



**Upper Tribunal  
(Immigration and Asylum Chamber)**

**Appeal Number: UI-2022-005873  
DC/50060/2021; IA/04616/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On the 21 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**Secretary of State for the Home Department**

Appellant

**and**

**Anum Ali  
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the appellant: Mr Clarke, Senior Home Office Presenting Officer  
For the respondent: Ms Harvey, Counsel instructed by Turpin Miller

**Heard at Field House on 13 April 2023**

**DECISION AND REASONS**

1. This is an appeal against a decision dated 28 September 2022 of First-tier Tribunal Judge Brannan which allowed Ms Ali's appeal against a deprivation of citizenship decision dated 11 March 2021 made under Section 40(3) of the British Nationality Act 1981 (BNA 1981).
2. For the purposes of this decision I refer to the Secretary of State for the Home Department as the respondent and to Ms Ali as the appellant, reflecting their positions before the First-tier Tribunal.

3. The appellant is a national of India and was born on 30 June 1970. The appellant's name at birth was Nahid Sultana Jilani.
4. The appellant married Sayed Jilani in 1989. She and Mr Jilani came to the UK as visitors in 1999. They came with two of Mr Jilani's children from a previous relationship. The appellant and Mr Jilani had three more children in the UK. It is not necessary to refer to them further here as their circumstances are not material to the error of law decision that has to be made.
5. On 21 May 2002 the appellant made an asylum claim in a false identity. She claimed that she was a Pakistani national named Nahid Ali and that her date of birth was 2 October 1972. She claimed that was in fear of her Pakistani husband. The claim was refused on 16 July 2002. The appellant appealed. She was found credible and her appeal was allowed by Mr Jamieson in a decision issued on 3 June 2003. The appellant accepts that the claim was false.
6. The appellant was granted indefinite leave to remain (ILR) on the basis of the decision of Mr Jamieson. On 9 January 2004 she applied for a travel document in the false identity of Nahid Ali and was issued with a travel document in that identity on 23 January 2004.
7. On 14 July 2004 the appellant obtained a 10 year visit visa in her true identity.
8. On 6 December 2010 the appellant applied to naturalise as a British citizen in the false identity of Nahid Ali. She was granted British citizenship on 2 February 2010.
9. On 19 August 2011 Mr Jilani, using the false identify of Zahid Ali, applied for leave to remain as the partner of the appellant, relying on her status as a British citizen in the identity of Nahid Ali. He was granted leave to remain on this basis on 14 October 2014.
10. Meanwhile, the Department of Work and Pensions (DWP) had become interested in the appellant and Mr Jilani. In 2012, their home was raided whilst the couple were abroad. Documents revealing the identify fraud were discovered.
11. On her return to the UK the appellant was charged with 9 offences of benefit fraud and 5 immigration offences. She pleaded not guilty. She maintained that she had acted at all times under duress because Mr Jilani had been violent towards her and forced her to act illegally. At a trial in March 2013, the jury failed to reach a verdict, that is, it was not the view of a majority of the jury that she was guilty. Put another way, the majority of the jury were in favour of an acquittal.
12. The trial judge, Judge Worsley, made comments after the trial ended. Those comments are set out in paragraph 48 of the decision of Judge Brannan. I do not propose to set them out in full here. Judge Worsley

stated that if the appellant had been found guilty because the jury did not find that her defence of duress was made out, he would still have handed down a suspended sentence as in his view “if it was not duress it came as near to duress as can be the case when someone is guilty”. He also commented that in his view, having read psychology reports and seen the appellant in court, “she was essentially a broken woman and so has been punished by the trial process so far.” Judge Worsley suggested that his comments would probably bind a judge if there was re-trial. There was no re-trial.

13. On 15 May 2013 the appellant changed her name to Anjum Ali, the name she is using in these proceedings.
14. The respondent began deprivation proceedings. The respondent sent the appellant a nullity decision on 4 March 2014, noting that the appellant still had ILR. Her case became caught up in the cohort awaiting resolution from the case of R (Hysaj) v. Secretary of State for the Home Department [2017] UKSC 82.
15. On 3 February 2018 the respondent withdrew the nullity decision and indicated she intended to deprive the appellant of citizenship under Section 40(3) of the British Nationality Act 1981 (the BNA). The appellant made representations arguing that she should not be deprived of British citizenship. On 11 March 2021 the respondent made a decision to deprive the appellant of British citizenship.
16. The appellant appealed the deprivation decision. The appeal came before Judge Brannan on 13 September 2022. Judge Brannan allowed the appeal.
17. The respondent appealed the decision of Judge Brannan and was granted permission to appeal by the Upper Tribunal on 10 January 2023.
18. The respondent brings two main grounds of challenge to the decision of Judge Brannan. They both concern the correct legal assessment that has to be made when considering deprivation of citizenship under s.40(3) of the BNA 1981. The correct legal approach is set out in the head note of Ciceri (deprivation of citizenship appeals: principles) [2021] UKUT 00238 (IAC) and it is expedient to set it out here:

“(1) The Tribunal must first establish whether the relevant condition precedent specified in section 40(2) or (3) of the British Nationality Act 1981 exists for the exercise of the discretion whether to deprive the appellant of British citizenship. In a section 40(3) case, this requires the Tribunal to establish whether citizenship was obtained by one or more of the means specified in that subsection. In answering the condition precedent question, the Tribunal must adopt the approach set out in paragraph 71 of the judgment in Begum, which is to consider whether the Secretary of State has made findings of fact which are unsupported by any evidence or are based on a view of the evidence that could not reasonably be held.

(2) If the relevant condition precedent is established, the Tribunal must determine whether the rights of the appellant or any other relevant person under the ECHR are engaged (usually ECHR Article 8). If they are, the Tribunal must decide for itself whether depriving the appellant of British citizenship would constitute a violation of those rights, contrary to the obligation under section 6 of the Human Rights Act 1998 not to act in a way that is incompatible with the ECHR.

(3) In so doing:

(a) the Tribunal must determine the reasonably foreseeable consequences of deprivation; but it will not be necessary or appropriate for the Tribunal (at least in the usual case) to conduct a proleptic assessment of the likelihood of the appellant being lawfully removed from the United Kingdom; and

(b) any relevant assessment of proportionality is for the Tribunal to make, on the evidence before it (which may not be the same as the evidence considered by the Secretary of State).

(4) In determining proportionality, the Tribunal must pay due regard to the inherent weight that will normally lie on the Secretary of State's side of the scales in the Article 8 balancing exercise, given the importance of maintaining the integrity of British nationality law in the face of attempts by individuals to subvert it by fraudulent conduct.

(5) Any delay by the Secretary of State in making a decision under section 40(2) or (3) may be relevant to the question of whether that decision constitutes a disproportionate interference with Article 8, applying the judgment of Lord Bingham in EB (Kosovo) v Secretary of State for the Home Department [2009] AC 1159. Any period during which the Secretary of State was adopting the (mistaken) stance that the grant of citizenship to the appellant was a nullity will, however, not normally be relevant in assessing the effects of delay by reference to the second and third of Lord Bingham's points in paragraphs 13 to 16 of EB (Kosovo)<sup>1</sup>.

(6) If deprivation would not amount to a breach of section 6 of the 1998 Act, the Tribunal may allow the appeal only if it concludes that the Secretary of State has acted in a way in which no reasonable Secretary of State could have acted; has taken into account some irrelevant matter; has disregarded something which should have been given weight; has been guilty of some procedural impropriety; or has not complied with section 40(4) (which prevents the Secretary of State from making an order to deprive if she is satisfied that the order would make a person stateless).

7) In reaching its conclusions under (6) above, the Tribunal must have regard to the nature of the discretionary power in section 40(2) or (3) and the Secretary of State's responsibility for deciding whether deprivation of citizenship is conducive to the public good."

19. The respondent's first ground maintained that Judge Brannan took an incorrect approach to the assessment of whether the respondent had

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reached a reasonable conclusion that fraud had been used to obtain citizenship. This is the condition precedent assessment set out in paragraph 1 of the head note of Ciceri. The respondent's second ground maintains that the First-tier Tribunal did not conduct an Article 8 ECHR assessment as set out in paragraphs 2-6 of Ciceri.

20. Judge Brannan set out the head note of Ciceri in full in paragraph 42 of his decision but I am unable to conclude that he applied those principles correctly.

21. Before the First-tier Tribunal, the appellant conceded that fraud was used to obtain citizenship and that the condition precedent for the exercise of discretion to deprive under s.40(3) was met. This concession was made in paragraph 6c of the appellant's skeleton argument before the First-tier Tribunal and maintained at the hearing. Judge Brannan stated in paragraph 44 of the decision:

"It is clear and agreed that the condition precedent in section 40(3) of the BNA is met.

22. The respondent was clear in her refusal decision in paragraphs 20 to 25 that the applicant would not have met the good character requirements if she had been truthful when applying for citizenship rather than continuing to conceal the use of the false identity. This was the basis of the respondent's position that the condition precedent provided in s.40(3) of the BNA 1981 that naturalisation must be shown to have been obtained by fraud was met. If Judge Brannan considered that the condition precedent was not met because, in his view, the appellant had acted under duress and for this reason would not have fallen foul of the good character requirements, he could have indicated this to be the case in paragraph 44. He did not. He stated clearly that the condition precedent was met, that is, a clear finding that the respondent's decision on this point was supported by evidence and was based on a view of the evidence that could reasonably be held.

23. As set out in paragraphs 2 to 5 of Ciceri, the judge then had to conduct an Article 8 assessment and decide for himself whether depriving the appellant of citizenship amounted to a breach. In that assessment, having found that the condition precedent was met, the judge had to apply the inherent weight lying on the respondent's side of balance given that the condition precedent was met.

24. The decision does not go on to conduct the Article 8 assessment. As submitted by the respondent in her second ground, the decision does not contain anything capable of showing a clear Article 8 assessment as set out in paragraphs 2 to 5 of Ciceri. In paragraph 44, after finding the condition precedent was met, Judge Brannan does not indicate that he intended to conduct the Article 8 assessment. Instead, he states immediately that the "decisive argument" in front of him was the assessment set out in paragraph 6 of the headnote of Ciceri. That is not

correct. The assessment of whether the respondent had exercised her discretion reasonably as set out in paragraph 6 of the head note of Ciceri is only required if an appellant is unsuccessful in the Article 8 assessment. Ms Harvey was not able to take me to parts of the decision showing that the Article 8 ECHR assessment that was required was conducted. Indeed, in paragraph 82 Judge Brannan suggests that an Article 8 ECHR was not required and was not conducted, stating that the issues of statelessness "... is a relevant consideration in Article 8 on which I could form my own view if required (my emphasis). "

25. The First-tier Tribunal did not take a correct approach in law and was not entitled to proceed directly to an assessment of whether the decision to deprive was one which no reasonable Secretary of State could have made.
26. As indicated in paragraph 44, what the decision does do is go on to consider whether the respondent could be said to have acted reasonably when exercising her decision to deprive. It did not appear to me that such an assessment could be sustainable where there was no intervening Article 8 assessment as part of the evaluation of whether there had been a proper exercise of discretion had to include a failure to show that deprivation would lead to a breach of Article 8. Further, a large part of what the judge goes on to do is conduct an assessment of whether the appellant was under duress when she used the false identity to obtain citizenship. The judge finds that she was; see paragraphs 45 to 63. This leads to a conclusion that she was not "morally culpable"; see paragraphs 65 and 71. The judge found that the respondent was wrong to find otherwise and could not be found to have exercised her discretion reasonably where that was so; see paragraph 66, for example. It was not for the First-tier Tribunal to make findings of fact on whether the appellant was under duress or of good character, however, and substitute those for the view of the respondent. As before, and as set out in paragraph 6 of the head note of Ciceri, the approach taken had to be one of review.
27. The failure to make an assessment that is a review rather than a merits based assessment is again undermined by the finding in paragraph 59 that the respondent had to place significant weight on the remarks of Judge Worsley in the criminal trial and, in the view of the First-tier Tribunal, was not entitled to do otherwise. The First-tier Tribunal substitutes its view of whether the appellant was under duress for that of the respondent. The insistence of the First-tier Tribunal that weight had to be attached to the comments of Judge Worsley is in itself a questionable position to take given that the comments were made at the end of a trial at which no view had been reached by a jury on the appellant's guilt or whether she had been under duress. The incorrect approach to the issue of duress also infects the assessment of statelessness in paragraphs 78 to 82 and undermines the conclusion that the respondent did not exercise her discretion on deprivation correctly.
28. There was also force in the respondent's submission in support of the first ground that in paragraphs 69 to 71, the decision appears to state that

because the respondent was wrong about whether the appellant was subject to duress, she was also wrong to find that the appellant could be considered to be a person of bad character when she failed to disclose the use of a false identity when applying for citizenship. Setting aside whether it was open to the judge to substitute his view on duress and the appellant's character, this part of the decision appears to undermine the earlier, clear finding that the respondent had made out the condition precedent as the appellant would not have been granted citizenship on good character grounds and had acted reasonably in doing so.

29. It was my conclusion that the decision of the First-tier Tribunal disclosed material errors of law on the core issues that had to be decided. None of findings can be preserved. Where that is so it is appropriate for the remaking of the appeal to be made in the First-tier Tribunal. I noted the submission for the appellant that it would be hard for her to have to give evidence again. Given that all issues must be redecided, however, and given that First-tier Tribunal judges are well able to assess how to deal with an appellant's evidence and whether the vulnerable witness guidance should be applied, it remained my view that the correct disposal was for the remaking to take place in the First-tier Tribunal.

**Notice of Decision**

30. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be remade afresh in the First-tier Tribunal.

Signed: S Pitt  
Upper Tribunal Judge Pitt

Date: 18 May 2023