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 There are some cases, such as those described in paragraph 55.10.2, where the supposed grant of citizenship was clearly a nullity. There may be others where a certificate of naturalisation or registration has been obtained by means of deception, but it is unclear whether we may, in consequence, treat it as a nullity or should consider deprivation of British citizenship status. The crucial first question in such a case will be whether the registration or naturalisation did in fact lead to the acquisition of citizenship, and this should be determined by reference to the guidance in paragraphs 55.10.2 to 55.10.4. Only if it appears that the deception was not such as to render the registration or naturalisation ineffective, would it then be appropriate to consider deprivation.

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 Deviation from the documents attached in the Annexes to this Guidance can only be made with the approval of Nationality Policy Team.

55.6.3 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. It will remain open to deprive in these circumstances on non-conducive grounds at which time part C of these Instructions would be relevant.

55.6.4 Decisions and Approvals

55.6.4.1 The caseworker must normally:

- Consider the content and supporting evidence provided in the Fraud Referral Pro-forma (Annex A)

- Complete stages 1-2 of the Deprivation Questionnaire - (Annex B) to determine if further investigation is required

- Write to relevant parties for detailed information to inform the decision-making process by using the Investigations Letter (Annex C)

- Complete stages 3-4 of the Deprivation Questionnaire and escalate their decision for

approvals to the senior caseworker, as indicated within the Questionnaire

55.6.4.2 The senior caseworker will normally then:

- Consider the caseworker's proposal following an analysis of the caseworker's summary and consultation with them on the reasonableness of any recommendation to deprive

- Note his or her final recommendation on the Deprivation Questionnaire, Stage 5

- Escalate the Deprivation Questionnaire to the Deprivation Approvals Group for approval, using a summary sheet

55.6.4.3 The Deprivation Approvals Group must then:

- Review the decision and written recommendation of the senior caseworker

- Note its final recommendation on the summary sheet

- Escalate, in all cases, the Deprivation Questionnaire to the Regional Director for final approval

55.6.4.4 The Regional Director will then:

- Review the decision and written recommendation of the Deprivation Working Group

- Note his/her final recommendation on the summary sheet

- Escalate, in all cases, the decision to the UKBA Chief Executive for approval

55.6.4.5 The Chief Executive or Deputy Chief Executive will then:

- Review the decision and written recommendation of the Regional Director

- Confirm his/her final recommendation

- Refer the decision back to DST.

55.6.4.6 DST will then prepare a 1:2 submission to the Immigration Minister and Home Secretary for approval

55.6.5 Action following finalisation of Approvals

55.6.5.1 Following conclusion of the approvals process outlined in section 1.1 the caseworker will normally:

- Place confirmation of the approval on file

- Issue a notice of a decision not to deprive (Annex D)

OR

- Issue a notice of a decision to deprive (Annex E) with accompanying rationale and appeal documentation, in accordance with Stage 6 of the Deprivation Questionnaire

- Prepare a bundle of relevant papers to support any appeal submitted and send this to the appropriate Presenting Officers' Unit as required

- Track the outcomes and progress of any appeal brought against a decision to deprive

55.6.6 Action following conclusion of the appeals process against decisions to deprive

- if the appeal against the decision to deprive is dismissed and the individual has exhausted their rights of appeal *OR*

- if no appeal is submitted within the prescribed period

55.6.6.1 The caseworker will normally:

- Refer the case to the appropriate region in order to enable a removal decision to be made

- Prepare the Deprivation Order (Annex G) and accompanying letter (Annex F) for the attention of the senior caseworker

55.6.6.2 The senior caseworker will normally:

- Finalise the content of the Deprivation Order and prepare a standard submission for the Chief Executive to request that the Deprivation Order be signed and issued by a relevant senior official with delegated authority

55.7 Caseworker Decisions – Completing the Deprivation Questionnaire

55.7.1 Following receipt of any information requested from the deprivation subject the caseworker, in order to deprive of citizenship, must be satisfied that the fraud, false representation or concealment of material fact was material to the acquisition of citizenship (55.7.2) and that the fraud was deliberate (55.7.3). Third parties associated with such fraud must have been complicit (55.7.4) in order to deprive them of their citizenship:

55.7.2 Material to the Acquisition of Citizenship

55.7.2.1 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.

55.7.2.2 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

55.7.2.3 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.

55.7.2.4 For example, a person who acquires ILR under a concession (e.g. the family ILR concession) does so regardless of their nationality, and so in this instance the fact that we could show an individual had lied about their nationality 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.

55.7.2.5 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 has been resident in the United Kingdom for more than 14 years we will not normally deprive of citizenship

- 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

- If a person acquired indefinite leave to remain under a Government Concession, e.g. a Family Asylum Concession, and that leave to

remain is alleged to have been obtained in a false identity we will not deprive of citizenship *unless* there is evidence than an earlier claim for asylum was made in an alternative identity and that this was refused

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

55.7.2.6 Deprivation on fraud grounds regardless of length of residence

Although the Secretary of State will not normally deprive someone of their British citizenship where they have more than 14 years residence in the United Kingdom (long residence), circumstances in which the Secretary of State may still proceed to deprive of British citizenship include, but are not limited to, where:

- Deception has been used more than once in an individual's dealings with UKBA – e.g. multiple frauds using different identities, rather than repeat episodes of the same factual deception at different immigration stages;
- There was a serious conviction before the date of naturalisation that was not known to UKBA at the time that naturalisation was granted and which remains unspent (if the conviction was after the grant of naturalisation that conviction will fall to be dealt with under the policy to deprive of British citizenship on conduciveness grounds);
- The individual has previously been refused naturalisation in a different (possibly their true) identity and has concealed this when acquiring British citizenship.

These criteria are not intended to be exhaustive and the Secretary of State may still proceed to deprive of British citizenship regardless of the subject's length of residence depending upon the facts of a particular case.

Examples to illustrate when the Secretary of State may deprive regardless of long residence include:

1. An individual who was naturalised in 2006 had concealed information about a period of imprisonment, which was material to the good character requirement, and had also cheated in the Life in the United Kingdom test. We would be likely to deprive in this situation because of multiple instances of deception.
2. An individual who was naturalised in 2003 on the basis of his marriage to a British citizen was convicted in 2006 of people trafficking offences and sentenced to 12 months for

offences committed between 2001 and 2004. Even though the conviction post-dates the grant of citizenship this might be the subject of deprivation action because of the particularly serious and sustained nature of the offences in question over a protracted period. We would be likely to deprive because of the seriousness of the offence.

Many of those convicted of an offence after being granted naturalisation may not have been of good character at the time they applied because the offence was committed before then, but it may be difficult to sustain an argument that this amounted to material fraud sufficient to deprive of British citizenship. Such cases should fall to be dealt with under the conduciveness deprivation policy when introduced.

The criteria suggested aims to help caseworkers identify when an individual may be deprived regardless of their long residence in the UK. It is not an exhaustive list and unusual cases should be escalated to senior caseworkers for careful consideration in conjunction with Nationality Policy Team.

55.7.3 Deliberate

55.7.3.1 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.

55.7.4 Complicit

55.7.4.1 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.

55.7.4.2 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.

55.7.4.3 **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.

55.7.4.4 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.

55.7.4.5 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.

55.7.5 The caseworker must also consider the following:

55.7.6 Reasonable/Balanced

55.7.6.1 The caseworker should consider whether deprivation would be seen to be a balanced and reasonable step to take must take 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.

55.7.6.2 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.

55.7.7 Mitigating Factors

55.7.7.1 The caseworker should also consider any mitigating circumstances. However, the caseworker should operate on the assumption that human rights considerations and compassionate circumstances are **not** relevant to the decision to deprive because:

- The caseworker does not have remit to consider setting removal directions at the same time as depriving and so human rights matters associated with removal are not relevant to the decision to deprive

- The policy is limited to depriving on the basis of facts that were material to the original decision and so any rights which may be affected are those acquired because of the citizenship which the individual has never been entitled to.

- In cases where a decision to deprive is appealed and this is unsuccessful, UKBA will then make a decision on removal prior to the issue of the Deprivation Order. This ensures that the individual remains a British citizen until such time that a decision is taken on removal The individual therefore also remains a British citizen at the time they appeal a decision to deprive.

55.7.7.2 Thus, any form of fraud, false representation or concealment of material fact should lead to deprivation regardless of compassionate circumstances. 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

55.7.7.3 The following <u>may</u> 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

55.7.7.4 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.

55.7.7.5 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.

55.7.8 Evidence

55.7.8.1 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?

55.7.8.2 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.

55.7.9 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 1997. He was granted refugee status 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 born in Pakistan.

Recommended Decision - Mr A'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 identity was clearly 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 C claimed asylum as a Kosovan national in 1997. He was granted ILR under the family ILR concession in 2005. He applied for naturalisation under section 6(1) and was granted in 2006. Mr C has now admitted that he was in fact born in Albania.

Recommended Decision - Although Mr C gave false details in applying for refugee status, this was not material to him being granted leave in the United Kingdom as he was granted ILR under a concession and not as a refugee. His nationality was not relevant to how ILR was granted under that concession as it would have been to a full asylum claim. This class of person is therefore excluded from the scope of the policy. But note: If there were other factors involved or an earlier failed asylum claim was submitted in the true identity/nationality which would have made the grant of ILR under the Concession void consideration of deprivation may still be appropriate.

d. 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.

e. 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.

f. 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.

g. 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.

h. 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 - Ms H 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. We should therefore pursue deprivation action.

55.7.10 Depriving Spouses and Civil Partners

55.7.10.1 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 Kosovan 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 Kosovan refugee, but was in fact Albanian. Mrs B was given ILR at the same time as his dependent, and was also claimed to be Kosovan 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.

C. Conduciveness Deprivation Process

55.8 This policy will be introduced in 2010.

PART 2: NULLITY

55.9 Introduction

55.9.1 Nullity, in the nationality context, is a common law rather than a statutory concept. The term is used to describe a registration or naturalisation which was ineffective from the outset, as opposed to being subject to cancellation by means of a deprivation order.

55.9.2 Unlike deprivation, it does not necessarily depend on misconduct by the person concerned or on the Secretary of State being satisfied as to certain matters. If it is concluded that a registration or naturalisation was a nullity, the Secretary of State will simply treat it as never having taken place.

55.9.3 A finding that a person's registration or naturalisation was a nullity could affect the position of that person's spouse or other relatives. It might also render him or her liable to deportation or removal. A person affected by a finding of nullity has no statutory right of appeal against the finding, but could seek to challenge it by means of an application for judicial review.

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

55.10.1 Section 42B of the British Nationality Act 1981 provides that a person who is registered under the 1981 Act, or to whom a certificate of naturalisation is issued, acquires, on that date, or on the making of the appropriate oath and pledge, the citizenship or status indicated by the certificate or entry in the register. The forerunner of s.42B also applied, with necessary modifications, to registrations under the 1983, 1990, 1996 and 1997 Acts, and to registrations as a BN(O) under the Hong

Kong (British Nationality) Order 1986. Similar provisions were included in the pre-1983 legislation.

55.10.2 The Court of Appeal confirmed in R -v- SSHD ex p Ejaz [1994] 2 All ER 436 that a certificate of naturalisation or registration will, in general, be conclusive evidence that the person acquired the specified citizenship or status on the specified date. It was irrelevant that, on the true facts of Ejaz, the application in that case should not have been granted. There are, however, a limited number of circumstances in which registration or the issue of a certificate of naturalisation will have no effect:

- The registration or naturalisation was obtained by impersonation

The question here is whether the person claiming to be the beneficiary of a registration or naturalisation is in fact the person to whom the grant was intended to be made. If A assumes B's identity, and obtain s a grant of citizenship in B's identity, then that grant will be a nullity as regards A.

What should be remembered

Cases may be encountered where an applicant has, for whatever reason changed or fabricated certain identifying particulars, attributes or qualifications when making his or her application. Unless the change/fabrication is so complete as to amount to the creation of an essentially fictional character, any resulting grant of citizenship is unlikely to be a nullity. In such a case it is possible that the grant will have been obtained by fraud, false representation or concealment of a material fact, so that deprivation action may be appropriate. But 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 provided it is not done for a fraudulent or other unlawful purpose and provided also that, in the case of a minor, the name was changed with the consent of those who, at the time, had parental responsibility for the child.

Example 1

A man, 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. On application for judicial review of the decision to remove him from the United Kingdom, 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." (R -v- SSHD and Governor of Horfield Prison ex p Sultan Mahmood [1980] 3 WLR 312n, CA)

In the above case it was clear that Sultan Mahmood was not the intended recipient of the grant of citizenship. The intended recipient was the entirely distinct (and deceased) person whose details were on the application. Therefore the grant of citizenship was a nullity.

Example 2

A registration had been effected under s.7 of the 1948 Act in the particulars Parvaz Akhtar son of Waris Ali. A man who 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. (R -v- SSHD ex Parvaz Akhtar [1980] 2 All ER 735, CA)

Example 3

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. He also missates his date of birth by 7 days. But in all other respects the details he gives on his application form relate to Mr A. The resulting grant would not be a nullity. 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, then

deprivation (on grounds that that the grant was obtained by means of concealment of a material fact) might be appropriate.

- The person concerned already had the citizenship or status purportedly conferred by the registration or naturalisation

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.

- The person to whom citizenship was purportedly granted was dead

References to "a person" in the nationality legislation are to be construed, unless the context requires otherwise, as references to a *living* person.

55.10.3 It <u>may</u> be appropriate to treat a registration or naturalisation as a nullity in the following additional circumstances (but see paragraph 55.10.4, below):

- There was no prior application for citizenship

It is unlikely that a court would regard a procedural irregularity, such as failure to pay a fee or to take the oath of allegiance at the appropriate time, as cause to treat a registration or naturalisation as a nullity. Where, however, the registration or naturalisation was not preceded by a request of <u>any</u> kind for citizenship to be granted to the named individual, it might well be appropriate to treat it as a nullity.

- The application for registration or naturalisation was made without the knowledge or consent of the person to whom it related

55.10.4 In paragraph 55.10.3 cases, a degree of caution should be exercised. It is one thing where, as in the paragraph 55.10.2 examples, an application is made fraudulently in the name of a person who has no knowledge either of the application or of the resulting registration or naturalisation. There is clear authority, in the Court of Appeal's decisions, for treating such a registration or naturalisation as a nullity. Other considerations come into play where, for example, a husband applies on behalf of his wife without her knowledge or consent but she later learns of, and comes to rely on, the resulting registration or naturalisation as evidence of her own status and (possibly) that of her children and grandchildren. Or where, in the process of granting a husband's application, a certificate of naturalisation is issued instead to his non-applicant wife, and she thereafter relies on it. Much will depend on the circumstances of the particular case, and reference, via a Senior Caseworker, to Nationality Policy Team may help to clarify the issues and assist in determining the best way forward.