

Chapter 55: Deprivation and Nullity of British citizenship

55.1 Introduction

55.1.1 Part 1 of this chapter explains the provision made for deprivation of British citizenship status by order under section 40 of the British Nationality Act 1981.

55.1.2 Part 2 explains in which circumstances a registration or naturalisation may be a nullity.

55.1.3 Distinguishing between deprivation and nullity

55.1.3.1 If there has been a decision to grant an application for registration or naturalisation as a British citizen, nullity action would be appropriate in circumstances where:

A: It is discovered that the applicant is not the intended recipient of the grant.

This could happen in the following ways:

- a) the applicant has given false information or concealed information concerning their identity, for example by using a false name, giving a false date or place of birth, or claiming a false nationality or concealing their true nationality status. In this scenario, whether nullity action is appropriate will depend on the nature, quality and extent of any fraud, deception or concealment.
- b) the applicant has created an entirely new false identity.
- c) the applicant is using someone else's identity (i.e. impersonation).

B: The applicant already has the status

The applicant has erroneously applied for registration or naturalisation and it is discovered that he already has British citizenship automatically (e.g. by birth.)

In such circumstances outlined above, it is possible that the naturalisation or registration will be a **nullity**. This means that the registration or naturalisation is deemed not to have taken place. Further information can be found at section 55.8 below.

55.1.3.2 Where nullity action is not appropriate, deprivation should be considered where concealment of a material fact would have led to the refusal of the citizenship application, if it had been known at the time, because the criteria of the British Nationality Act 1981 would not have been met. Examples include (but are not limited to):

- False details given in relation to an asylum claim or application for leave to remain which led to leave being given to an individual who would otherwise not have qualified, and would have therefore affected that person's ability to meet the residence and/or good character requirements for naturalisation or registration
- Undisclosed convictions or other information which would have affected the individual's ability to meet the good character requirement
- A marriage or civil partnership which is found to be invalid or void, and would have therefore affected the individual's ability to meet the requirements for an application under section 6(2).

Deprivation is covered at section 55.2 below.

55.1.3.3. If it is unclear whether a case should be considered as a nullity or for deprivation action you should contact the Nationality Policy Team.

Part 1: Deprivation

Deprivation of citizenship under section 40 of the British Nationality Act 1981 on grounds of fraud, false representation or concealment of material fact or on grounds of conduciveness to the public good

A. General Information

55.2 Introduction

55.2.1 These Instructions explain the application by the United Kingdom Border Agency of the legal power to deprive a person of British citizenship under section 40 of the British Nationality Act 1981 ('The 1981 Act').

55.3 The Power to Deprive Citizenship

55.3.1 General Power

55.3.1.1 Under s.40 of the 1981 Act, as amended by the Nationality, Immigration and Asylum Act 2002 from 1 April 2003 and by the Immigration, Asylum and Nationality Act 2006 from 16 June 2006, **any** British citizen, British overseas territories citizen, British Overseas citizen, British National (Overseas), British protected person or British subject may, by Order, be deprived of his or her citizenship or status if the Home Secretary is satisfied that:

a. it would be conducive to the public good to deprive the person of his or her British nationality, and that s/he would not become stateless as a result of the deprivation (ss.40(2) and (4)); or

b. where the person acquired the citizenship or status as a result of his registration or naturalisation **on or after** 1 January 1983, the registration or naturalisation was obtained by means of:

- fraud; or

- false representation; or
- the concealment of any material fact (s.40(3)); or
- c. where the person acquired the citizenship or status on account of his registration or naturalisation **before** 1983, the registration or naturalisation was obtained by means of:
 - fraud; or
 - false representation; or
 - the concealment of any material fact (s.40(6))

55.3.2 Delegation of powers to Governors and Lieutenant-Governors

- 55.3.2.1 Under s.43 of the 1981 Act the Home Secretary has delegated to the Governor of each of the British overseas territories powers under ss.40(2), (3), (4), (5) and (6) and s.40A(2) of the 1981 Act, but only in respect of the deprivation of British overseas territories citizenship. Governors are required to refer cases to the Home Secretary for prior approval before any decision is taken.
- 55.3.2.2 The Home Secretary has similarly delegated deprivation powers in respect of British citizenship to the Lieutenant-Governor of each of the Islands, again subject to a requirement to refer cases for prior approval before any decision is taken.
- 55.3.2.3 In these cases, the respondent to any appeal under s.40A(1) of the 1981 Act or s.2B of the Special Immigration Appeals Commission Act 1997 will be the relevant Governor or Lieutenant-Governor.

55.4 Definitions

- 55.4.1 "**False representation**" means a representation which was dishonestly made on the applicant's part i.e. an innocent mistake would not give rise to a power to order deprivation under this provision.
- 55.4.2 "**Concealment of any material fact**" means **operative** concealment i.e. the concealment practised by the applicant

must have had a direct bearing on the decision to register or, as the case may be, to issue a certificate of naturalisation.

- 55.4.3 “**Fraud**” encompasses either of the above.
- 55.4.4 “**Conduciveness to the Public Good**” means depriving in the public interest on the grounds of involvement in terrorism, espionage, serious organised crime, war crimes or unacceptable behaviours.

55.5 Timing

- 55.5.1 There is no specific time limit within which deprivation procedures must be initiated. A person to whom s.40 of the 1981 Act applies remains indefinitely liable to deprivation on the terms outlined above.

B. Deprivation Process – Fraud, False Representation, Concealment of Material Fact

This process is not relevant to fraud deprivation cases involving national security (terrorism and espionage), serious organised crime, war crimes and unacceptable behaviours

55.6 Process Overview

- 55.6.1 Caseworkers should utilise the documentation within the Annexes to this Guidance in order to comprehensively complete the deprivation consideration process, ensure relevant approvals are secured and that there is standardisation and consistency in decisions and documentation.
- 55.6.2 Part B relates only to the power to deprive on grounds of fraud, false representation or concealment of material fact. Any reference to not being appropriate to deprive in certain circumstances concerns deprivation on grounds of fraud, false representation or concealment of material fact only, and not to deprivation on non-conducive grounds.
- 55.6.3 The process to be followed is set out in the SRU Deprivation Process Document.
- 55.6.4 The final decision to deprive in a fraud deprivation case should be made at SCS level (Grade 5 or above).

55.7 Material to the Acquisition of Citizenship

55.7.1 If the relevant facts, had they been known at the time the application for citizenship was considered, would have affected the decision to grant citizenship via naturalisation or registration the caseworker should consider deprivation.

55.7.2 This will include but is not limited to:

- Undisclosed convictions or other information which would have affected a person's ability to meet the good character requirement
- A marriage/civil partnership which is found to be invalid or void, and so would have affected a person's ability to meet the requirements for section 6(2)
- False details given in relation to an immigration or asylum application, which led to that status being given to a person who would not otherwise have qualified, and so would have affected a person's ability to meet the residence and/or good character requirements for naturalisation or registration

55.7.3 If the fraud, false representation or concealment of material fact did not have a direct bearing on the grant of citizenship, it will not be appropriate to pursue deprivation action.

55.7.4 For example, where a person acquires ILR under a concession (e.g. the family ILR concession) the fact that we could show the person had previously lied about their asylum claim may be irrelevant. Similarly, a person may use a different name if they wish (see NAMES in the General Information section of Volume 2 of the Staff Instructions): unless it conceals criminality, or other information relevant to an assessment of their good character, or immigration history in another identity it is not material to the acquisition of ILR or citizenship. However, before making a decision not to deprive, the caseworker should ensure that relevant character checks are undertaken in relation to the subject's true identity to ensure that the false information provided to the Home Office was not used to conceal criminality or other information relevant to an assessment of their character.

55.7.5 In general the Secretary of State will not deprive of British citizenship in the following circumstances:

- Where fraud **postdates** the application for British citizenship it will not be appropriate to pursue deprivation action.
- If a person was a minor on the date at which they applied for citizenship we will not deprive of citizenship
- If a person was a minor on the date at which they acquired indefinite leave to remain and the false representation, concealment of material fact or fraud arose at that stage and the leave to remain led to the subsequent acquisition of citizenship we will not deprive of citizenship

However, where it is in the public interest to deprive despite the presence of these factors they will not prevent deprivation.

55.7.6 Length of residence in the UK alone will not normally be a reason not to deprive a person of their citizenship.

55.7.7 Deliberate

55.7.7.1 The caseworker should be satisfied that there was an intention to deceive: an innocent error or genuine omission should not lead to deprivation. However, a deliberate abuse of immigration or nationality application processes (for example Knowledge of Life/ESOL testing) may lead to deprivation.

55.7.8 Complicit

55.7.8.1 If the person was a child at the time the fraud, false representation or concealment of material fact was perpetrated, the caseworker should assume that they were not complicit in any deception by their parent or guardian.

55.7.8.2 This includes individuals who were granted discretionary leave until their 18th birthday having entered the UK as a sole minor who can not be returned because of a lack of reception arrangements. Such a minor may be granted ILR after they reach the age of 18 without need to

succeed under the Refugee Convention or make a further application but the fraud was perpetrated when the individual was a minor.

- 55.7.8.3 **However**, where a minor on reaching the age of 18 does not acquire ILR or other leave automatically and submits an application for asylum or other form of leave which maintains a fraud, false representation or concealment of material fact which they adopted whilst a minor, they should be treated as complicit.
- 55.7.8.4 In the case of an adult, the fact that an individual was advised by a relative or agent to give false information does not indicate that they were not complicit in the deception.
- 55.7.8.5 All adults should be held legally responsible for their own citizenship applications, even where this is part of a family application. Complicity should therefore be assumed unless sufficient evidence in mitigation is provided by the individual in question as part of the investigations process.

55.7.9 The caseworker must also consider the following:

55.7.10 **Reasonable/Balanced**

- 55.7.10.1 The caseworker should consider whether deprivation would be seen to be a balanced and reasonable step to take, taking into account the seriousness of the fraud, misrepresentation or concealment, the level of evidence for this, and what information was available to UKBA at the time of consideration.
- 55.7.10.2 Evidence that was before the Secretary of State at the time of application but was disregarded or mishandled **should not in general** be used at a later stage to deprive of nationality. However, where it is in the public interest to deprive despite the presence of this factor, it will not prevent the deprivation.

55.7.11 **Mitigating Factors**

- 55.7.11.1 The caseworker should also consider any mitigating circumstances.

55.7.11.2 All adults are expected to take responsibility for the information they provided on acquisition of ILR and/or citizenship and the following will not be examples of mitigation:

- Where the applicant claims that a family member acted on their behalf
- Where the applicant claims that a representative or interpreter advised them to provide false details
- Where an applicant claims that he or she was coerced into providing false information or concealing a fact, but has since had the opportunity to advise the Home Office of the correct position but failed to do so

55.7.11.3 The following **may** be considered to be mitigating factors:

- Where there is evidence of some form of mental or physical impairment that can clearly be shown to have impacted on the subject's judgement at the time the material fraud took place
- Where there is evidence of some form of coercion that indicates that the subject was not able to make independent decisions at the time the material fraud took place

55.7.11.4 In both of these scenarios the evidence presented must clearly indicate a lack of free will and/or sound judgement. Statements by deprivation subjects not supported by corroborative evidence will not be sufficient to make a decision to deprive of nationality unreasonable or unbalanced.

55.7.11.5 Evidence of mental or physical impairment that is alleged to have impacted on the subject's free will or judgement would need to be provided by the subject's doctor or other relevant health professional.

55.7.11.6 The caseworker should consider the impact of deprivation on the individual's rights under the European Convention on Human Rights (ECHR).

In particular you should consider whether deprivation would interfere with the person's private and family life and, if so, whether such action would nevertheless be proportionate. In some cases it might be appropriate to remove citizenship but allow the person to remain in the UK. In such cases you should consider granting leave in accordance with guidance on [family](#) and [private life](#).

55.7.11.7 Similarly the caseworker should consider the impact of deprivation on the individual's rights under [European law](#) and whether it would nevertheless be proportionate to make a deprivation order. In some cases deprivation may be appropriate but you may need to allow a reasonable period of time before depriving, so that a person can make arrangements to continue or replace the benefits gained from European citizenship. This might include:

- where the person previously held another EU citizenship and would need time to resume it, or
- where the person is living in another European country, exercising a treaty right, and so would need time to regularise their stay, or
- where a person was exercising EU rights as a student overseas and would need time to complete his or her course.

55.7.12 Evidence

55.7.12.1 The following key questions should be considered by the caseworker:

- Does the evidence presented as part of the investigation process meet the necessary standard of proof?
- Is there an admission of guilt or strong evidence from a third party of action which suggests guilt?
- Is the evidence weak or based on hearsay and therefore likely to be easily challenged?

55.7.12.2 The UKBA does not wish to pursue deprivation where this is likely to be unsuccessful on appeal as this would not be an effective use of public resources.

55.7.13 Case Studies

a. Ms A applied for citizenship in June 2005 and was naturalised under section 6(1) in January 2006. On her form she ticked the box to say that she had not been charged with any offences, either inside or outside the United Kingdom.

Since being granted it has been established that she had been charged and convicted of drugs offences in Belgium in September 2003, and sentenced to 3 months imprisonment.

Recommended Decision - Had we known this information at the time of considering the application, we would not have granted as the good character requirement would not have been met. We should therefore consider deprivation action.

b. Mr B claimed asylum as an Afghan national in 2000. He was granted refugee status and ILR in 2001. He applied for naturalisation under section 6(1) and was granted in 2006. It has now been established that Mr B was in fact a Pakistani national and had used a false date of birth.

Mr C, an Afghan national, claimed asylum in 2000 and was granted refugee status and ILR in 2001. He applied for naturalisation under section 6(1) and was granted in 2006. It has now been established that whilst Mr C claimed asylum in his true identity he gave false information in support of his application which, had we known it, would have meant that he did not qualify under the 1951 Convention.

Recommended Decisions –

As Mr B had applied in a false identity, we should assess whether Mr B's citizenship was in fact a nullity (see Part 2).

As Mr C applied in his own identity but provided false information in other respects, we should consider deprivation. This is because Mr C's refugee status, and thus his ability to meet the residence requirements for naturalisation, was based on false information. Had we known this at the time of considering the citizenship application, it would not have been granted. His fraudulent representations were material to the grant of refugee status and, but for that fraud, he would not have been in a position to remain in the UK and subsequently naturalise as a British citizen. We should therefore consider deprivation action.

c. Mr D entered the UK in April 2002 and applied for naturalisation under section 6(2) on 1 May 2005. In support of his application he provided his UK marriage certificate and his wife's British citizen passport. It has now emerged that Mr D was previously married in Germany and had not in fact obtained a divorce from his first wife.

Recommended Decision - Had we known that Mr D was not married to a British citizen at the time of application, we would not have granted the application. We should therefore consider deprivation action.

d. Mrs E applied for naturalisation in 2007. At the time she stated on her form that her husband was a British citizen, but we had not seen her marriage certificate or evidence of his citizenship, and so naturalised her under section 6(1). It has now been established that Mrs E was in fact bigamously married – she had not divorced her previous French husband.

Recommended Decision - As Mrs E was naturalised under section 6(1) of the BNA 81, the fact that she claimed to be married to a British citizen was not directly material to her being granted citizenship. We would not therefore pursue deprivation action.

e. Mr F applied for naturalisation in 2007 and was granted citizenship under section 6(1) in September of that year. Allegations have since been made and Mr F has confessed that he got his brother to take the life of the UK test on his behalf.

Recommended Decision - As Mr F did not meet the requirements for naturalisation, we would not have granted the application, had this information been available to us at the time of consideration. We should therefore consider deprivation action.

f. Miss G (then aged 11) was included in her family's asylum application in 1999. She was granted refugee status in 2003 as a dependent of her father. She applied for naturalisation under section 6(1) and was granted in July 2006. Miss G has now admitted that she was in fact born in Albania, and not Kosovo as was claimed in all applications with IND/BIA.

Recommended Decision - The deception in this case was material to the grant of ILR, and therefore to Miss G's ability to meet the residence requirements. However, as Miss G was a minor at the time her family entered the UK, she could not be regarded as having been complicit in the deception as minors are expressly excluded from the scope of the policy.

g. Ms H entered the UK in 1985 as a visitor. She subsequently overstayed and was eventually removed in May 1999. In June 1999 she returned to the

UK using the identity of Mrs Z, with a false name and date of birth. She was naturalised as a British citizen in those details under section 6(1) on 3/7/2005. Mrs Z has now admitted that she acquired citizenship in an assumed name, and it has been established that she was in fact Ms H.

Recommended Decision – As Ms H acquired citizenship in a false identity, we should consider whether nullity action is appropriate. If nullity action is not appropriate we should consider deprivation as she used false details to gain entry to the UK, hiding the fact that she had previously been removed. As such she was an illegal entrant, and so we would have refused her application for naturalisation.

55.7.14 Depriving Spouses and Civil Partners

55.7.14.1 A caseworker should consider depriving a spouse or civil partner of their British citizenship if the fraud under consideration was also material to his or her application for naturalisation, for example:

a. Mrs A, a Spanish national, applied for naturalisation in 2005 – this was a joint 6(1) application with her husband. Mrs A had entered the UK in 1999 and the couple had married in the UK in 2003. It has now emerged that her husband gained indefinite leave to remain in 2000 on the basis of being a Kosovar refugee, but was in fact Albanian. UKBA therefore plan to deprive him of his citizenship.

Recommended Decision - The deception took place before Mrs A married her husband, and so she could not be regarded as complicit in any deception that took place before the couple met. Citizenship was gained in her own right, rather than on the basis of marriage, and so we would not deprive.

b. Mrs B made a joint application for naturalisation with her husband. It has now emerged that her husband gained indefinite leave to remain in 2000 on the basis of being a Kosovar refugee, but was in fact Albanian. Mrs B was given ILR at the same time as his dependent, and was also claimed to be Kosovar but was Albanian.

Recommended Decision - Mrs B was married to her husband when the deception took place, and also obtained indefinite leave on the basis of his deception. The deception is therefore material to the grant of citizenship, and she could be regarded as complicit. We should therefore consider deprivation.

Part 2: Nullity

55.8 Introduction

55.8.1 Nullity, is the term used to describe a registration or naturalisation which was ineffective from the outset. This means the individual concerned does not need to be deprived of their British citizenship, as they are regarded as never having been granted it in the first place. The test for whether a registration or naturalisation was a nullity has been developed through case law and so is not set out in the legislation which deals with British nationality.

55.8.2 If it is concluded that a registration or naturalisation is a nullity, the Secretary of State will simply treat it as never having taken place and notify the individual accordingly. In such cases there is no need to use the statutory procedures for depriving a person of citizenship under section 40(2) and (3) of the British Nationality Act 1981. The Secretary of State need only be satisfied that the citizenship registration or naturalisation was not technically obtained in law.

55.8.3 A person whose citizenship is declared null and void has no statutory right of appeal, but could seek to challenge the decision by means of an application for judicial review. A decision to treat a person's registration or naturalisation as a nullity could affect the position of that person's spouse or other relatives whose own immigration or citizenship status was secured on the basis of the person's claimed citizenship status. It might also render him or her liable to deportation or removal.

55.8.4 Where a person's citizenship has been declared null and void, they will revert to their previous immigration status. If they still hold valid leave in an immigration category, this will continue

provided we are satisfied that the criteria for granting such leave remains fulfilled. Equally, if they held indefinite leave to enter or remain before making their citizenship application, they will retain their settled status, provided we remain satisfied that all the relevant criteria were met when settlement was granted. The fact that someone initially retains their settled status following a declaration that their citizenship was a nullity does not prevent their indefinite leave to enter/remain being revoked at a later stage e.g. if the Secretary of State is satisfied that indefinite leave to enter/remain was obtained by deception. Further information on revoking indefinite leave to enter/remain can be found at [here](#)

55.9 Circumstances in which a registration or naturalisation may be a nullity

Where citizenship has been granted to someone who already holds that status

55.9.1 A registration or naturalisation which adds nothing to the status already enjoyed by the applicant is, at best, no more than confirmation of that status. In such cases, it will usually be appropriate to treat the registration or naturalisation as a nullity, and to refund any fee submitted with the application. For example, a person may be unaware that they were automatically British at birth (e.g. they were born in the UK, but left when they were a baby and lived abroad for decades) and so may erroneously apply to naturalise or register as a British citizen. In order to minimise such errors, caseworkers check whether a pre existing claim/right to citizenship exists before considering nationality applications. Any action to treat the grant of citizenship as a nullity in these circumstances would be based solely on the fact that citizenship is already held, rather than the concealment of identity.

Where the applicant has tried to conceal their personal attributes or impersonated someone else so that they are not the intended recipient of the citizenship grant.

55.9.2 General principles

- 1) A grant of citizenship for the purposes of the British Nationality Act 1981 Act is intended to be made to the person whose details are on the certificate of registration or naturalisation;
- 2) Where an application is made for the grant of citizenship and the applicant has given some genuine information but tried to hide their real identity by concealment or false representation that may potentially be treated as a nullity (see 55.9.3 for more details);
- 3) Where a person impersonates someone else thereby using another's personal details in order to obtain citizenship that is not rightly his/hers, that may be treated as a nullity.
- 4) Where someone creates an entirely false identity in order to obtain citizenship that may be treated as a nullity.

55.9.3 The types of concealment or misrepresentation of specific identifying particulars that could lead to a grant of citizenship being treated as a nullity are:

- Giving a false name;
- Giving a false date of birth (particularly if this means the applicant was treated as a minor rather than an adult or visa versa);
- Giving a false place of birth;
- Giving a false nationality or concealing possession of a nationality.

- Misrepresenting or concealing personal and domestic circumstances (such as whether a person is a refugee in fear of ethnic persecution)

A grant of British citizenship or registration as a British citizen should be treated as a nullity where the applicant has concealed or misrepresented such identifying particulars to such a degree that they can be said to have adopted a false identity in the sense of false attributes. The decision will be specific to each case. It will be a question of fact and degree depending on the nature, quality and extent of the fraud, deception or concealment. Caseworkers should read the case law and scenarios below before coming to a decision.

If the only false particular is a false name, it is unlikely that we would deprive as a person can in law change their name – see 55.9.4 below.

Alternative names/Pseudonyms

55.9.4 It should be remembered that a person is, at all times, and without the need to observe any particular legal formality, free to take on any name he or she chooses. There is nothing illegal in this, providing that the person involved is not advancing a false identity.

Nullity and Long Residence

55.9.5 Where it has come to light that an applicant is not the true recipient of a grant of citizenship because he used a false name/personal identifiers, or created an entirely false identity, nullity action will still be appropriate, regardless of the length of residence in the UK. This is because if the applicant was never the intended recipient of the grant, this remains the case regardless of how long s/he may have remained in the UK.

Case law on nullity following the concealment of identity or impersonation

55.9.6 Several cases are set out below in which the courts have considered the question of when a grant of citizenship should be treated as a nullity if deception on the part of the applicant later comes to light. Some are based on older legislation, but the same principles still apply.

1. R -v- SSHD and Governor of Horfield Prison ex p Sultan Mahmood [1980] 3 WLR 312 (Court of Appeal)

The applicant, Sultan Mahmood, assumed the identity of his deceased cousin, Javed Iqbal, in order to gain admission to the United Kingdom. A certificate of registration was issued to him in the assumed identity 12 months later under s.6(1) of the 1948 Act. He then purported to revert to his original name by executing a deed poll. The deception later came to light and he was detained pending removal as an illegal immigrant under the 1971 Act. Mahmood applied for a writ of habeus corpus (which requires the state to demonstrate to the court its legal authority to deprive a person of their liberty), arguing that unless and until he had been deprived of his citizenship he could not be detained with a view to removal. Lord Justice Roskill said: "If it were clear that the appellant was the Javed Iqbal originally named and identified in the Pakistani passport and in the other relevant documents and that the Secretary of State had intended to grant registration to that person, this argument [i.e. that the appellant had become a CUKC] would clearly have great force because it would be to that person so named that the grant would have been directed. But the evidence is that that person was dead. I am clearly of the view that the instant case is one in which the alleged registration was a nullity."

In the above case it was clear that the grant of citizenship was a nullity as the applicant was not who he claimed to be and the person whose

details were on the application was deceased. Therefore the grant of citizenship was a nullity.

2. R -v- SSHD ex Parvaz Akhtar [1980] 2 All ER 735, (Court of Appeal)

A registration had been effected under s.7 of the 1948 Act in the particulars Parvaz Akhtar son of Waris Ali. A man whom the Home Secretary was proposing to remove from the United Kingdom as an illegal entrant claimed to have become a CUKC as a result of that registration, and thus to have the right of abode here. However, enquiries led the Immigration Service to conclude that the man was, in reality, Abdul Hamid son of Noor Hussain, and that Parvaz Akhtar son of Waris Ali either never existed or was some other person. Lord Justice Templeman, sitting in the Court of Appeal, said: "When Waris Ali applied for the registration he undoubtedly intended to procure the registration of the appellant and nobody else. But the effect of the registration cannot depend on the intention of the applicant... The registration which was in fact effected was the registration of Parvaz Akhtar, son of Waris Ali." The appellant could not bring himself within that description and could not, therefore, claim to enjoy the rights and privileges of a CUKC.

3. R (Ejaz) v Secretary of State for the Home Department [1994] QB 496 (Court of Appeal)

This is a case where a grant of citizenship obtained by deception was found **not** to be a nullity. The applicant, Naheed Ejaz, had been granted citizenship on the basis that her husband was a British Citizen. It transpired that her husband was not and had never been a British Citizen; he had entered the country using a British passport in the name of Arshad Iqbal, but in fact was a Pakistani citizen named Diwan Kamal. The court held that as there was no doubt that Naheed Ejaz was the

person who had applied for citizenship, the grant of citizenship was valid (although deprivation of citizenship under section 40 was still an option).

4. Bibi v Entry Clearance Officer, Dhaka [2007] EWCA Civ 740

In this case a man named Abdul Jabbar had assumed the identity of Abdul Sattar to enter the UK and later applied and was granted citizenship in the name of Abdul Sattar. After his death, his family applied for certificates of entitlement to right of abode in the UK on the basis of Abdul Jabbar/Sattar's citizenship. The court held that the grant of citizenship was a nullity, as it had been in **Mahmood** as the applicant was not the person that had been granted citizenship. As a result the family had no rights arising from the grant (and they had not applied for and been granted citizenship in their own right, as was the case in *Ejaz*).

5. R (Kadria and Krasniqi) v Secretary of State for the Home Department (2010) EWHC 3405

These two cases concerned two brothers, Villion and Laurent Cakollari, who came from Albania, but had come to the UK under the names of Villion Krasniqui (Villion) and Rouland Kadria (Laurent). Both successfully applied for citizenship in those names. When the deception came to light Villion was removed from the country and efforts were made to remove Laurent. Both challenged this action on the basis they were British citizens. The High Court ruled that the grant of citizenship in both cases had been a nullity (in accordance with the principles referred to in paragraph 55.9.1) because:

- they had lied in respect to their names;
- Villion had claimed to be a minor;
- Laurent had lied about his nationality;
- They had lied about their circumstances (both had claimed to be refugees from Kosovo);

- both had sustained the deceptions over a period of time
- the deceptions had been for several purposes, namely to enter the UK, to obtain indefinite leave to remain, to obtain citizenship and in one case to obtain a passport.

Examples of scenarios where a registration/naturalisation would and would not be regarded as a nullity

55.9.7 The following are fictitious scenarios to illustrate how a typical case might be dealt with; please note it should not be treated as binding guidance on how such cases should be dealt with in reality.

1. Miss A applies for British citizenship using the name and personal details of her deceased sister, Miss B. She had previously used this identity to enter the UK, obtain leave to remain and subsequent settlement. The deception came to light when she used her true identity to sponsor a visa to the UK for her husband. In light of the facts that she had used someone else's identity, not only to obtain citizenship, but in numerous dealings with UKBA coupled with the fact that she was clearly not the intended recipient of the citizenship grant, it would be appropriate to treat this case as a nullity.
2. Mr A applies for citizenship. He does not reveal that he was formerly known as Mr B, under which identity he had been convicted of certain criminal offences. Mr B had legally changed his name to Mr A by deed poll. As Mr B he had been legitimately granted indefinite leave to remain in the United Kingdom. In all other respects the details he gives on his application form relate to Mr A. The resulting grant would not be a nullity. This is because the applicant is in all principal matters the person to whom the naturalisation or registration certificate has been issued. However, it would be necessary to consider whether, if his criminal past had been known when his application was considered, citizenship would have been granted. If

citizenship would have been refused on good character grounds, then deprivation action (on grounds that the grant was obtained by means of concealment of a material fact) might be appropriate.

3. Mr C applies for citizenship. He does not reveal that he was formerly known as Mr D, under which identity he had been convicted of certain criminal offences.. As Mr D he had been legitimately granted indefinite leave to remain in the United Kingdom. In his citizenship application, Mr C falsified his date of birth by 12 months. The resulting grant would be a nullity as the applicant is not the person to whom the naturalisation or registration certificate has been issued.

Impact of nullity on the applicant's children

A person whose registration or naturalisation is declared null and void is regarded as never having held that status. This will therefore impact on any children born following registration/naturalisation.

i. Children born in the UK

If the parent was settled in the UK prior to becoming a citizen, the child may be a British citizen.

ii. Children born overseas

As the parent was not a British citizen at the time of the birth, the child cannot be a British citizen by descent, and so will not have the right of abode in the UK. They will need to regularise their stay.

iii. Children registered when the parent registered or naturalised

Where the child registered as a British citizen on the basis of a false identity, then the registration is likely to be a nullity. Where the child registered as a British citizen in their true identity then, notwithstanding that the grant to the parent is a nullity, it would not be appropriate to take nullity action.