

DEPRIVATION OF CITIZENSHIP RESOURCES

I have put together this resource sheet covering deprivation of citizenship under §40 British Nationality Act 1981 and appeals against such decisions. I hope it is of use. Adam

§40 BNA 1981

"40. Deprivation of citizenship

(1) In this section a reference to a person's 'citizenship status' is a reference to his status as -

- (a) a British citizen
- (b) a British overseas territories citizen,
- (c) a British Overseas citizen,
- (d) a British National (Overseas),
- (e) a British protected person, or
- (f) a British subject.

(2) The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good.

(3) The Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of -

- (a) fraud,
- (b) false representation, or
- (c) concealment of a material fact.

(4) The Secretary of State may not make an order under subsection (2) if he is satisfied that the order would make a person stateless.

(5) Before making an order under this section in respect of a person the Secretary of State must give the person written notice specifying -

- (a) that the Secretary of State has decided to make an order,
- (b) the reasons for the order, and
- (c) the person's right of appeal under section 40A (1) or under section 2B of the Special Immigration Appeals Commission Act 1997.

(6) Where a person acquired a citizenship status by the operation of a law which applied to him because of his registration or naturalisation under an enactment having effect before commencement, the Secretary of State may by order deprive the person of the citizenship status if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of -

- (a) fraud,
- (b) false representation, or
- (c) concealment of a material fact ."

Home Office Guidance

Deprivation and nullity of British citizenship: nationality policy guidance

<https://www.gov.uk/government/publications/deprivation-and-nullity-of-british-citizenship-nationality-policy-guidance>

This guidance tells Home Office staff about the provision made for deprivation of British citizenship status by order under section 40 of the British Nationality Act 1981.

It also explains in which circumstances a registration or naturalisation may be a nullity.

Arusha and Demushi (deprivation of citizenship - delay) Albania [2012] UKUT 80 (IAC) (13 March 2012)

http://www.bailii.org/uk/cases/UKUT/IAC/2012/00080_ukut_iac_2012_aa_ors_albania.html

(i) The following rulings made by the First-tier Tribunal on the nature and scope of an appeal against the deprivation of citizenship under s.40 of the British Nationality Act 1981 were not challenged by either party before the Upper Tribunal:

(a) The Tribunal has a wide-ranging power to consider, by way of appeal not a review, what the decision in an appellant's case should have been. The Tribunal has to ask itself 'does the evidence in the case establish that citizenship was obtained by fraud?' If it does then it has to ask 'do the other circumstances of the case point to discretionary deprivation?'

(b) In terms of the proof of fraud, the Tribunal will consider any evidence, whether or not available to the respondent at the time he made his decision, which is relevant to the determination of that question.

(c) It is for the respondent to prove that the appellant's conduct comes within the scope of s.40 of the 1981 Act.

(d) The appellant can raise general human rights grounds but they must be framed to deal with the breach alleged to be caused by the decision to deprive the appellant of his nationality, and giving effect to that decision, and not framed to deal with the fiction that the appellant would be removed.

(ii) To establish that a delay in the promulgation of a decision has led to an error of law it has to be shown that the decision was not safe and therefore unlawful. There must be a nexus between the delay and the safety of the decision: see *Secretary of State v RK (Algeria)* [2007] EWCA Civ 868.

Deliallisi (British citizen: deprivation appeal: Scope) [2013] UKUT 439(IAC)

[http://www.bailii.org/uk/cases/UKUT/IAC/2013/\[2013\]_UKUT_439_iac.html](http://www.bailii.org/uk/cases/UKUT/IAC/2013/[2013]_UKUT_439_iac.html)

(1) An appeal under section 40A of the British Nationality Act 1981 against a decision to deprive a person of British citizenship requires the Tribunal to consider whether the Secretary of State's discretionary decision to deprive should be exercised differently. This will involve (but not be limited to) ECHR Article 8 issues, as well as the question whether deprivation would be a disproportionate interference with a person's EU rights.

(2) Although, unlike section 84(1)(g) of the Nationality, Immigration and Asylum Act 2002, section 40A of the 1981 Act does not involve any statutory hypothesis that the appellant will be removed from the United Kingdom in consequence of the deprivation decision, the Tribunal is required to determine the reasonably foreseeable consequences of deprivation, which may, depending on the facts, include removal.

(3) A person who, immediately before becoming a British citizen, had indefinite leave to remain in the United Kingdom, does not automatically become entitled to such leave, upon being deprived of such citizenship.

AB (British citizenship: deprivation; Deliallisi considered) Nigeria [2016] UKUT 451 (IAC) (28 September 2016)

<http://www.bailii.org/uk/cases/UKUT/IAC/2016/451.html>

(1) As held in Deliallisi (British citizen: deprivation appeal: scope) [2013] UKUT 439 (IAC), in an appeal under section 40A of the British Nationality Act 1981 the Tribunal is required to determine the reasonably foreseeable consequences of deprivation.

(2) Whilst the Tribunal considering a section 40A appeal cannot pre-judge the outcome of any future legal challenge that the appellant might bring against a decision to remove, following deprivation, the Tribunal must nevertheless take a view as to whether, from its present vantage point, there is likely to be force in any future challenge: cf section 94 of the Nationality, Immigration and Asylum Act 2002 and paragraph 353 of the immigration rules. The stronger the potential case, the less likely it will be that the reasonably foreseeable consequences of deprivation will include removal.

(3) A person who had indefinite leave to remain in the United Kingdom, immediately before acquiring British citizenship, does not thereby become entitled to indefinite leave to remain, upon being deprived of such citizenship under section 40 of the 1981 Act. Leave to remain is effectively extinguished by becoming a British citizen, since the system of controls under the Immigration Act 1971 does not apply to British citizens.

(4) In a section 40A appeal, an appellant may rely on the ground that deprivation would have a disproportionate effect, as regards the rights flowing from citizenship of the EU, only if, on the facts, there is a "cross-border" element. The finding to the contrary in Deliallisi was reached per incuriam in the judgment of the Court of Appeal in *G1 v Secretary of State for the Home Department* [2012] EWCA Civ 867.

Ahmed and Others (deprivation of citizenship) (Pakistan) [2017] UKUT 118 (IAC) (10 February 2017)

<http://www.bailii.org/uk/cases/UKUT/IAC/2017/118.html>

(i) While the two fold duties enshrined in section 55 of the Borders, Citizenship and Immigration Act 2009 are imposed on the Secretary of State, the onus of making representations and providing relevant evidence relating to a child's best interests rests on the appropriate parental figure.

(ii) A failure to discharge this onus may well defeat any argument that there was a proactive duty of enquiry on the Secretary of State in a given context.

(iii) In deprivation of citizenship cases, section 55 issues arise at two stages: at the deprivation of citizen stage and at the later stage of proposed removal or deportation.

Pirzada (Deprivation of citizenship: general principles : Afghanistan) [2017] UKUT 196 (IAC) (20 April 2017)

<http://www.bailii.org/uk/cases/UKUT/IAC/2017/196.html>

(i) The Secretary of State has two separate powers of deprivation, exercisable on different grounds, as set out in sub-ss (2) and (3) of s 40 of the British Nationality Act 1981.

(ii) The power under s 40(2) arises only if the Secretary of State is satisfied that deprivation is conducive to the public good.

(iii) The power under sub-s (3) arises only if the Secretary of State is satisfied that registration or naturalisation was obtained by fraud, false representation or concealment of a material fact. The deception referred to must have motivated the grant of (in the present case) citizenship, and therefore necessarily preceded that grant.

(iv) The separation of sub-ss (2) and (3) makes it clear that obtaining naturalisation by one of the means of deception set out in sub-s (3) cannot of itself amount to a reason enabling the Secretary of State to be satisfied that deprivation is conducive to the public good for the purposes of sub-s (2); but, in an appropriate case, there would appear to be no reason why the Secretary of State should not be satisfied that the conditions under both subsections exist.

(v) The restrictions on the rights of appeal imposed by s 84 of the 2002 Act do not apply to appeals against a s 40 decision: therefore, any proper ground of appeal is available to an applicant. The grounds of appeal are, however, limited by the formulation of s 40 and must be directed to whether the Secretary of State's decision was in fact empowered by that section. There is no suggestion that a Tribunal has the power to consider whether it is satisfied of any of the matters set out in sub-ss (2) or (3); nor is there any suggestion that the Tribunal can itself exercise the Secretary of State's discretion.

Sleiman (deprivation of citizenship; conduct : Lebanon) [2017] UKUT 367 (IAC) (19 July 2017)

<http://www.bailii.org/uk/cases/UKUT/IAC/2017/367.html>

In an appeal against a decision to deprive a person of a citizenship status, in assessing whether the appellant obtained registration or naturalisation "by means of" fraud, false representation, or concealment of a material fact, the impugned behaviour must be directly material to the decision to grant citizenship.

Hysaj & Ors, R (on the application of) v Secretary of State for the Home Department [2017] UKSC 82 (21 December 2017)

<http://www.bailii.org/uk/cases/UKSC/2017/82.html>

S 40 BNA makes provision for the Secretary of State to deprive a person of citizenship if satisfied that the grant was obtained by means of 'fraud, false representation or concealment of a material fact'. There is a right of appeal to the First-tier Tribunal against most such deprivations in s 40A [7].

The original decision adopting the nullity approach, rather than a deprivation of citizenship, involved the purported grant of British citizenship to someone who was impersonating another real person (R v Secretary of State for the Home Department ex p Mahmood [1981] QB 58). Subsequent cases, including R v Secretary of State for the Home Department ex p Akhtar [1981] QB 46, Bibi v Entry Clearance Officer, Dhaka [2007] EWCA Civ 740 and the present ones, expanded this approach to persons adopting a false identity through which the characteristics needed to obtain citizenship were acquired [8-14].

The Secretary of State considers that the law took a wrong turning after Mahmood, and the nullity approach should only apply in impersonation cases [15]. The subsequent cases were based on the principle that there is a category of fraud as to identity which is so serious that a purported grant of citizenship is of no effect, but had not articulated a clear definition of such fraud. This uncertainty means the law is difficult to apply in practice and also gives rise to a number of illogical and unsatisfactory consequences. The same principle would also appear to nullify the grant of ILR, but the Secretary of State has never contended for this [16-18].

The Supreme Court agrees with this reasoning. It follows that the decisions of the Court of Appeal in Akhtar and Bibi must be overruled and the present appeals allowed by consent [19].

Adam Pipe
No8 Chambers
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<http://www.twitter.com/adampipe>
<https://www.linkedin.com/in/pipeadam/>