the date of birth to defer his retirement (para. 60). The High Court did not find any of these explanations to be credible: the claimant's employers still had his correct birth year (1947) on record. Thus, changing his birthdate on his passport would not have made a difference, and he must have been aware of this fact at the time. Moreover, his initial statement to the Secretary of State and his first witness statement only mentioned seeking a promotion as the motive for the change. However, although the claimant changed the date, he was promoted only in 1997 (para. 59). The additional reason for changing the date of birth (to delay retirement) was introduced very late, just before the hearing (para. 61). According to the judge, it was suspicious that such a justification was provided at a second stage, after the *Nooh, R* case, where it was accepted that the attempt to postpone retirement explained the changes in some of the claimants' dates of birth (para. 61).

Finally, the claimant presented documentary proof indicating his residence in Aden before relocating to the UAE in 1974, which the High Court accepted (para. 65). After reviewing the evidence on education and employment, the High Court reached the conclusion that Abdi Omer Taher had indeed pursued education and employment in Aden before relocating to the UAE (para. 67).

Parents' identity

The claimant stated that his father was born in Aden circa 1930 and his mother in British Somaliland circa 1931. These dates were approximate due to a lack of records. All four of his grandparents of Somali ethnicity were born in Burao, British Somaliland (para. 68). The claimant was unable to provide any identity documents for his parents, including passports or birth and marriage certificates, which were necessary to support his claim that they were Somalis residing in Aden at the time of his birth. His mother's death certificate did not contain the necessary information. The claimant explained that his father had passed away in a car accident in the Netherlands in 1994 while living abroad. As his father had remarried, his personal documents were in the possession of his widow, and the claimant was unaware of their whereabouts (para. 69).

The Secretary of State argued that the claimant's credibility and honesty were undermined by his actions, specifically altering his passport with a false date and using a passport with false information while traveling. This deceit persisted for a long time and was only rectified when the claimant saw potential benefits in obtaining a BOC passport (para. 78). Relying on *MA (Somalia) v SSHD* [2010] UKSC 49 to assess the credibility of the claimant (para. 79), and in view of the evidence, the High Court concluded that it was unable to ascertain the authenticity of the claimant's Republic of Yemen birth certificate and its accuracy in reflecting the records from 1947.

The Court reasoned that it was concerning that he did not possess an original Colony of Aden birth certificate or a scanned copy (this should still be available in Yemen, as was found in the case of *Nooh, R*.) While he asserted that he lost the original birth certificate long ago, it raised suspicion that he only sought a

replacement when applying for a BOC passport (paras. 42, 83). The individual's Somali passports served as proof of the claimant's identity, place of birth in Aden, Somali nationality, and parentage. However, Somali passports may not always be reliable or accurate. This is due to the fact that consular departments in the Somali Embassy in the UAE have been known to issue passports and make changes to passport details without conducting the necessary verification checks typically carried out by European countries. Furthermore, they have even produced passports with false information knowingly (para. 84).

Conclusions

The High Court Judge concluded that the claimant had been unable to provide official records regarding his parents' identity, place and date of birth, Somali heritage, or residence in Aden. The records of his father's work in Aden were created after the claimant's date of birth (para. 85). The claimant lacked credibility as a witness, and his testimony could not be considered sufficient without supporting documentation. Insufficient documentary evidence was provided by the claimant to prove his claim of Somali heritage and birth in Aden before 14 August 1968 without acquiring South Yemeni nationality by that date. As a result, the claim was dismissed (paras. 87, 88).

Main quotations on cultural or religious diversity:

"At the hearing, the Claimant adduced expert evidence on Somali culture which addressed the variations commonly found in the spelling of names." (para. 31)

"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." (para. 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.” (para. 34)

“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. 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.” (para. 36)

“Dr Hoehne also described the wide use of nicknames in Somali culture and the practice of parents calling a child by different names.” (para. 37)

“In my judgment, these variations in spelling are likely to have occurred in part because the names were being translated into different languages, and in part because consistent spelling is not a feature of Somali culture and different spellings of the same name are commonplace. In my judgment, these inconsistencies in names did not, taken alone, call into question the Claimant’s identity.” (para. 39)

“[I]t does appear that Somalis do sometimes give a false birth date in order to gain some real or perceived advantage, and they appear to take a casual and pragmatic attitude towards this practice, rather as if an individual’s birth date is not of any particular consequence. I suspect that this attitude probably stems from the lack of importance of birth dates in Somali culture and society, as documented by Dr Hoehne.” (para. 81)

“But even taking the cultural differences into account, the Claimant’s account as to how he came to change his birth date from 1947 to 1949 is implausible and inconsistent, for the reasons I have already explained.” (para. 82)

Main legal texts quoted in the decision:

- British Nationality and Status of Aliens Act 1914
- British Nationality Act 1948
- The Aden, Perim and Kuria Muria Islands Act 1967
- British Nationality (People's Republic of Southern Yemen) Order 1968
- British Nationality Act 1981

Cases cited in the decision:

- *Nooh, R (on the application of) v Secretary of State for the Home Department* [2018] EWHC 1572 (Admin)
- *R (on the application of Suleiman) v Secretary of State for the Home Department* CO/3162/2016
- *R (Bondada) v Secretary of State for the Home Department* [2015] EWHC 2661 (Admin)
- *MA (Somalia) v SSHD* [2010] UKSC 49
- *R (Botan) v Secretary of State for Foreign and Commonwealth Affairs* CO/1484/2009
- *R (Harrison) v Secretary of State for the Home Department* [2003] EWCA Civ 432
- *R v Lucas* [1981] QB 720

Commentary

Evidence and Misspelling in Documents: Taher, R (on the application of) v Secretary of State for the Home Department [2018] EWHC 2274 (Admin)

The case of *Taher, R (on the application of) v Secretary of State for the Home Department* [2018] mainly concerns the evidence that needs to be submitted to establish that a person is a BOC and as such entitled to a BOC passport. From a cultural diversity perspective, the case illustrates the challenges posed by credibility concerns as well as the accuracy of transliteration in legal proceedings.

Credibility concerns often arise in immigration and asylum proceedings either because the applicant's testimony is not corroborated or because the testimony is

inconsistent. They may be due to several reasons, such as difficulties in obtaining documents, the submission of forged documents, cultural differences between the applicant and the decision-maker, and translation and transliteration issues.

Transliteration involves representing the sounds of one language in the script of another, whereas translation focuses on rendering a text from one language into another while maintaining its original meaning. Transliteration issues may occur if there is no accurate equivalent in English and the translator simply substitutes what he considers the most similar word or name. If there is no awareness of the problem, and the translator does not explain that he used a modified version of the word, confusion may result. The problem is amplified in situations where more than one translator is involved and different translators have differently translated names and words of the documents submitted to the Court. Often, this occurs when names are transliterated from non-Latin scripts into English, as they can be transliterated in more than one way (as shown in the case of *Taher*, where the names of the claimant's father and mother were spelled differently on different documents). This is because the spelling may depend on how the translator perceives the phonetic expression of the name.

Some of these problems can be addressed by expert evidence. In the case at stake, the Court could resolve the spelling issues because expert reports were called on to explain the misspellings and inconsistencies and contextualize them in the practices of the country of origin. This is in line with research that has shown how expert evidence can assist the decision-maker in reaching better-informed decisions when confronted with unfamiliar facts and matters (Bianchini 2021).

In this case, the Court duly engaged with the expert evidence and found it helpful and adequate to appreciate the inconsistencies and cross-cultural perplexities that affected the Western versions of the names in the documents submitted and their translations. Nevertheless, in the end, the Court was not satisfied that the claimant was able to establish his case, but mainly because other documents were missing and because he had lied about his date of birth, impacting his credibility.

On a final note, while the author is aware of the complexity of the concepts of BOC and Somali heritage as well as of the geography relevant to contextualize the case of *Taher*, it is impossible to address all of them in this template. The reader is encouraged to consult Berry, "British Overseas Citizens (BOCs) of Somali Heritage from Yemen", listed in the literature box below.

Literature related to the main issue(s) at stake:

General legal literature on the topic that may not be directly connected with the case

- Bianchini, Katia. 2021. "The Role of Expert Witnesses in the Adjudication of Religious and Culture-Based Asylum Claims in the United Kingdom: The Case of 'Witchcraft' Persecution". *Journal of Refugee Studies* 34 (4): 3793–3819.
- Cohen, Juliet. 2001. "Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers". *International Journal of Refugee Law* 13: 293–330.
- Henderson, Mark and Mohena Moffatt. 2023. "Interpretation at the Hearing". In *Best Practice Guide to Asylum and Human Rights Appeals*, Ch. 24*.* London: Electronic Immigration Network, available at <https://www.ein.org.uk/bpg/chapter/34#toc2> accessed 10 October 2025.
- Berry, Adrian. N.d. "British Overseas Citizens (BOCs) of Somali Heritage from Yemen". *Nationality and Citizenship Law*, available at <https://nationalityandcitizenshiplaw.com/2020/02/19/british-overseas-citizens-bocs-of-somali-heritage-from-aden-yemen/> accessed 10 October 2025.

General literature on the topic from other disciplines in the humanities and social sciences, in particular social and cultural anthropology

- Aliverti, Ana and Rachel Seoighe. 2017. "Lost in Translation? Examining the Role of Court Interpreters in Cases Involving Foreign National Defendants in

England and Wales." *New Criminal Law Review* 20 (1): 130–156.

- Berk-Seligson, Susan. 2002. *The Bilingual Courtroom: Court Interpreters in the Judicial Process*. Chicago: University Press.
- Gibb, Robert and Anthony Good. 2014. "Interpretation, Translation and Intercultural Communication in Refugee Status Determination Procedures in the UK and France". *Language and Intercultural Communication* 14 (3): 385–399. [Reprinted in Phipps, Alison and Rebecca Kay (eds). 2015. *Languages in Migratory Settings: Place, Politics, and Aesthetics*. London: Routledge]

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