



UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: IA/01876/2014

THE IMMIGRATION ACTS

Heard at: Field House  
On: 13 January 2015

Promulgated  
On: 20 February 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

MRS LAMULAH BUKULU SEKIZIYIVU  
NO ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr P Asiimwe, Legal Representative, Jesus Solicitors  
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Nigeria. She appeals with leave against the decision of First-tier Tribunal Judge Seelhoff dismissing her appeal against the respondent's decision to deprive her of British citizenship. Under the British Nationality Act 1981, she had a right of appeal. However, the decision to deprive her has, as noted by the Judge, no effect.

### **The background to the appeal**

2. The appellant came to the UK in October 2002 and applied for asylum. That was initially refused in October 2002 but she successfully appealed that decision and was granted refugee status on 14 January 2004 with indefinite leave to remain.
3. She application for British citizenship made on 22 October 2007, was granted on 3 January 2008.
4. On 10 August 2008, she was convicted of various counts of tendering counterfeit currency and possessing false currency. She was sentenced to 18 months in prison on each count to run concurrently.
5. On 6 September 2011 she was arrested and charged with conspiracy to facilitate and conspiracy to obtain benefits. On 1 November 2012 she was convicted for conspiracy to defraud and was sentenced to three years in prison. It had been contended in the course of the investigation that evidence came to light confirming that she had committed benefit fraud between 2004 and 2012 as well as immigration fraud.
6. The appellant was one of five persons convicted and sentenced as part of the same proceedings on 1 November 2012. Judge Ainley's sentencing remarks revealed that the ringleader of the fraud obtained status documents in a number of different identities and falsely claimed to have children when she claimed asylum, including one whom she said was called "Betty Natimba." The Judge recorded that identity documents were obtained in the name of Betty Natimba, despite the fact that she had never existed [6].
7. Judge Ainley found that the fraud as a whole included claims for benefits to the tune of about half a million pounds, medication costing about £2 million, education costing several hundred thousand pounds and obtaining in excess of £650,000 through illegally subletting flats. It is also recorded that a further £450,000 of fraudulent claims were made by other people using identities obtained by the ringleader of the fraud.
8. The appellant was the fourth person sentenced at the same sentencing hearing, and the sentencing remarks confirmed that whilst the appellant had nothing to do with the conspiracy at its outset, she became involved from at least 2008 when she was using documents in a false identity. The sentencing remarks confirmed that she was working on a day to day basis using the Betty identity so she could fraudulently claim benefits in her own name.
9. In sentencing her, the Judge noted that she had persisted in lying about her conduct throughout the proceedings. Her claim to be Betty Natimba was obviously dishonest. ".....Here again we had to listen to increasingly threadbare lies told by you as to why the obvious conclusion that you were Betty Natimba was wrong. I pay no heed to that - nor I am sure did the jury."

10. The Judge noted that she specifically attached herself to an immigration fraud which constituted an aggravating feature and concluded that the least sentence he could pass on her was one of three years in prison. The Judge also made reference in his sentencing remarks to the two previous convictions.
11. On 11 December 2013 the respondent gave notice of her decision to deprive the appellant of her citizenship under section 40 of the British Nationality Act 1981. It was contended that she obtained her status as a British Citizen fraudulently.
12. The respondent also contended that from evidence received from 2004 from the Department of Work and Pensions and its own investigating team, that the appellant claimed Incapacity Benefit from 2004 until 2012. In the benefit form she claimed she was so incapacitated she could hardly move. She had assumed the identity of Betty Natimba and was responsible for an NTL application in that name on 17 November 2005. Those were all matters that she concealed and failed to disclose when she applied for British citizenship at the end of 2007. As a result it was appropriate to deprive her of citizenship as she must have made false assertions of good character [10].
13. She was informed of her right to appeal and was told that if she did not appeal or the appeal is unsuccessful, the respondent would formally deprive her of British Citizenship by Deprivation Order, whereby she will lose her status of British citizenship and the associated rights and benefits – paragraphs 11 and 12 of the notice of decision.
14. The decision letter considered the impact of the deprivation of citizenship, noting that she is no longer a recognised refugee, but stated that there was no immediate intention to remove her and that a separate removal decision would be made should the appeal fail, at which stage she would be able to raise human rights grounds in respect of any removal decision.
15. The appellant appealed the decision, denying in her grounds that she had ever used the identity of Betty Natimba, asserting that the decision to deprive her of British citizenship would breach the respondent's Article 8 obligations.
16. Judge Seelhoff noted [15] that the respondent had indicated in the decision that there would be a separate removal process for her removal from the UK, which would entail considerations of her Article 8 rights. The respondent would be required to consider her claim to be a refugee afresh before she could be removed.
17. He noted that there was some difficulty in obtaining many of the historic documents in this case. Some of the allegations about the appellant's conduct resulted only in sparse material being supplied. A fraud officer's statement, which was commended in the Judge's sentencing remarks, was poorly drafted and unsupported by further evidence confirming the allegations made therein. That document recorded that the appellant claimed benefits between 2004 and 2012 with the only gap being the five months she spent in prison in connection with the false currency issue.

18. It was noted that the appellant's naturalisation application was countersigned by Tessi Busulwa, which was one of the false identities of the ringleader of the fraud, whose reference on the form stated that she had known the appellant for five years.
19. Accordingly, it was asserted that the appellant must have known the ringleader from 2004 and had been actively involved with the fraud throughout that time. It is alleged that the appellant made a fraudulent claim totalling £100,000 in her own right. Further, it was asserted that there was some fraudulent detail relating to her asylum claim as there was no evidence of her ever having sent money to the sons she claimed to have had when she arrived in the UK. There was evidence of her sending money to her brother and mother [22].
20. Judge Seelhoff noted that from the bundle of evidence served by the appellant, there was her statement where she denied involvement in any of the frauds or the matters which led to her conviction. She also claimed she had been suffering from depression and had been trying to locate "her children" (plural) in Uganda. She denied working in any of the false identities including ever having used "Betty Natimba", or having ever done anything wrong [24]. He had regard to the difficulties raised with regard to the production of historic documents.
21. The witness statement of the appellant is short (pages 1-5). She made her application for British citizenship in her name. It was granted to her in her name. The assertion that she was not a person of good character when she obtained British citizenship is incorrect.
22. She acknowledges that she was convicted of the offence of conspiracy to defraud on 1 November 2012, for which she was sentenced to three years' imprisonment.
23. She only served 18 months and has repaid her burden to society. She is very sorry for her actions that led to her being in prison "and continue to try to show that I have changed for the better as a person." She has applied to work as a voluntary worker with a charity. It would be unfair and unjust if she were punished again for a crime that she was convicted of. She has never gone back to Uganda since she came here and has no family or friends to return to there.
24. The current government of Uganda is the same government that persecuted her because of her husband's political opinion. Returning her there would deprive her of her liberty and would lead to her being tortured or killed in breach of her human rights.
25. Her grounds of appeal before the First-tier Tribunal contended that the decision to deprive her of British citizenship is an abuse of the UK's obligations under the European Convention of Human Rights having regard to her private life under Article 8. Her removal would therefore be unlawful. She also denied that she was ever known as "Betty Natimba." She denied having claimed benefits in that name.
26. She did not assert in her grounds that the deprivation would result in her becoming stateless. Nor was any such assertion made in her witness statement

27. Judge Seelhoff directed himself in accordance with the Upper Tribunal's decision in Deliallisi (British citizen: Deprivation appeal: Scope) [2013] (IAC) [14]. He noted that the respondent envisaged '.....a separate removal process for the appellant is removed from the UK" (sic) at which stage her human rights would be considered as well as her claim to be a refugee [15].
28. In his findings, he stated that the task for him was to reconsider the decision and decide whether or not it is correct, taking into account all the circumstances and the evidence. He stated that he has reviewed the papers as well as reading the authorities he was referred to. Contrary to the presenting officer's contention before him that he should disregard Deliallisi, which was "not a well thought out judgment" [30] the Judge found that he was bound by that authority in terms of the approach that he took to his analysis [33].
29. The starting point was a consideration of the appellant's convictions and the findings of the sentencing Judge and his remarks. This was to be treated as a definitive record of the appellant's criminal history. The sentencing Judge had found that she had been part of an extensive fraud and her involvement was so serious that he felt he had no alternative but to impose a sentence of three years' imprisonment. He also found that she was a persistent liar who accepted no responsibility for her actions.
30. Judge Seelhoff noted that although he had no details of her previous convictions beyond knowing that they were for possessing false currency, she received a sentence of 18 months in prison for her first offences which meant that it "must have been a serious matter" [35]. He stated that the appellant is someone who has made a living from crime and who has persisted in her lies about her offending before him as she specifically denied any involvement in the criminal matters for which she had been found guilty by a jury. He accordingly attached minimal weight to anything she said denying responsibility for her criminal conduct [35].
31. There were other details in her recent statements that he referred to, including the claim that she had spent time trying to locate her children (plural) in Uganda whereas in her original asylum claim, she stated she only had one son. Further, it was evident from the DWP report that no evidence was found of her sending money to a son in Uganda, 'suggesting that none existed' [36].
32. He further noted [37] that the appellant's application for naturalisation was countersigned by Tessie Bosulwa, which was alleged to be a false identity used by the ringleader of the fraud. Her naturalisation application form confirmed that it was countersigned by "Tessie Bosulwa" who stated that she had known the appellant for five years. The sentencing remarks in respect of the ringleader of the offence confirmed that Tessie Bosulwa was a false identity that was being used by that person from 1997.
33. The appellant had not answered the contention made in the statement from Sarah Braker the fraud officer at the DWP who had drafted it.

34. Judge Seelhoff found on the balance of probabilities that the reference from Tessie Bosulwa on the appellant's application for naturalisation was "a false one" [37]. He decided not to reconvene the hearing to address 'this point' as it was plain from the papers that the appellant is an habitual liar and he would not attach any weight to anything she might offer by way of explanation and it would not take the case any further [38].
35. The application for naturalisation was therefore evidence that she had been involved with and trusted the person using the Tessie Bosulwa identity for five years as of 2007. That declaration linked the appellant to a fraudster back as far as 2002, suggesting that she would have known that person at the time the NTL application for Betty Natimba was lodged. He accepted that the Betty Natimba identity was used by more than one person. That did not take him very far in exonerating the appellant from using that identity as she had documents in her name and was found to have used that identity in her trial.
36. Judge Seelhoff had regard to the sentencing Judge's finding that her involvement with the fraud for at least one of the identities dated from "2008 at the latest". He considered it likely that her involvement pre-dated that date [41].
37. He was thus satisfied on the balance of probabilities that some false representations were made in respect of the application for naturalisation and that material facts were concealed when she asserted that she was of good character despite the gaps in the evidence served by the respondent.
38. Judge Seelhoff also had regard to the other justification for deprivation of citizenship namely that it was in the public interest. He noted that the appellant had a very poor criminal history. She received a prison sentence of 18 months on one occasion and three years on another. He had regard to the provisions in a deportation context with regard to Article 8. Whilst the appellant was technically not a foreign criminal it could be inferred from the deportation provisions and others that there is a significant public interest in the removal of persons who have another nationality and who have a serious criminal record. She had shown no remorse for her crimes [44].
39. There are other factors weighing against deprivation of citizenship, which he considered [45]. She is a former refugee. Although it would be "inappropriate" to conclude that she still is a refugee, there may well still be some danger to her in being sent back to Uganda. Against that, she had no sign of integrating in the UK. There was no evidence that she had ever lawfully worked here. The criminal behaviour is a significant indicator that she rejects the lawful norms of this society.
40. He had regard to the effect of cancelling British citizenship, thereby denying her the benefits of European citizenship and her right to live anywhere in Europe. There was however nothing before him to show that she has ever travelled to Europe and unlike the appellants in Deliallisi, supra, she had no wider family members who also

held British passports who would be “....impacted as a result of her inability to travel round Europe” [45].

41. In considering the consequences to the appellant of losing her right as a European citizen, he had regard to the public interest of “the wider citizens of Europe as well as those of the UK”. The European interests are likely to mirror those of the UK when depriving someone of citizenship where they are a repeat fraudster.
42. This was a different case from Deliallisi, where the appellant there obtained his status in a false identity but subsequently lived a lawful life paying taxes and contributing to the UK. Here this appellant had actually done significant harm to the UK with her involvement in the fraud that secured several million pounds of improper earnings, a large portion of which was from the public purse. There was therefore an important deterrent value involved. [46]
43. Judge Seelhoff considered the medical evidence, noting that she is suffering from depression and is receiving treatment. The papers at the highest disclosed tuberculosis, depression, some symptoms of PTSD and some suicidal ideation. Deprivation of citizenship is likely to be detrimental to her mental health. However, he found that it is an entirely appropriate step, given the scale of her criminal conduct; it is one that he found to be reasonable and proportionate, particularly given the respondent's “agreement” to give her a fresh right of appeal against any decision to remove or deport her [47].
44. Her removal from the UK is a foreseeable consequence of the decision but not directly foreseeable as the respondent had undertaken to conduct a full review of the Human Rights prior to any removal. [49] He however could not exclude the possibility that her deceit extended to the earlier asylum claim which would need to be comprehensively re-examined before any steps are taken to remove her.
45. Despite significant gaps in the evidence before him regarding the asylum claim, and in respect of the “specifics of the fraud” his overall assessment was that the criminal conduct in this case was very serious and was aggravated by her continuing denial of guilt. Accordingly, the only rational decision would be to deprive her of her citizenship. It would be wholly inappropriate to interfere with the respondent's decision on this occasion [50].

### **The appeal before the Upper Tribunal**

46. The appellant was given permission to appeal to the Upper Tribunal by First-tier Tribunal Judge Andrew. In his decision dated 2 December 2014, he noted that the grounds complained that the Judge did not consider whether the appellant would become stateless if she were deprived of her British citizenship. That failure amounted to an arguable error of law.
47. In the grounds relied on in the application for permission to appeal, it was specifically contended (paragraph 5) that the Immigration Act 2014 states that the Home Secretary must have reasonable grounds for believing the appellant is able to

become a national of another country. The grounds, which are drawn in the first person, contended that the government of President Museevani “from whom I was running away” and in respect of which she was granted full refugee status, is still in power. The Judge therefore erred in law as she is unable to become a citizen of Uganda again and would be stateless if she lost her British citizenship.

48. As already noted, no evidence either factual or legal was produced before the First-tier Tribunal regarding that contention. The appellant had not even relied on that contention as a ground of appeal before the First-tier Tribunal.
49. At the hearing on 13 January 2015, Mr Asiimwe submitted that the Judge had not properly explained that if the citizenship were to be “withdrawn” the logical next step must be to remove her. Not enough attention had been given as to what she would be left with once citizenship is deprived. No regard was had as to whether she would become stateless if deprived of her British citizenship.
50. There are also other unmeritorious contentions, some of which are set out below, but which were not pursued at the hearing.
51. The Judge had breached the Limitation Act 1980 and tried to re-open her case ten years and eight months after it had been heard by the Upper Tribunal. The Judge was therefore biased. The Judge was also “abusing his powers.” The Judge did not mention that she provided evidence to the court regarding the identity of the real Betty Natimba. She repeated that this is evidence of his bias.
52. She contended that the Judge had breached her Article 3 rights. The Judge recognised and accepted that her life may be at risk if returned to Uganda [45] but the Judge is “still advocating for me to be returned to Uganda in paragraph 46.” That shows his bias towards her.
53. The Judge also breached the provisions of the Disability Discrimination Act 1995 when he stated that in order to be able to attach significant weight to evidence from doctors as to the appellant's psychiatric well being, he would want to be confident that they were aware of the appellant's history of sophisticated fraud which included benefit fraud, which could entail deceiving medical professionals. That showed bias as well.
54. Mr Asiimwe submitted that the appellant had “paid for the offence committed.” The “balance of convenience” is in her favour. She is likely to lose her life if returned to Uganda.
55. On behalf of the respondent, Mr Bramble submitted that the decision was in accordance with the decision of the Upper Tribunal in Deliallisi, supra. He referred to the distinction between the appellant in Deliallisi and the current appellant as noted by Judge Seelhoff.



56. He submitted that the question is how far the Judge needed to assess the risk on return. These are matters that 'at the end of the day, might have to be taken into account by the respondent should her appeal fail'. Removal would not be imminent.

### **Assessment**

57. Although there were various grounds raised by the appellant in her application for permission, most of these related to allegations that the Judge was biased, or that the material was sparse.
58. However, the Judge has given ample consideration to those contentions and has given proper reasons why he was satisfied on the balance of probabilities that some false representations had been made in respect of the application for naturalisation, namely that material facts were concealed when the appellant asserted that she was of good character. That finding was made notwithstanding the gaps in evidence served by the respondent in that regard. He found that it had been proved that there was deception used by the appellant.
59. In any event, he had regard to a further justification for deprivation of citizenship, which was in the public interest, and that was her very poor criminal history. She had received prison sentences of 18 months on one occasion and three years on another. There was thus a significant public interest in the removal of persons who have another nationality and who have a serious criminal record. This appellant showed no remorse for her crimes.
60. The Judge also noted factors which weighed against the deprivation of citizenship. One of those was that she was a former refugee. Whilst he found it inappropriate to conclude that she is still a refugee, there may still be danger to her in being sent to Uganda [45].
61. Nor was there any evidence that she had ever lawfully worked in the UK. He had regard to the effect on her of cancelling the benefits of European citizenship. However, there was nothing to show that she had ever travelled to Europe and did not have wider family members who also hold British passports who would be affected by her inability to travel around Europe.
62. He noted that unlike the appellant in Deliallisi, this appellant had actually 'done significant harm' to the UK having regard to her involvement in a fraud which secured several million pounds of improper earnings. A large portion came from the public purse.
63. He also noted that her removal is a foreseeable consequence of the decision but not directly foreseeable as the respondent still has to conduct a full review of the human rights claim prior to any removal.
64. I have had regard to the decision in Deliallisi, supra. An appeal under s.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.

65. Although s.40A of the 1981 Act does not involve any statutory hypothesis that the appellant will be removed from the UK 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.
66. The Tribunal also noted that a person who, immediately before becoming a British citizen, had indefinite leave to remain in the UK, does not automatically become entitled to such leave, upon being deprived of such citizenship.
67. Judge Seelhoff found that her removal from the UK was a foreseeable consequence of this decision, albeit not directly. The appellant in Deliallisi had been in gainful employment for almost all the time in this country. He supported his British wife and two British children who lived with him in West London. In those circumstances, it was extremely unlikely that removal action would be initiated. Apart from the significant dishonesty he displayed in claiming to come from Kosovo there was no suggestion that he was otherwise of bad character.
68. I have also had regard to the decision referred to in Deliallisi, namely, Rottmann v Freistaat Bayern [2010] EUECJ C 135/08 (02 March 2010).
69. In the latter case, a citizen of Austria exercised free movement rights to settle in Germany. He obtained naturalisation in Germany. It was discovered that he failed to disclose in connection with his application that he was subject to criminal investigations in Austria. The German authorities took steps to withdraw his German nationality. Upon becoming naturalised in Germany, he had lost citizenship of Austria, pursuant to the nationality laws of that country.
70. The CJEU held [57] that a Member State whose nationality had been acquired by deception cannot be considered bound, pursuant to Article 17EC, to refrain from withdrawing naturalisation merely because the person concerned had not recovered the nationality of his Member State of origin.
71. It was nevertheless for the national court to determine whether, before such a decision withdrawing naturalisation takes effect, having regard to all the relevant circumstances, observance of the principles of proportionality requires the person concerned to be afforded a reasonable period of time in order to try to recover the nationality of his Member State of origin [58].
72. The appellant has given no evidence either before the First-tier Tribunal or the Upper Tribunal as to whether, on becoming naturalised in Britain, she lost citizenship of Uganda pursuant to any nationality laws of that country.
73. In any event, it is evident that the respondent has not taken any decision relating to her removal.

74. The respondent referred to paragraph 339A of the immigration rules that a person's grant of asylum will be revoked or not renewed if the secretary of state is satisfied that he has acquired a new nationality and enjoys the protection of the country of his new nationality. On that basis, it was pointed out to her that on becoming a British citizen, she ceased to be a refugee in the UK. That remains the case if she is deprived of her British citizenship and she will not be able to apply to reinstate her previous status as a refugee in the UK.
75. Nevertheless, she was informed that it will still be open to her to make a claim in relation to any breach of her human rights, including her right to respect for private and family life under Article 8 ECHR which arises as a result of the decision to remove her from the UK at the time the deprivation order depriving her of her British citizenship was made.
76. It is noted – paragraph 14 - that following the decision to remove, if made, and any appeal against the decision to remove being dismissed, removal directions will then be issued in her name in accordance with s.10 of the Immigration and Asylum Act 1999.
77. In the circumstances, in the event that the appellant has lost citizenship of Uganda pursuant to its nationality laws, observance of the principle of proportionality requires that she be afforded a reasonable period of time in order to try to recover the nationality of that state.
78. It is envisaged therefore that prior to a decision on removal being made, the appellant will be afforded a proper opportunity, if that is indeed the effect of Ugandan nationality laws, to try to recover her nationality there. These, and other human rights claims, will be open to the appellant to make following a decision to remove her from the UK at the time the deprivation order depriving her of her British citizenship is made. She will also have an appeal following a decision to remove her.
79. In the circumstances, I find that the Judge has properly reconsidered the respondent's decision and has reviewed the evidence and documentation before him. He has carefully assessed the factors weighing both for and against the appellant regarding the deprivation of citizenship. The making of the decision did not involve the making of any material error on a point of law.

#### Notice of Decision

The appellant's appeal is dismissed.

No anonymity direction is made.

Signed

Date: 19 February 2015

Deputy Upper Tribunal Judge Mailer