



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DC/00002/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
on 4 July 2018

Decision & Reasons Promulgated  
on 17 July 2018

Before

UPPER TRIBUNAL JUDGE BLUM

Between

OMOBUKOLA [A]  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms A Watterson, Counsel, instructed by David A Grand  
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is a remade appeal pursuant to s.12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007. In an 'error of law' decision promulgated on 27 April 2018 the Upper Tribunal identified material legal errors in the decision of Judge of the First-tier Tribunal Flynn, promulgated on 6 July 2017, in which she dismissed the appellant's appeal against the respondent's decision, dated 29 December 2016, to

deprive her of her British nationality under s.40 of the British Nationality Act 1981 (the 1981 Act), and set that decision aside. The reasons why the First-tier Tribunal fell into legal error are detailed in the error of law decision annexed to this re-made decision.

## Background

2. The appellant was born in Nigeria on 3 July 1975. She initially claimed to have entered the UK on 27 July 2001 but there is no record of her lawful entry. She was issued with Indefinite Leave to Remain (ILR) on 24 July 2002 after paying money to a corrupt Home Office official. The appellant's son was born on 9 July 2004 in the UK. He was registered as a British citizen on 22 July 2015. The appellant submitted an application on 14 January 2008 for naturalisation as a British citizen. Her application was granted on 17 March 2008.
3. On 23 May 2011 the appellant was interviewed under caution by Immigration Officers. On 23 December 2011 the appellant was convicted of making a false statement in pursuit of naturalisation because she knew she did not have lawful ILR. She was sentenced to 36 weeks imprisonment, suspended for 24 months. The Sentencing Judge remarked that the appellant pleaded guilty at the first occasion and made full and frank admissions, acknowledged that her offence was an 'extremely serious matter' and that the appellant did not seek out an illegal means of staying in the country and that the idea was put into her head. The judge stated that the appellant was, "... in a sense – and I stress in a sense – prey and victim of the man who pleaded guilty to this large-scale deception." The judge continued, "I accept that you were vulnerable, I accept that you were tempted and you succumbed to temptation and paid some two and a half thousand pounds in order to get false documents."
4. The appellant then left the UK on an unknown date, she claims in order to visit her sick father. When she re-entered the country on 10 October 2012 she gave Immigration Officers a false name and date of birth and later agreed that she had attempted to facilitate her entry by using deception. On 16 November 2012 the appellant's suspended sentence was activated and she was also sentenced to 8 months imprisonment for possession of a false Nigerian passport.
5. On 13 January 2016 the respondent informed the appellant that she was considering depriving her of her British citizenship pursuant to Section 40(3) of the 1981 Act. Following a letter dated 20 January 2016 from the appellant's legal representative, the respondent decided to deprive the appellant of her British citizenship on 29 December 2016. It is this decision that is the subject of the appeal.

## Documents

6. The respondent's bundle contains, *inter alia*, the appellant's naturalisation application form, copies of her expired Nigerian passports, a transcript of a tape

recorded interview conducted on 23 May 2011, a 'Contact and Residence Order' dated 10 June 2013 issued by the Romford County Court under s.8 of the Children Act 1989 (requiring, *inter alia*, the appellant's son to reside with her at an address in Dagenham from 24 July 2013, for the appellant to have the child for the first half of the mid-term and summer holidays and his father to have him for the 2<sup>nd</sup> half of the mid-term and summer holidays and for the father to have contact with the child every Friday during the school term), the sentencing remarks dated 23 December 2011 and the Order for imprisonment dated 16 November 2012, and the decision dated 29 December 2016.

7. The appellant relies on a small bundle of documents that was before the First-tier Tribunal, including her witness statement signed and dated 24 March 2017, and a letter from the son's school confirming his attendance since 2 September 2015 and noting that he was progressing well. In preparation for the Upper Tribunal's re-making of the appeal the appellant provided a small additional bundle consisting of a handwritten letter sent to the Home Office with her representations dated 20 January 2016, further letters from her son's school dated 22 June 2018, 21 June 2018, 20 March 2018 and 27 November 2017, a letter from the London Borough of Barking and Dagenham dated 21 March 2018 offering the appellant interim accommodation in discharge of the Borough's duty under s.188(1) of the Housing Act 1996, a Notice of Eviction and a Notice of Appointment (with bailiff), both issued in the Romford County Court on 16 February 2018 relating to the appellant, and an Order of Possession of a property occupied by the appellant dated 18 January 2018.

### **The appellant's evidence before the First-tier Tribunal**

8. In her statement dated 24 March 2017 the appellant claimed she married a British citizen in 2000 and obtained entry clearance to join her husband in the UK. He turned out to be a violent man and she left him a year before her entry clearance expired. She then had a brief relationship with another man that resulted in the birth of her son. The appellant stated, "Since shortly after his birth, I have been the sole carer of my son. I do not know where his father is and I have no contact with him." The appellant claimed she became an overstayer. She met a man in church who said he was an immigration officer. She was desperate and, after explaining her situation, he said he could get her ILR on payment of £2,500. She obtained the money and paid him, and he placed the ILR stamp in her passport. She then acquired her naturalisation certificate on 17 March 2008. The appellant then described how she was stopped when returning from Nigeria to the UK in 2011 and how she was eventually prosecuted and pleaded guilty to obtaining property by false representations. The appellant claims that, shortly after her sentence, she received news that her father was seriously ill with cancer and she therefore returned to Nigeria in May 2012 where she remained until his death. She obtained a Nigerian passport and re-entered the UK in November 2012 but was stopped on her arrival in the UK and eventually prosecuted and, after pleading guilty again, sentenced. The appellant described how her son was

registered as a British citizen having resided in the UK for 10 continuous years since his birth, and that she remained her son's sole carer. She regretted her fraud and maintains that her son would be left alone if she were removed. Her son is at school, is settled, is doing well, and all his friends are here. The appellant would not take her son to Nigeria as it is unsafe and he would be without support.

9. In her evidence before the First-tier Tribunal hearing on 9 June 2017 the appellant stated that her son was British and lived with her, that her son's father remarried and lived outside London, and that her son had not seen his father since January 2017 as he had been bullied by his father's stepchildren. The appellant referred to a further court hearing in 2015 when it was agreed that the father would see his son 'once in a while', and she mentioned the involvement of Cafcass, but no documents were provided. The appellant claimed that her son's father left when he was a year old, that the father did nothing at all, and that her son had only limited contact with his father. She claimed the father of her son had never been in her son's life and she did not know where the father lived and had no contact with him. She also claimed she had not seen the father of her son since 2005. The appellant had left her son with her friend, Yvonne, when she went to prison. The appellant said that the father of her son was sentenced to 6 months imprisonment and that he had lied to a court saying she had been deported in order to obtain an order from the court to pick up his son. There was no independent support for these assertions.

### **The hearing**

10. The appellant confirmed and adopted her statement dated 21 March 2017 and her handwritten letter from 2016, and confirmed that her son had not been to Nigeria since a single visit in 2008. In examination-in-chief the appellant said she had contact with the father of her child once in February 2018 and that her son spoke almost every day to his father by phone. He wanted to take his son to his house for the son's birthday. It transpired that the appellant's son was living with his father when the appellant was arrested because he obtained a court order granting him custody. The child remained living with his father following her conviction and imprisonment in 2012. The appellant claimed that someone in Nigeria contacted the father of her child and he was granted custody of the child by a court in the UK. The appellant was asked why her statement made no mention of the period that her son was living with his father. She said she did not think about it and did not think it was necessary. She was also asked why she claimed in her statement that, since shortly after the birth of her son, she has been his 'sole carer'. The appellant's answer was that she did not think it was necessary.
11. The appellant had been living at a friend's house in a private address for 3 years after her release from custody. The appellant was currently living in interim accommodation provided by the Council, a point confirmed by an offer of interim accommodation by the London Borough of Barking & Dagenham dated 21 March

2018. The appellant stated that this accommodation was provided because of her son as she had no right to be in the UK.

12. The appellant confirmed her son was in Year 9 and that she received Child benefit, and that she received financial support from the church and that her mother sent her money from Nigeria. She received Housing benefit when she was in private accommodation and now paid £13.50 a week for her current accommodation.
13. In cross-examination the appellant was again asked why she failed to mention that the father of her son looked after him while she was in prison. The appellant again said she did not believe it was necessary, and then she was not advised. She confirmed she had a lawyer at the time.
14. In response to some clarificatory questions from the Tribunal the appellant said there was in fact no need to go to the family Court in 2015 because of a lack of legal aid, and that the instances of bullying to her son, as described in the First-tier Tribunal hearing, occurred when her son was living with his father in 2013. The appellant said there was no statement from her son as the lawyer advised her that it was not necessary to bring him to the hearing. When asked to describe the consequences of being deprived of British citizenship, the appellant described how her son had been saving up to buy her a perfume. She had to fight for him and had been taking care of him and that, as a result of the deprivation, she could not take care of him or do the things she would want to do with him. There was no re-examination.
15. In his submissions Mr Tarlow said he had already informed Ms Watterson that, if the appeal was dismissed, the appellant would be given some form of Leave To Remain, which he described as 'short bursts of Discretionary Leave'. I asked Mr Tarlow whether he was able, in an official capacity, to confirm that the appellant would be given short periods of LTR if she was ultimately unsuccessful in her appeal. Mr Tarlow confirmed that the appellant would be granted short periods of leave if deprived of her citizenship. He reminded me of the appellant's behaviour and submitted that her citizenship should be revoked in light of that behaviour.
16. In her submissions Ms Watterson confirmed that the area of dispute between the parties revolved around the respondent's exercise of discretion. She invited me to consider the circumstances of the appellant's fraud, the Sentencing Judge's remarks concerning her vulnerability, and her explanation for travelling to see her ill father in Nigeria after her first conviction. With respect to the assessment of the reasonable foreseeable consequences of the deprivation of citizenship, as considered in Deliallisi (British citizen: deprivation appeal: Scope) [2013] UKUT 00439 (IAC), Ms Watterson said she and Mr Tarlok both agreed that the appellant's ultimate removal from the UK was unlikely. There would however, in the short to medium term, be a period of uncertainty. I was referred to the respondent's current policy guidance on deprivation, especially section 55.7.11.6.

It was submitted that the period of limbo that she may endure would adversely impact on the human rights of her and her son, and that her inability to work would impinge on the security and quality of life of her son. She will lose her right to Housing Benefit and may have to fall back on protections based on support contained in the Children Act. The uncertainty of any 'limbo' period, and the lack of firm accommodation were reasonably likely to flow from the deprivation and that the discretion should be exercised in her favour.

17. I reserved my decision.

## Discussion

18. In considering whether the respondent's discretionary decision to deprive the appellant of her British citizenship should be exercised differently I am guided by a number of decisions including Deliallisi (British Citizen: deprivation appeal: Scope) [2013] UKUT 439 (IAC), AB (British Citizenship: deprivation; Deliallisi considered) (Nigeria) [2016] UKUT 451 (IAC), Pirzada (Deprivation of citizenship: general principles) [2017] UKUT 00196 (IAC), and BA (deprivation of citizenship: appeals) [2018] UKUT 00085 (IAC).

19. I remind myself that I must consider afresh the respondent's decision and that this will involve, but is not limited to, Art 8 issues. I am required to determine the reasonably foreseeable consequences of deprivation, and in reaching my decision, I am bound by the requirement in s.55 of the Borders, Citizenship and Immigration Act 2009 to consider, as a primary (although not paramount) consideration, the best interests of the appellant's son. The fact that the respondent has decided in the exercise of his discretion to deprive the appellant of her British citizenship will in practice mean that I can allow the appellant's appeal only if satisfied that the reasonably foreseeable consequences of deprivation would violate the obligations of the UK government under the Human Rights Act 1998 and/or there is some exceptional feature of the case which means the discretion should be exercised differently (BA, at [38], [40] and [44]). In accordance with AB, I must take a view as to whether, from my present vantage point, there is likely to be force in any future challenge that the appellant may bring against a decision to remove. I note that the stronger the potential case, the less likely it will be that the reasonably foreseeable consequences of deprivation will include removal. I note what was said in Deliallisi (at [36]), that, *"In cases of the present kind, the application by the respondent of her policy on deprivation must be taken as indicating where, as a general matter, the respondent considers the balance falls to be struck, as between, on the one hand, the public interest in maintaining the integrity of immigration control and the rights flowing from British citizenship, and, on the other, the interests of the individual concerned and of others likely to be affected by that person's ceasing to be a British citizen."*

20. It has not been suggested by the appellant that her naturalisation as a British citizen was not obtained by fraud or false representation. Her guilty plea in

respect of the offence for which she was sentenced in December 2011 leads to the incontrovertible finding that her naturalisation was obtained by means of fraud or false representation. Nor has it been suggested that the deprivation of citizenship will leave the appellant stateless. She has always been a Nigerian national and there was no evidence before me that she would cease to be a Nigerian national.

21. In determining whether the reasonably foreseeable consequences of the respondent's decision would violate Art 8, and/or in assessing whether there are exceptional features of the case requiring the discretion to be exercised differently, I take into account that the appellant has been convicted on two occasions of offences involving dishonesty. I have considered the Sentencing Judge's remarks in respect of her first conviction in 2011. I note in particular that the Sentencing Judge found the appellant did not seek out illegal means of staying in the UK, that the idea was put into her head and she was "in a sense", prey and a victim, and that the appellant was vulnerable. It is not clear in what sense the Sentencing Judge found the appellant to be vulnerable. There is no independent medical evidence suggesting the appellant has any particular vulnerability, and I presume the appellant was considered vulnerable because she was a single mother living in the UK without lawful basis and therefore vulnerable to exploitation or unscrupulous propositions.
22. The appellant's subsequent conviction in 2012 for using a false passport however indicates that she was still prepared to use dishonesty, to attempt to deceive immigration officers and to undermine the system of immigration control. The appellant claims she returned to Nigeria to be with her cancer-stricken father and remained with him until he died. This assertion, which is also contained in her manuscript letter, is presented as an explanation for her use of the false Nigerian passport that led to her sentence of 8 months imprisonment. Despite the appellant's evidence that her mother continues to reside in Nigeria and provides the appellant with financial support, the appellant has not produced any evidence supporting her father's alleged illness or his death. There is no requirement of corroborative evidence in this jurisdiction and I do not draw an adverse inference based on the absence of any evidence of her father's illness, but I find that the appellant has not proved, on the balance of probabilities, that her father had cancer, or indeed that he is dead.
23. I have concerns with other aspects of the appellant's evidence. Her description of her initial entry and residence in the UK does not accord with the details contained in the decision to deprive her of her British citizenship. In her statement she claims that she married a British citizen in 2000 and obtained entry clearance to join her husband in the UK. She claims she left him a year before her leave expired. The respondent's position is that there is no record of the appellant's arrival in the UK. Although there is a spousal entry clearance vignette in a copy of the appellant's passport, the appellant has not produced any other reliable evidence of her marriage to a British citizen, or that she was ever lawfully granted

entry clearance. Given the appellant's dishonesty in obtaining a false ILR vignette and use of a false Nigerian passport, and the respondent's assertion that there are no Home Office records confirming her arrival in the UK, I reject the appellant's claim that she lawfully entered the UK, or that she was ever married to a British citizen.

24. In her statement the appellant claimed that, since shortly after the birth of her son, she has been his sole carer. This assertion is however inconsistent with her oral evidence that the father of her son had custody of him when she was arrested and then imprisoned. When asked why she did not say that her son lived with his father the appellant said she did not think about it and did not think it was necessary, and later said she was 'not advised'. I do not find this explanation credible. On the appellant's own account her son lived with his father for some months. It is simply not plausible that she would not have realised the importance of given accurate information relating to the care arrangements relating to her son, and his relationship with his father, or that her representatives would not have advised her to be accurate in her statement. I find the appellant deliberately withheld relevant information in her statement in an attempt to present herself as the only carer for her son. The appellant also claimed in her statement to not know where the father of her child was. Yet in her oral evidence before the First-tier Tribunal she stated that her son last saw his father in January 2017 but that he did not want to stay with his father because he was bullied by his father's step-children (in her oral evidence she said this occurred in 2013). This suggests that the appellant did know where the father of her son was. I additionally note the absence of any evidence from the appellant's son in respect of his relationship with his father, and the absence of any independent evidence relating to the same. It is difficult to reach any firm conclusions concerning the relationship between the appellant's son and his father given the paucity of evidence presented to me and the appellant's previous history of deception.
25. It was agreed by both representatives that the appellant's ultimate removal from the UK is unlikely. I agree with their view. Despite the unsatisfactory evidence relating to the relationship between the appellant's son and his father, the evidence that was presented by the appellant suggests that she is currently the principle carer for her son, who was almost 14 years old at the date of the remade hearing, and that he continues to live with her. There was no suggestion from Mr Tarlow that it would be reasonable for a 14-Year-old British citizen child to leave the UK, a country where he has lived his whole life, where he has commenced his GCSE studies, and where he is very likely to have established significant relationships outside his immediate family relationship with his mother, not least with his father. I additionally note that the appellant herself has resided in the UK for 17 years, and that she claims to have worked as a support worker with adults and children suffering from learning difficulties, although little independent evidence of her previous employment was provided. I additionally note that the appellant does not fall within the definition of a 'foreign criminal' contained in



s.117D of the Nationality, Immigration and Asylum Act 2002, and that she is not someone who is subject to the automatic deportation provisions.

26. Significantly, Mr Tarlow indicated, as the agent of the respondent, that the appellant would be granted short periods of LTR if her appeal was not successful. This official indication renders it extremely unlikely that the respondent will seek to remove the appellant, or that she will be living without some form of leave for any significant period of time, particularly having regard to the respondent's duty under s.55 of the Borders, Citizenship and Immigration Act 2009.
27. Ms Watterson however submits that any period of 'limbo' in the short to medium term will have serious consequences on the appellant and her son such as to breach the Art 8 rights of one or the other or both, or to amount to an exceptional feature requiring the respondent's discretion to be exercised differently. Ms Watterson points to the absence of any reference in the current version of the respondent's guidance 'Chapter 55: deprivation and nullity of British citizenship' to the consequences of an unsuccessful appeal. In Deliallisi Upper Tribunal Judge Peter Lane (as he then was) rejected a submission that the appellant in that case would be left in 'limbo' by reference to the version of Chapter 55 then in force, which indicated that, if an appeal against a deprivation decision was unsuccessful, the respondent would make a decision on removal prior to the issue of the deprivation order, thereby ensuring that an individual remains a British citizen until such time that a decision is taken on removal. I accept that the current version of Chapter 55 contains no such provision. The appellant will however remain a British citizen until the issue of a deprivation order. Moreover, having indicated that the appellant will be granted periods of LTR if her appeal is unsuccessful, it appears to me unlikely that the appellant will be left without any lawful immigration status in the short or medium term. I observe in passing that, if the respondent fails to grant her any lawful status within a reasonable period, there is nothing preventing her from issuing judicial review proceedings on the basis that the delay is unlawful.
28. In any event, even if the appellant is without any LTR in the short to medium term, I do not find that this would result in a breach of Art 8, or that it would amount to an exceptional feature. Although she claims in her manuscript letter that she was depressed and had thoughts of ending her life, there is no independent evidence that any short or medium-term uncertainty in respect of her immigration status will have a significant impact on the appellant's mental health or otherwise on her wellbeing, or her ability to provide for the welfare and safety of her son, or that it will have any significant adverse impact on her son. The appellant and her son are currently housed in interim accommodation, but there is no suggestion that they will become destitute as a result of the deprivation of citizenship given the Local Authority's obligations to ensure the welfare of children and the obligations under the Children Act. The appellant explained at the hearing that, in addition to child benefit, she receives help from the church

and that her mother sends her money from Nigeria. There was no suggestion that these sources of support would stop.

29. Nor am I satisfied that being subject to short periods of LTR, which presumably would be renewable, would breach Art 8 or amount to an exceptional feature. Having indicated that the appellant will be granted periods of LTR, and with reference to paragraph 63 of Deliallisi, I consider it very unlikely that the respondent would seek to preclude the appellant from obtaining gainful employment by imposing a 'no work' condition. In any event, I am not satisfied, on the limited evidence provided to me, that there would be any undue hardship even if the appellant was not allowed to work given the statutory duties and authorities relating to destitution. I accept that having to renew periods of leave in the future may be inconvenient, but it is unlikely to be unduly onerous and would be entirely proportionate in relation to the appellant's thoroughly dishonest behaviour and her actions that seriously undermine immigration control. The appellant may also need to apply to obtain a visa when travelling, but I also regard this as a relatively minor inconvenience.
30. I have considered the evidence before me 'in the round', and I have taken into account, in determining how the discretion should be exercised, the passage of time between naturalisation decision and deprivation decision. I have considered the best interests of the appellant's son, albeit hampered by the limited evidence before me. For the reasons I have given in the above paragraphs I am not satisfied that the reasonably foreseeable consequences of the deprivation of the appellant's British citizenship would breach Art 8, or that there is some exceptional feature of the case requiring the discretion to be exercised differently.

### **Notice of Decision**

**The appeal against the decision to deprive the appellant of her British citizenship is dismissed**



16 July 2018

Signed  
Upper Tribunal Judge Blum

Date

# Annex



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DC/00002/2017

## THE IMMIGRATION ACTS

Heard at Field House  
on 24 April 2018

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE BLUM

Between

OMOBUKOLA [A]  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

### Representation:

For the Appellant: Mr A Chakmakjian, Counsel, instructed by David A Grand  
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

## DECISION AND REASONS

1. This is an appeal against the decision of Judge of the First-tier Tribunal Flynn (the judge), promulgated on 6 July 2017, in which she dismissed the appellant's appeal against the respondent's decision dated 29 December 2016 to deprive her of her British nationality under s.40 of the British Nationality Act 1981 (the 1981 Act).

## **Background**

2. The appellant was born in Nigeria on 3 July 1975. She initially claimed to have entered the UK on 27 July 2001 but there is no record of her lawful entry. She was issued with Indefinite Leave to Remain (ILR) on 24 July 2002 after paying money to a corrupt Home Office official. The appellant's son was born on 9 July 2004 in the UK. The appellant submitted an application on 14 January 2008 for naturalisation as a British citizen. Her application was granted on 17 March 2008.
3. On 23 May 2011 the appellant was interviewed under caution by Immigration Officers. On 23 December 2011 the appellant was convicted of making a false statement in pursuit of naturalisation because she knew she did not have lawful ILR. She was sentenced to 36 weeks imprisonment, suspended for 24 months.
4. The appellant left the UK on an unknown date, she claims in order to visit her sick father. When she attempted to re-enter the country on 10 October 2012 she gave Immigration Officers a false name and date of birth and agreed that she had attempted to facilitate her entry by using deception. On 16 November 2012 the appellant's suspended sentence was activated and she was also sentenced to 8 months imprisonment for possession of a false Nigerian passport.
5. On 13 January 2016 the respondent informed the appellant that she was considering depriving her of her British citizenship pursuant to Section 40(3) of the 1981 Act. Following a letter dated 20 January 2016 from the appellant's legal representative, the respondent decided to deprive the appellant of her British citizenship.

## **The decision of the First-tier Tribunal**

6. The judge heard oral evidence from the appellant and considered a small bundle of documents including a witness statement from the appellant signed and dated 24 March 2017, and a letter from the son's school confirming his attendance since 2 September 2015 and noting that he was progressing well.
7. The judge summarised the appellant's evidence. Her son was British and lived with her. Her son's father remarried and lived outside London. The appellant's son had not seen his father since January 2017 as he had been bullied by his father's stepchildren. Although the respondent's bundle contained a copy of a Contact and Residence Order issued by the Romford County Court on 10 June 2013, there was no further documentary evidence relating to contact between the

appellant's son and his father. The appellant claimed that her son had only limited contact with his father.

8. In the respondent's submission it was noted that no removal directions had been issued but that if they were the appellant would be able to make an application for leave, as could anyone without status. The appellant's representative did not dispute that she committed offences but contended that the appellant's son had the right to remain in the UK as a British citizen who was almost 13 years old and that he would be unable to do so without his mother.
9. In her conclusions the judge referred to a concession allegedly made by the appellant's representative that the decision to deprive the appellant of her British nationality was "legally correct". The judge took into account the sentencing remarks dated 23 December 2011 but noted that the appellant reoffended the following year. The judge therefore only attached limited weight to those sentencing remarks. The judge considered the very limited evidence before her relating to the appellant's child and concluded that there was no independent evidence before her as to the child's best interests. The judge found that the appellant was unlikely to be stateless if deprived of her British nationality, and that her son was more likely than not entitled to Nigerian nationality. The judge noted the absence of any probative evidence of the relationship between the appellant's son and his father and found the appellant was an unreliable and incredible witness. At paragraph 61 the judge found there was no basis for concluding that it would be unreasonable to expect the appellant's son to leave the UK with her. The judge concluded that the respondent's decision was in accordance with the law and, in paragraph 65, dismissed the appeal. The judge proceeded to consider what she described as a human rights appeal (paragraph 67) and, applying Deliallisi (British citizen: deprivation appeal: Scope) [2013] UKUT 00439 (IAC), found that it was not reasonably foreseeable that the appellant would be removed (paragraphs 73 and 76). The judge therefore dismissed the appeal "on human rights grounds" (paragraph 77).

### **The grounds of appeal and the parties' submissions**

10. The Grounds of Appeal variously challenged the "concession" allegedly made, the judge's application of Deliallisi, particularly with reference to what were described as inconsistent findings between paragraph 61 and paragraph 71 onwards, and the judge's assessment of the sentencing judge's remarks, the school documents and the appellant's credibility.
11. In granting permission, the Upper Tribunal stated,

It is arguable that the First-tier Tribunal has unfairly misunderstood the nature and extent of the concession made on behalf of the appellant regarding the appropriate approach to the decision to deprive her of her nationality.

The First-tier Tribunal has also arguably made inconsistent findings regarding the prospects of the appellant being removed given her son's lengthy residence in the UK. All grounds are arguable.

12. Mr Chakmakjian focused his submissions on the inconsistency between paragraphs 61 and 73. It was submitted that the judge engaged in unwarranted speculation in saying that further evidence could be provided in a future application and that the judge was not entitled to equate the facts of Deliallisi with the present case in the absence of any satisfactory reasoning. Mr Clarke agreed that the decision was poorly structured and that the judge appeared to conflate a deprivation appeal with a human rights appeal, but submitted that her assessment of the Deliallisi test was unimpeachable and the judge's other errors immaterial.

## Discussion

13. There are several concerning features of the judge's decision that call into question its sustainability. At paragraph 42 the judge refers to s.85(4) of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) as entitling her to take account of any evidence relevant to the substance of the respondent's decision, including evidence post-dating the decision. Section 85 however does not apply as this is not an appeal under Part V of the 2002 Act. The respondent's decision is appealable by virtue of s.40A(1) of the 1981 Act. While the application of s.85 does not have any material bearing on the actual decision under appeal the fact that the judge misunderstood the statutory framework for the appeal gives no confidence that she has approached the appeal in the appropriate manner.
14. The judge's misconception of the appeal framework continues at paragraph 67 where she purports to consider the appellant's human rights appeal, and bears in mind her duty under s.117B of the 2002 Act. There was however no refusal of a human rights claim and therefore no human rights appeal before the judge. The only decision under challenge is the decision of 29 December 2016 to deprive the appellant of her nationality. This is a decision taken under the 1981 Act. In the absence of a refusal of a human rights claim (s.82 of the 2002 Act) the judge had no jurisdiction to consider, as she appears to have done, a human rights appeal.
15. At paragraph 43 the judge claims that the appellant's representative, "... *conceded that the respondent's decision to revoke the appellant's British citizenship under Section 40 (3) of the British Nationality Act 1981 was legally correct.*" It is not clear how the judge reached this conclusion. If the deprivation decision was 'legally correct' then there would be no mileage in the appeal. Yet it is readily apparent that the appeal was advanced on the basis that the deprivation of nationality would breach article 8 and that in reaching her decision the respondent failed to consider her duty under s.55 of the Borders, Citizenship and Immigration Act 2009 (see the rest of paragraph 43). The Grounds content that the appellant's representative only accepted that she had fraudulently obtained her ILR, a point recorded by the

judge at paragraph 37. The miss-recording of a concession suggests that the judge failed to approach the appeal with all due care and attention.

16. The most significant concern however relates to the judge's finding at paragraph 61 that it was not unreasonable to expect the appellant's son to leave the UK with her. This finding was made in the context of the judge's consideration of the exercise of discretion to deprive the appellant of her citizenship (see paragraphs 58 & 65). The judge found there was very little independent evidence relating to the best interests of the appellant's child. She did not find the appellant to be a credible or reliable witness. She found it more likely than not that the appellant's son was entitled to Nigerian citizenship and noted the absence of any further evidence of the son's contact with his father after the Contact and Residence Order made on 10 June 2013. It is pertinent to note that, in respect of her assessment of the exercise of discretion under s.40(3) of the 1981 Act, the judge does not appear to have applied the test in Deliallis. In other words, the judge did not consider whether the reasonably foreseeable consequence of the deprivation would violate the U.K.'s obligations under the Human Rights Act 1998, and in particular article 8. Much of the judge's assessment up until paragraph 65 appears to relate to a standard human rights claim and there is little meaningful assessment of the consequences of deprivation in circumstances where no removal decision has been made.
17. The judge does deal with the test in Deliallis from paragraph 71 onwards in the context of a 'human rights appeal' and concludes, at paragraph 74, that it is very likely that the appellant will be able to provide evidence to support her claim that it is unreasonable to remove her with her son. This finding stands in contrast to her finding at paragraph 61. I appreciate that the judge's conclusion at paragraph 61 was made in the context of very limited evidence of the son's best interests, and that her conclusion at 74 was made in anticipation of stronger evidence being provided in a future application. But the fact remains that the judge failed to apply the Deliallis test in considering the exercise of discretion under s.40(3) and reached contrary conclusions in respect of the reasonableness of the son leaving the UK.
18. I am additionally concerned that the judge failed to give any adequate reasons for concluding, at paragraph 72, that the appellant's circumstances were similar to those in Deliallis, and that she failed to give any adequate reasons for concluding, at paragraph 73, that it was not reasonably foreseeable that the appellant would be removed.
19. I am satisfied that the above errors render the decision unsafe. The appellant can have no confidence that the judge applied the appropriate test when determining the exercise of discretion and in considering what the reasonably foreseeable consequences of deprivation might be.

20. Having considered the representations from the parties I set aside the decision of the First-tier Tribunal and adjourn the hearing to be remade at a further hearing in the Upper Tribunal giving the appellant an opportunity to make an application under rule 15 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

**Notice of Decision**

**The First-tier Tribunal decision is vitiated by material errors of law and is set aside. The case adjourned for a further hearing in the Upper Tribunal to remake the decision.**



24 April 2018

Signed  
Upper Tribunal Judge Blum

Date