IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004320
On appeal from: DC/50184/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 15 August 2023

Before

MRS JUSTICE HILL DBE
Sitting as a Judge of the Upper Tribunal

UPPER TRIBUNAL JUDGE GLEESON

Between

OGAGA ENAGHINOR
aka
PRINCE NAMNO JOSEPH
aka
PRINCE OGAGA ENAGHINOR JOSEPH
(NO ANONYMITY ORDER MADE)

By his Litigation Friend
MR JOSEPH JOHN CHIBUZOR ANEKE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Parminder Saini of Counsel, instructed by MTG Solicitors
For the Respondent: Ms Susana Cunha, a Senior Home Office Presenting Officer

Heard at Field House on 6 July 2023

DECISION AND REASONS

Introduction

1. The appellant challenges the decision of the First-tier Tribunal, promulgated on 22 July 2022, dismissing his appeal against the respondent's 25 June 2021 decision to deprive him of his British citizen status, acquired in a Sierra Leonean identity to which he was not entitled. He is a citizen of Nigeria.

2. For the reasons set out in this decision, we have come to the conclusion that the making of the previous decision involved the making of an error on a point of law. We have remade the decision and dismissed the appeal.

Background

3. The appellant was born on 16 December 1975 in Nigeria. He came to the UK and claimed asylum at port on 18 March 2001. He was 25 years old and said that he was Prince Namno Joseph, of Sierra Leone, who feared the Revolutionary United Front (RUF) who had killed his parents in September 2000, in a room at his family home. He said he ran away, fearing being killed himself. He continued to work as a farmer, which was also his late parents' occupation, and did not leave Sierra Leone until February 2001, some 5 months after their deaths. He travelled through Guinea, with the help of an uncle, spending a month there before coming to the UK. He did not claim asylum in Guinea.

4. The Secretary of State did not believe the appellant's account and on 17 April 2001 his asylum claim was refused. However on 10 May 2001 she granted him exceptional leave to remain (now discretionary leave), given the difficult circumstances in Sierra Leone at the time. On 15 September 2005, she granted him indefinite leave to remain, and on 8 February 2007, British citizen status. All of these steps occurred in the appellant's Sierra Leonean identity.

5. On 11 March 2015, the appellant sought a change of name, reflecting a deed poll (his second), but on 13 August 2015, the respondent refused to allow a change of name.

6. On 30 July 2018, the appellant provided a declaration from his paternal cousin, Mr James Atikporu Oghenovo, confirming that they had met at college in London in 2015 and Mr Oghenovo told the appellant he was a Nigerian citizen and his real name. On 13 August 2018, the appellant made a declaration to the same effect.

7. On 15 November 2019, the respondent informed the appellant that she was investigating the circumstances in which he obtained naturalisation. On 25 June 2021, the respondent gave notice of her decision to deprive the appellant of his British citizenship pursuant to section 40(3) of the British Nationality Act 1981(as amended by the Nationality, Immigration and Asylum Act 2002).

8. The appellant appealed to the First-tier Tribunal.

Dr Raffi's evidence

9. Before the First-tier Tribunal hearing, the appellant obtained two psychiatric reports from Dr Asad Raffi MBChB BSc MRCPsych PG Dip, a Consultant Psychiatrist at Sanctum Healthcare. Dr Raffi is recognised under section 12(2) of the Mental Health Act 1983 as having specialist training in and experience in the diagnosis of mental disorder. He previously worked for Mersey Care NHS Trust and the Priory Group.

10. Dr Raffi's first report is undated but was prepared following a Zoom video call on 10 February 2022. He noted that the appellant has a severe stammer which hampers his communication. He observed that the appellant had been diagnosed in 2015 with mental health issues, described as mixed anxiety and depressive disorder (ICD-10 Code F:412).

11. Dr Raffi considered that to be an inaccurate diagnosis: his opinion was that the correct diagnosis should be complex post-traumatic stress disorder and psychosis. He recommended that the appellant be treated with antipsychotic medication and the appropriate psychological therapy, neither of which the appellant was receiving. The appellant still is not receiving any treatment for his mental health issues.

12. On 24 May 2022, Dr Raffi provided a supplementary report. That was only 3 months later. Again, the report was based on an interview by Zoom video link. Dr Raffi recorded what he had been asked to do: MTG Solicitors said they required the supplementary report 'in order to determine whether Mr Enaghinor has capacity to conduct his appeal at the Home Office'.

13. Dr Raffi indicated that the appellant had been able to consent to the completion of a psychiatric report, understand the purpose of Dr Raffi's role, and to understand why he had been asked to complete the report.

14. Dr Raffi gave his professional opinion as to the appellant's understanding of the immigration tribunal proceedings, and his ability to process information and give instructions to his representatives:

> "3.14 [The appellant] told me that he was not aware of what [an appeal] entailed and could not remember at all.
>
> 3.15 I advised him of what an appeal was and the likely scenario involving the appeal.
>
> 3.16 He struggled to retain the information.
>
> 3.17 He admitted that it was not unusual for him [not] to remember as he had a "low memory".
>
> 3.18 I assessed whether he could weigh up the information provided to him in order to reach a decision and he appeared to struggle to do this.

> 3.19 I also felt that his ability to communicate a decision would be significantly impacted by his speech impediment (Stammer) which exacerbates in its severity when he is faced with a stressful situation.
>
> 3.20 I asked if any adjustments could be made to support him in the appeal process and he felt that there was nothing that might help."

15. In the section marked Opinion and Recommendations, Dr Raffi gave the following robust assessment of the appellant's lack of mental capacity:

> **"…9.2 Capacity to conduct appeal proceedings.**
>
> 9.2.1 It is my opinion that Mr Enaghinor lacks the capacity to conduct appeal proceedings, in relation to giving oral evidence.
>
> 9.2.2 He suffers with a mental disorder which impacts his capacity.
>
> 9.2.3 He is unable to understand information relevant to the appeal process.
>
> 9.2.4 He was unable to retain the information provided to him.
>
> 9.2.5 I did not think he was able to weigh up the information provided to reach a decision.
>
> 9.2.6 He was not able to communicate a decision."

Proceedings before the First-tier Tribunal

16. On 6 July 2022 a Case Management Review ("CMR") was held. The judge conducting the CMR recorded that the appellant did not intend to give evidence at the upcoming hearing "in view of [his] apparent lack of capacity to give oral evidence (see Dr Raffi's Psychiatric Report of 24 May 2022)".

17. The appellant's solicitors did not arrange for a litigation friend to be appointed for him.

18. At the hearing on 6 July 2022, First-tier Tribunal Judge Karbani was presented with Dr Raffi's reports. She asked Counsel for the appellant (Ms Malhotra) whether, given the opinions Dr Raffi had expressed in his second report about the appellant's capacity - a litigation friend was necessary: Counsel took instructions and told the judge that no litigation friend was sought.

19. The appellant did not give evidence before the First-tier Tribunal, on the advice of his representatives. He did rely on his affidavit evidence, which had been prepared and signed between the two reports prepared by Dr Raffi. Mr Joseph Aneke, his good friend, and Ms Justina Okoro, his former partner and the mother of their four children, gave evidence. Both are Nigerian citizens.

20. The parties agreed that there were two issues: whether the respondent had lawfully deprived the appellant of his British citizen status by reference to section 40(3) and the condition precedent it contains; and if so, whether such deprivation breached his right to private and family life under Article 8 ECHR outside the Rules.

21. The First-tier judge was unimpressed by Dr Raffi's evidence and gave little weight to it, both in term of his opinions as to the appellant's diagnosis and credibility and his evidence as to his capacity.

22. Specifically, the judge noted that Dr Raffi's position as to the appellant's capacity had completely changed over the course of his two reports completed within a short space of time without explanation; and that he had not set out the method he had used to check the appellant's capacity or provided any references or detail for his assessment. The judge concluded that the appellant's solicitors' decision not to act on Dr Raffi's opinion by seeking the appointment of a litigation friend was not in keeping with their professional obligations; and that their lack of action undermined the appellant's claim to lack capacity. The judge was not satisfied that the appellant lacked capacity to participate in the appeal proceedings and found that his credibility had been undermined because he chose not to give evidence: [56]-[59] of the Decision.

23. Taking all the evidence in the round, the judge concluded that the respondent had discharged her burden to show that the appellant deliberately misled the Home Office as to his identity; and that the discretion to deprive him of his citizenship should not be exercised differently taking into account the reasonably foreseeable consequences of deprivation and whether it amounted to a disproportionate interference with his Article 8 rights: : [71]-[81] of the Decision.

24. The appellant appealed to the Upper Tribunal.

Permission to appeal

25. The grounds of appeal were settled by Mr Saini.

26. By way of preamble, but expressly not as a ground of appeal, Mr Saini criticised the First-tier Tribunal for failure to apply expressly the recent decisions in Begum, R. (on the application of) v Special Immigration Appeals Commission & Anor [2021] UKSC 7 (26 February 2021) and that of the Upper Tribunal in Ciceri (deprivation of citizenship appeals: principles) Albania [2021] UKUT 238 (IAC) (8 September 2021).

27. The grounds of appeal advanced were that:

> (1) The First-tier judge erred in law in failing to decide whether the respondent had discharged the duty on her to show that the section 40(3) precondition was met, which is expressed as a failure to decide whether this appellant had 'purposely committed deception/fraud';

(2) The judge failed to treat the appellant as a vulnerable adult and should not have placed weight on his election not to give evidence; and that

(3) It was not open to the judge to place very little weight on Dr Raffi's medical evidence.

28. Upper Tribunal Judge Pickup granted permission to appeal on this basis:

> "4. The decision sets out and applies the case law and burden and standard of proof. The judge also considered whether the evidence including expert opinion on the appellant's mental health and other medical evidence meant that his capacity was impaired at the time he provided the false information. The judge concluded that the appellant deliberately misled the respondent as to his identity was open to the judge on the evidence and justified by the extensive cogent reasons set out.
>
> 5. It is arguable that in omitting to consider the up-to-date case law, the First-tier Tribunal may have misdirected itself in the approach to be followed in a deprivation of citizenship case.
>
> 6. It is also arguable whether the judge considered the appellant's innocent explanation without first determining whether the respondent had discharged the burden of proving the condition precedent of fraud.
>
> 7. It is also arguable as to whether the findings as to whether the appellant should be treated as a vulnerable witness are sustainable."

The Upper Tribunal hearing on 23 January 2023 and events thereafter

29. The appeal came before us on 23 January 2023. At the beginning of the hearing, we raised with Mr Saini a preliminary issue. Given Dr Raffi's unequivocal evidence that the appellant could not understand information relevant to the appeal process, retain information provided to him, weigh up information provided to reach a decision, or communicate a decision to his representatives, it was not clear to us how the appellant could be considered to have given instructions to seek permission to appeal to the Upper Tribunal or to pursue that appeal, without the assistance of a litigation friend.

30. We put the case back in the list to enable Mr Saini to take instructions from MTG Solicitors who have represented the appellant throughout. Having taken instructions, Mr Saini informed us that he was instructed that MTG Solicitors remained confident that the appellant had capacity to instruct them and had never lost that capacity; and that should a litigation friend be required, either of the appellant's witnesses stood ready to act in that capacity if appointed.

31. We directed MTG Solicitors to provide an explanation for this sequence of events from the firm's senior partner and, if so advised, the person having conduct of the appeal in that firm. The hearing was adjourned.

32. A letter was duly provided by Mr Malik Asim Saeed, the senior partner of MTG Solicitors. We have set the detail of the letter out in our Decision and Reasons issued on 20 February 2023, to which we refer. We noted at [40] that we remained deeply concerned. The basis of this appeal was that the First-tier judge was not entitled to conclude that little weight could be given to the medical evidence of Dr Raffi, who appears to be both experienced and qualified in the field of psychiatric medicine, with particular reference to traumatised individuals. However, the expert evidence of Dr Raffi was quite clear: he did not consider that the appellant could understand information given to him about his case, retain it, make a decision upon it, or communicate such a decision. That went much further than an inability to testify. We concluded at [45] that the correspondence from MTG Solicitors did not fully address or explain the central issue we highlighted at the hearing, namely the obvious tension between advancing an appeal relying on some parts of an expert report and then professional conduct which seeks to disregard that evidence.

33. We directed that within 14 days the appellant's solicitors should indicate whether they continued to rely on the psychiatric report of Dr Raffi, and if so, whether they were able to continue to act; may apply for the appointment of a litigation friend, if so advised; and/or may apply to vary or replace the grounds of appeal, subject to satisfying the Tribunal that they are properly instructed.

34. By a document dated 2 March 2023, drafted by Mr Saini, the appellant sought to appoint a litigation friend, amend his grounds of appeal and admit a letter from his general medical practitioner. We allowed all these applications for the reasons given in our Order and Directions issued on 28 March 2023. Mr Saini made clear in the document that the appellant no longer relied on Dr Raffi's second report, but did seek to rely on his first.

35. The grounds of appeal were reframed as follows:

> (1) Unlawful approach to assessment of the respondent's burden of proof;
>
> (2) Unlawful assessment of the appellant's vulnerability and election not to give live evidence, and a failure to treat the appellant as a vulnerable adult in any event; and
>
> (3) Unlawful assessment of the expert evidence.

36. We observed that the position regarding the credibility of Dr Raffi's evidence seemed to us likely to be internally contradictory between (2) and (3) but that this was a matter for submissions.

37. The appeal was re-listed for 6 July 2023.

Procedural matters relating to the re-listed hearing

38. **Litigation Friend.** Mr Joseph John Chibuzor Aneke was appointed the appellant's litigation friend following his application dated 2 March 2023. Mr Aneke considered the appellant to be a protected party because:

> "The appellant has a stammer, has difficulties with communication and thus lacks confidence in these circumstances which can make him stressed and anxious when dealing with these legal proceedings."

39. We were satisfied that the appointment of a litigation friend was appropriate in the circumstances.

40. **Mode of hearing.** The hearing took place face to face. We are satisfied that the hearing was completed fairly, with the help and cooperation of both representatives and of the appellant's litigation friend, Mr Joseph Aneke. We are grateful to Mr Aneke, for the invaluable assistance he gave the Upper Tribunal in achieving this, and for having supported the appellant during these proceedings.

41. **Vulnerable appellant.** The appellant is a vulnerable person: he has some mental health difficulties, but also a very serious stammer which was likely to impede his giving evidence to the Tribunal. There was no language difficulty: the appellant speaks English and so does Mr Aneke. There was also no literacy issue: the appellant reads and writes English.

42. By reason of his vulnerability, the appellant is entitled to be treated appropriately, in accordance with the Joint Presidential Guidance No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance.

43. A CMR had been held on 27 April 2023. After consideration of the medical evidence and discussions with the appellant's Counsel, it was agreed that if we allowed the appeal and decided to remake the decision, during his evidence, the appellant would be provided with pen and paper and have the option of writing down his replies. We also agreed that the hearing room would be kept quiet, with a minimum number of persons present, and that the questions asked by both representatives would be kept simple and straightforward.

44. Having given our decision that we had found an error of law in the First-tier Tribunal Judge's decision, we explained to the appellant at the beginning of the remaking part of the hearing that the Upper Tribunal wanted to be able to have his best evidence, to assist us in reaching our decision. We also explained how the day would go. We said that if he needed a break, or did not understand anything, he should ask.

45. The appellant sat between his litigation friend and his wife during his testimony and wrote down almost all of his answers, which his litigation friend read out. That worked very well. We also provided water and gave him a break after the first hour's cross-examination.

46. The appellant confirmed, both after that break and at the end of his evidence, that he had felt comfortable and had been able to give his best evidence to the Upper Tribunal.

47. At the end of the hearing, the Tribunal explained the next steps to the appellant who said that he understood. He will of course have the assistance of his representatives and Counsel in understanding what happens when he receives this decision.

Error of law decision

The *Ciceri* issue

48. As noted above, the first basis on which Upper Tribunal Judge Pickup granted the appellant permission to appeal related to the First-tier Tribunal Judge's apparent failure to follow the approach set out in Begum and Ciceri.

49. This approach is to the effect that on an appeal against a decision to deprive a person of British citizenship under section 40A of the British Nationality Act 1981, such as this, the first stage is for the Tribunal to establish whether the relevant condition precedent specified in section 40(2) or (3) of the 1981 Act existed for the exercise of the discretion whether to deprive the claimant of British citizenship. In a section 40(3) case, that 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 Begum at [71], namely to consider whether the respondent had made findings of fact which were unsupported by any evidence or were based on a view of the evidence that could not reasonably be held.

50. The appellant had not advanced a ground of appeal to this effect, but as he was granted permission to pursue it, we have considered it.

51. The respondent conceded in her Rule 24 response dated 23 November 2022 that the judge had applied the wrong approach in the appellant's case. She accepted that rather than following the Ciceri guidance, the judge had conducted a merits-based assessment. However she contended that this error was not material because after conducting a very detailed assessment of the evidence, the judge had reached the same conclusion as the respondent.

52. In his amended grounds of appeal, Mr Saini applauded the judge for approaching the appeal on a merits-based, pre-Begum basis, without first explaining that Begum was wrongly followed in Ciceri, albeit accepting that the approach was controversial. Noting that the respondent had not cross-appealed to have the decision set aside on this basis, he submitted that it should be taken as read that the appellant's grounds included a

challenge to the correctness of the merits-based approach performed by the judge. However, in oral submissions, he conceded that the error was not material, for the reason given by the respondent.

53. We agree with the parties' analysis: the judge erred by not following the approach set out in Begum and Ciceri, but it was not material to the outcome.

54. In considering the grounds of appeal relied upon, we shall deal first with grounds 1 and 3, on which the appeal does not succeed, and will then set out our reasons for setting aside the decision of the First-tier Tribunal by reference to ground 2.

Ground 1

55. Under this ground Mr Saini contended that the judge had erred in the approach to the respondent's burden of proof. He argued that the judge had begun the analysis by examining the appellant's innocent explanation, without first assessing whether the respondent had discharged the burden of proving the condition precedent of fraud necessary to establish the power to deprive under section 40(3). In oral submissions he argued that the judge had simply recited the respondent's evidence without properly assessing it; and had wrongly combined the respondent's reasoning with her own view.

56. The respondent relied on her Rule 24 response dated 25 January 2023 drafted by Ms Cunha. This was to the effect that the judge had in fact considered the respondent's reasoning for depriving the appellant of his citizenship before considering his explanation. The appellant had accepted using a false identity in his ILR application dated 14 March 2005 (albeit contending that there was an innocent explanation for that, namely that he did not know his identity until 2015). The judge had looked at the other documents provided by the respondent. This was sufficient to shift the burden of proof to the appellant.

57. The judge properly directed herself at [34] of the Decision to the fact that the respondent bears the burden of proof on this issue. The judge then said as follows:

> "35. The respondent's case is that the appellant deliberately gave false details regarding (i) his name and (ii) his place of birth and nationality. The respondent relies on the assertions made in the appellant's asylum claim, application for ILR and for naturalisation. The appellant did not dispute that any such representations were made but submits that there was an innocent explanation for it."

58. The judge then went on to consider the credibility of the appellant's explanation.

59. In our judgment, [35] of the Decision illustrates the judge properly considering the respondent's evidence first, before turning to the appellant's explanation. In circumstances such as this, where the appellant did not dispute using the incorrect details, it was understandable that she dealt with this issue briefly. The focus of the judge's consideration was, naturally and entirely properly, whether the appellant's explanation was one she could accept. There was no error of law in the judge's approach. We therefore dismiss Ground 1.

Ground 3

60. Under this ground Mr Saini contended that the FTT judge had erred in the assessment of Dr Raffi's expert evidence in several respects. He submitted that the judge had failed to explain what it was that Dr Raffi had failed to do which had resulted in his report being given very little weight. It was unclear how the judge could gainsay the expert's diagnosis. While Dr Raffi may not have assessed all of the elements of the credibility in issue, he was entitled to comment, as he had, that the appellant was a credible historian who was not exaggerating his symptoms. Dr Raffi had confirmed his awareness of the duties of an expert and had signed the declaration and statement of truth. His report met the requirements for an expert's report set out in the Practice Direction of the Immigration and Asylum Chamber of the First-tier Tribunal dated 13 May 2022, paragraphs 6.2 to 6.3.

61. The respondent relied on her Rule 24 response dated 11 April 2023, drafted by Ms Willocks-Briscoe as well as the earlier Rule 24 response dated 25 January 2023 drafted by Ms Cunha. She submitted that the judge was required to take a holistic view of the medical evidence. The judge's approach was in accordance with that set out in HA (expert evidence: mental health) Sri Lanka v SSHD [2022] UKUT 000111 at [159]-[162]. Further, the weight to be attached to medical evidence was a matter for the judge: HH (Ethiopia) v Secretary of State for the Home Department [2007] EWCA Civ 306 at [17]-[18].

62. We accept the SSHD's submissions on this issue. HA made the following clear:

> "160. Notwithstanding their limitations, the GP records concerning the individual detail a specific record of presentation and may paint a broader picture of his or her mental health than is available to the expert psychiatrist, particularly where the individual and the GP (and any associated health care professionals) have interacted over a significant period of time, during some of which the individual may not have perceived themselves as being at risk of removal.
>
> 161. Accordingly, as a general matter, GP records are likely to be regarded by the Tribunal as directly relevant to the assessment of the individual's mental health and should be engaged with by the expert in their report. Where the expert's opinion differs from (or might appear, to a layperson, to differ from) the GP records, the expert will

> be expected to say so in the report, as part of their obligations as an expert witness. The Tribunal is unlikely to be satisfied by a report which merely attempts to brush aside the GP records."

63. On that basis, we accept the SSHD's submission that the judge, entirely properly, subjected Dr Raffi's report to a critical analysis, in comparison to the appellant's medical records. The judge helpfully set out the key entries from the medical records at [41]-[46] of the Decision. It was particularly notable that West London Mental Health Services had found in September 2015 that the appellant showed "no indication of psychotic features or cognitive disturbances" and in July 2016 that there was "no evidence of the core features of PTSD". In light of this evidence the judge was entitled to reach the following conclusion:

> "48. Dr Raffi does not make any reference to any diagnostic tool in reaching this conclusion, or explain why he departs from the diagnosis of the West London Mental [Health] Services. I have taken his report in the context of a long medical history which did consider whether the appellant had PTSD, but found 'no evidence of the core features', and diagnosed him and treated him with mixed anxiety and depression. There is no explanation by Dr Raffi for the difference in diagnosis which I can find can be reasonably expected where the appellant has received specialist mental health services already. Dr Raffi does not show any meaningful consideration of the GP records which showed no cognitive impairment in 2015."

64. Further, HA emphasised the following;

> "162. In all cases in which expert evidence is adduced, the Tribunal should be scrupulous in ensuring that the expert has not merely recited their obligations, at the beginning or end of their report, but has actually complied with them in substance. Where there has been significant non-compliance, the Tribunal should say so in terms, in its decision. Furthermore, those giving expert evidence should be aware that the Tribunal is likely to pursue the matter with the relevant regulatory body, in the absence of a satisfactory explanation for the failure."

65. The judge was justified in concluding that although Dr Raffi had concluded that the appellant was a "credible historian" and was not "exaggerating his symptoms", he had not engaged with the key credibility issue advanced by the respondent, namely whether the appellant was unaware that he was an Nigerian national until he met his cousin in 2015, or why he was unable to recall his "principal symptoms" as Dr Raffi had noted at paragraph 6.3 of his second report.

66. The judge was also entitled to conclude that Dr Raffi had not attempted properly to identify the primary cause of any PTSD in the appellant. This was notable given the appellant's complex history that included the trauma he witnessed in Sierra Leone, witnessing the death of his parents, a workplace incident in which he suffered an attack in the street, the impact of his severe stammer, the stress of ongoing immigration

proceedings and the potential impact of (on his account) finding out he was a completely different nationality from his cousin in 2015, despite believing something else all his life: [49] of the Decision.

67. Further, the judge was justified in finding that Dr Raffi had not provided an assessment of the account of how the appellant came to know of his "real" details in 2015, nor provided sufficient explanation of how the appellant's psychosis affected his decision to request a change of details to the respondent: [50] of the Decision.

68. Overall, the judge was not satisfied that Dr Raffi had "sufficiently engaged with his instruction for this appeal, either in his diagnosis or assessing his general credibility including in the context of the appellant's medical history". Citing HA, the judge concluded that very little weight was to be attached to his report: [50] of the Decision. This was an unimpeachable conclusion.

69. We therefore dismiss Ground 3.

Ground 2

70. Under this ground, Mr Saini contended that the judge had unlawfully assessed the appellant's vulnerability and unlawfully failed to treat him as a vulnerable adult. Further, he argued that there had been procedural unfairness in the way in which the judge had made adverse findings about the appellant's election not to give evidence and thus his credibility, without giving him notice of this possibility.

71. He relied on the fact that it had been noted at the CMR that the appellant would not give oral evidence at the hearing in light of his apparent lack of capacity. He contended that it was for this reason that the appellant presumed that the tribunal had accepted that he could and would not give evidence.

72. We have reviewed the record of the CMR. It is clear from it that there had been no judicial decision made about the appellant's capacity. All that had happened was that the judge conducting the CMR had made a note that the appellant did not intend to give evidence in light of Dr Raffi's second report. It appears that in light of this indication, both parties approached the hearing before the judge on the basis that the appellant would not be giving evidence and that little more was said about that issue.

73. The decision in HA had been reported just over 2 months before the hearing in this case. The appellant's representatives should therefore have been well aware that the judge was likely, indeed required, to subject Dr Raffi's evidence to a critical assessment. There was a risk that the evidence would not be accepted in whole or part. This included a risk that the judge would not accept Dr Raffi's evidence as to the appellant's capacity. However the possibility that Dr Raffi's evidence might be rejected by the judge does not seem to have contemplated by the appellant's representatives.

74. We have every sympathy with the judge who conducted this hearing. She was rightly concerned at the lack of appointment of a Litigation Friend for the appellant, as we were. She was faced with a situation where the appellant's representatives were relying on expert evidence to the effect that he lacked capacity but at the same time indicating that no Litigation Friend was necessary. She was also presented with something of a "fait accompli" in the form of the decision that he would not give evidence, as recorded at the CMR. There was no suggestion from the appellant's representatives that they wished to explore any adjustments that could be made for him to enable him to give evidence.

75. However, there is one area of the judge's approach that has troubled us. It is clear from [59] of the Decision that the judge was not only so concerned about the contents of Dr Raffi's evidence that she rejected it in full, but that she then used this as a basis for undermining the appellant's credibility. The appellant's credibility was the central issue on the appeal. It appears that in reliance on what had happened at the CMR, the appellant's team had not considered the possibility of the judge reaching such a conclusion; and the summary of the submissions does not suggest that this possibility had been canvassed in argument. Mr Saini contended that had they been so aware, the outcome might have been different: the appellant could have been advised more fully of the risks of not giving evidence; the issue of adjustments to enable him to give evidence might have been reconsidered and at the very least submissions could have been made to the judge on the issue.

76. We recognise that the requirements of fairness are "very much conditioned by the facts of each case": Secretary of State for the Home Department v Maheshwaran [2002] EWCA Civ 173 at [5]. Bearing in mind the appellant's undoubted vulnerability, and the centrality of his credibility to the appeal, we consider that on the particular facts of this case, fairness required that the appellant be given some indication from the judge of the risk not only that Dr Raffi's evidence as to his capacity would be rejected, but that it would be concluded that he could give evidence, and that adverse findings would be made against him in terms of his credibility as a result of his failure to do so.

77. We reiterate that the guidance in HA is clear. Representatives need to be aware that First-tier Tribunal Judges cannot be expected simply to accept expert reports at face value; and that submission of an expert report brings no guarantee that the judge will accept the expert's view. Further, it is incumbent on those representing vulnerable individuals to follow the directions and guidance set out in the Practice Direction (First-tier and Upper Tribunals: Witnesses) [2009] 1 WLR 332 and the Joint Presidential Guidance Note No 2 of 2010 referred to at [42] above: see the observations of the Court of Appeal in AM (Afghanistan) v Secretary of State for the Home Department [2007] EWCA Civ 1123 at [30].

78. However, we conclude that the procedural unfairness constituted a material error of law in this particular case. Accordingly the appeal succeeds on this basis alone.

Remaking the decision

Deprivation

79. The deprivation decision is dated 25 June 2021. It states that the appellant's genuine identity is Ogaga Enaghinor, born 16 December 1975 in Ughelli Nigeria. It identifies three false identities: Prince Ogaga Enaghinor Joseph, Prince Namno Joseph, and Joseph Ogaga, all born in Mende, Sierra Leone.

80. The deprivation letter recognises at [5] that an innocent mistake does not give rise to the power to order deprivation under section 40 of the British Nationality Act 1981. Concealment of a material fact must have had a direct bearing on the decision to register or issue a certificate of naturalisation. Long residence is not normally a reason not to deprive. Complicity is assumed unless 'sufficient evidence is provided by the individual in question as part of the investigations process'. The standard of proof is the civil standard of balance of probabilities.

81. The appellant's account is set out. He claimed to have been unaware of his nationality because of the difficult life the family led in Sierra Leone, and his parents' illiteracy. He had no idea why his previous representative had used the wrong name when applying for naturalisation.

82. The respondent did not accept the appellant's explanation. She was satisfied that he had used the Sierra Leonean identities to obtain first leave to remain, then indefinite leave to remain and finally naturalisation and that the deceit, used and maintained over time, indicated that the appellant was not of good character and that deprivation was appropriate.

83. The appellant appealed to the First-tier Tribunal.

First-tier Tribunal decision and remaking process

84. We refer to our summary of the background, the proceedings before the First-tier Tribunal Judge, and her Decision as set out above.

85. The judge did not consider that she could place much, if any, weight on Dr Raffi's report, and we have upheld that finding. She also found that the respondent had discharged the primary evidential requirement on her of showing fraud, and we have upheld that finding. The Article 8 ECHR findings have not been put in issue in the grounds of appeal.

86. The judge found that the solicitors' decision not to seek the appointment of a litigation friend was 'not in keeping with their professional obligations' and undermined the appellant's claim to lack capacity. She found that his failure to give evidence damaged his credibility. We have found that she

should have warned the appellant and his representatives that if he did not give evidence, she might take that view. It is that part of the decision which needs to be remade, with the evidence before us today.

87. Judge Karbani dismissed the appeal. The appellant appealed to the Upper Tribunal.

88. Having set aside the decision of the First-tier Tribunal as it relates to the credibility of the appellant's account, we now proceed to remake it on the narrow issue of whether he has provided to the respondent an innocent explanation such that it was not open to her to deprive him of his citizenship.

89. We remind ourselves that, applying *Begum* and *Ciceri,* where the First-tier Tribunal has found that deprivation would not be disproportionate by reference to Article 8 ECHR, the Tribunal's role is supervisory only. The Upper Tribunal may interfere with the deprivation decision in the following, limited circumstances:

> "(6) … 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."

That is the basis on which we approach remaking the decision in this appeal.

Evidence before the Upper Tribunal

90. We were provided with a stitched bundle, running to 674 pages, and have had regard to all the evidence therein to which the parties took us during the hearing and to such other parts of the bundle as we consider relevant to the task in hand. The following relevant documents were before the respondent when she made her deprivation decision.

Documents

91. The appellant has been the subject of two deeds poll, changing his name. The first, in 2005, changed his name from Prince Namno Joseph to Prince Ogaga Enaghinor Joseph. That deed is not before us, though the respondent's decision letter dated 25 June 2021 indicates that it was seen by the case worker on 3 October 2006, when the appellant submitted his naturalisation application.

92. The appellant was naturalised on 8 February 2007, as Prince Ogaga Enaghinor Joseph. The naturalisation certificate records a different name at birth, Prince Namno Joseph, and his place of birth as Mende, Sierra Leone.

93. The second deed poll is in the bundle. It is dated 5 March 2015. It changes the appellant's name again, this time from Prince Ogaga Enaghinor Joseph to Ogaga Enaghinor.

94. The appellant produces an attestation of birth dated 3 June 2015 from the National Population Commission of Nigeria (the register of births, marriages, deaths, divorces, etc). It was issued by the High Court of Justice in Delta State and records that Ogaga Enaghinor was born in Ughelli in Ughelli North on 16 December 1975, to Adairie Enaghinor from Ughelli (his father) and Lady Isaac Joseph from Mende, Sierra Leone. The certificate states that the appellant is an 'indigene of Ughelli in Ughelli North Local Government area of Delta State'. The appellant now accepts that this is his national and regional origin, not Mende, Sierra Leone.

95. The 2015 attestation of birth was based on a statutory declaration made at the High Court in Ughelli on the same day, 3 June 2015, by the appellant's cousin, Osemwenkhae Josephine, who described herself as a Christian, a Nigerian citizen, and a public servant; she may be a police officer, as she lives in the Obalende Police Barrack in Ikoyi-Lagos, Lagos State.

Dr Asad Raffi's report

96. Dr Asad Raffi MBChB BSc MRCPsych PG Dip, Consultant Psychiatrist, provided a medical report, undated but based on a zoom call on 10 February 2022. In light of the indication from the appellant that he would not rely on Dr Raffi's second report, as noted above, we have had no regard to it.

97. In his February 2022 psychological report, Dr Raffi set out his qualifications and noted that he had received special training in and experience of the diagnosis of mental disorder and was recognised under section 12(2) of the Mental Health Act 1983. His instructions were limited to the appellant's capacity in 2015, when he provided information to the respondent resulting in the decision to deprive him of his British citizen status, and to set out his current medical condition, his date of diagnosis, the treatment currently being received, the severity of the condition, and so forth.

98. The appellant's solicitors instructed Dr Raffi that:

> "1.3 The purpose of the report is to understand why our client reported what he did to the Home Office without any legal advice, whether he is able to give instructions or not and whether he will follow what is going on during his appeal proceedings."

99. Dr Raffi had access to the decision letter, the appellant's GP records, a letter dated 25 August 2015 containing the outcome of assessment and initial care plan, NHS letters dated 2 March 2016 and 17 March 2017, and a psychology discharge report dated May 2018. We note that the GP records included in the bundle begin in 2015, when the appellant went to a new surgery. There is nothing before that.

100. After setting out the appellant's history, Dr Raffi recorded that he was a tall black gentleman of African descent, who spoke with a regionalised accent consistent with the region of his origins (i.e. Nigeria). He was appropriately dressed, engaging and cooperative. Dr Raffi considered him to be a credible historian, although there were significant gaps in the appellant's memory. His English language repertoire was limited but Dr Raffi did not consider that the appellant was exaggerating his mental health symptoms.

101. Dr Raffi noted a significant stammer, made worse by stress. The appellant had reasonable insight into his condition and described symptoms suggestive of pervasive low mood and depression, as well as flashbacks, bad dreams, and intrusive thoughts. The appellant was hypervigilant, with associated symptoms of panic and anxiety. There was evidence of visual and auditory hallucinations, and paranoid and persecution symptoms, suggesting a psychotic illness.

102. Dr Raffi noted that the appellant's mental health issues were not diagnosed until 2015. The appellant was not receiving any support, treatment or active care coordination. Dr Raffi considered that he had complex post-traumatic stress disorder and psychosis and needed both psychological therapy and antipsychotic medication. He should be urgently re-referred back to mental health services. If the appellant remained untreated, his prognosis was very poor. His main carer was his supportive ex-partner. He would need significant ongoing support to improve his prognosis and his mental health. At present, he only had his GP's support.

103. Dr Raffi went further. He said that he considered that in 2015, when the appellant provided evidence to the Home Office, he lacked capacity as he was labouring under the effects of a (recently diagnosed) psychotic illness. With adequate adjustments, and support, he would be able to participate meaningfully in the appeal proceedings before the First-tier Tribunal.

104. Dr Raffi's final response was as follows:

> "9.16 What effect the deprivation of our client's British Citizenship could have on wellbeing? I fear that deportation will inevitably lead to a further relapse and deterioration in his mental state, which may result in an escalation of risk, suicidal ideation and ultimately death."

The answer does not appear to relate to the question asked, which concerned deprivation of citizenship, not deportation.

Dr Veian Masum's letter (appellant's GP)

105. The appellant produced for the Upper Tribunal a letter dated 23 February 2023 from his general medical practitioner, Dr Veian Masum at The Warren Practice in Hayes, Middlesex. It is very brief and may be cited in its entirety:

> "This letter is to confirm that Ogaga can get very stressed and anxious when he is in a noisy place and surrounded by people. However, if alone and in calm surroundings, he is able to retain information and has the capacity to make decisions."

106. There are a number of other documents about the appellant's stammer, which are not now germane to what we have to consider, appropriate adjustments having been made at the hearing.

Appellant's witnesses

107. We had witness statements from the appellant's partner, Ms Justina Okoro, and from Mr Aneke, which were prepared for the First-tier Tribunal, because the appellant did not give evidence: they were the only witnesses on his behalf.

108. We heard oral evidence from Mr Aneke and from the appellant (with Mr Aneke's assistance as litigation friend).

Justina Okoro's evidence

109. Ms Okoro's witness statement dated 22 April 2022 for the First-tier Tribunal hearing set out the appellant's relationship with his four children and with her. He is clearly a loving father, albeit the relationship has ended, but he does not live with her or his children.

110. Ms Okoro supports the family from her work as a cleaner, and they receive some benefits: the appellant is not permitted to work and feels that he has failed his family by not supporting them financially. The cost of living has skyrocketed and his help in looking after the children when she is working is essential, as she could not afford childcare.

111. The appellant talks to himself and is constantly anxious. The family simply want the proceedings to be over so that he can recover, move on with his life, and eventually get back on his feet. Ms Okoro asked the First-tier Tribunal to allow the appeal.

Joseph Aneke's evidence

112. Mr Aneke's witness statement was dated 26 April 2022. In it, he said he met the appellant, whom he referred to as Ogaga Enaghinor, and Ms Okoro, at church in 2010. He and his family considered them to be close friends. Mr Aneke was also the appellant's recovery officer through Hestia

Mental Health Community Recovery (Hestia), the appellant having been referred to Hestia in 2014 when living in Hounslow.

113. Mr Aneke set out what the appellant had told him about his knowledge of his nationality and name. Mr Aneke encouraged him to rectify his naturalisation certificate, and to change his name by deed poll (the 2015 change of name). The Home Office was helpful initially, and the appellant was able to change his driving licence to Ogaga Enaghinor. They advised him to apply for a new passport to reflect the change, but HM Passport Office required him to change his details 'with all the appropriate authorities' before they would consider an application for a British passport in the Ogaga Enaghinor identity.

114. Mr Aneke said this:

> "I hope the Court can see that [the appellant] was not being deceptive by any means, and simply thought he was doing the right thing by informing the Home Office of the change in his name and place of birth. It is sad to see that he is being punished as such, and this ongoing matter has taken a toll on his wellbeing, especially his mental health."

115. Mr Aneke's witness statement concluded with a request for the appeal to be allowed so that the appellant could continue to live in the UK with his family members.

116. We heard Mr Aneke's oral evidence first, so that he would be able to assist the appellant during his evidence. After adopting his witness statement, he was tendered for cross-examination.

117. In cross-examination, Mr Aneke confirmed that he had not met the appellant until 2010. He had never known him in his Namno Joseph identity, which the appellant changed in 2005 by deed poll. When he met him in 2010, Mr Aneke did not realise that the appellant, like himself, was Nigerian.

118. Mr Aneke confirmed that he had encouraged the appellant to put right his identity, in 2015. Sierra Leone and Nigeria both had many languages, but each had a pidgin English. Sierra Leone was smaller than Nigeria: he had been there three times, when he was cabin crew.

119. Mr Aneke was Nigerian and the appellant spoke Nigerian pidgin English. Mr Aneke knew the appellant was Nigerian by the way he spoke.

120. In re-examination, Mr Aneke said that even when he met the appellant in 2010, he sounded Nigerian. Pidgin English was the only language they spoke together: Sierra Leone and Liberia, as smaller countries, had their own version, but all three pidgins were similar and people from all three countries could understand one another. Mr Aneke then said that the appellant's parents were from Benin. He was not asked any further questions about this remark.

Appellant's evidence

121. The appellant adopted his witness statements. His second witness statement related to Article 8 ECHR: the Article 8 element of the First-tier Tribunal decision had not been challenged and he did not rely on that statement. We therefore summarise only his first witness statement, which was dated 18 February 2022.

122. In his statement, the appellant said he had been born in Ughelli, Nigeria, on 16 December 1975. He is 47 years old. When he was born in Nigeria, the National Population Commission (NPC) did not issue birth certificates and he did not have one. He had provided an attested letter from the NPC confirming his place and date of birth. The lack of any additional corroboration was outside his control.

123. The appellant said he lived in Nigeria until he was 8 years old, when the family moved to Sierra Leone. In 2000, when he would have been 25 years old, his parents were killed in Sierra Leone during the civil war there. The relationship between his parents was volatile, with his father often disappearing for extended periods of time. He still suffered flashbacks and nightmares as a consequence of his childhood and the civil war in Sierra Leone.

124. The appellant blamed Dr Raffi for errors in the history he gave to him, and his former solicitors for completing his naturalisation application wrongly, referring to the name of the appellant's father as Prince Enaghinor Joseph, not Adairie Enaghinor, the name which appeared on the NPC attestation. He could not recall the answers he gave in his asylum screening interview: it was more than 20 years ago and if there were errors in what he said then, they were simply mistakes. He was not trying to deceive the respondent.

125. The appellant said that his first deed poll, in 2006, was undertaken so that he would have his father's name and not that of his maternal grandfather. He did not use the name Prince Namno Joseph (the name adopted in the 2006 deed) 'solely to deceive the Home Office'.

126. As a result of the trauma he had suffered, the appellant had mental health problems and relied on help from friends, family or professionals. The errors already mentioned were misunderstandings by them. The appellant genuinely believed what his naturalisation said, that he was a Sierra Leonean called Prince Ogaga Enaghinor Joseph, born in Mende, Sierra Leone.

127. On 16 February 2015, the appellant said he met his cousin (described in his witness statement simply as 'James', but in the refusal letter as James Atikporu Oghenovo) at the West London College of Business and Management Sciences. They talked about family, and Mr Oghenovo told the appellant his Nigerian name and place of birth, which his parents had never mentioned. In Sierra Leone, they were just focusing on survival on a daily basis. He set out to amend the information held by the Home Office,

and the present proceedings were the outcome. He denied having obtained his British citizen status fraudulently.

128. In cross-examination, the appellant said he had not given the right name and nationality on arrival because he did not know them. He believed his cousin James Oghenovo's account of his background when he met him in 2015, because his father was born in Nigeria. He had not been close to Mr Oghenovo previously, indeed they had only met twice. Mr Oghenovo was the son of the appellant's paternal uncle, and was also from Nigeria. Mr Oghenovo told the appellant he knew him when he was small, described the appellant's parents, and that the appellant stammered a lot. Everything he said about the appellant was true, which was why he believed Mr Oghenovo.

129. The appellant had lost a mobile phone with Mr Oghenovo's details on it and could not contact him anymore. He had not asked Mr Oghenovo to give evidence at the First-tier Tribunal or Upper Tribunal hearings.

130. Namno Joseph was the name the appellant's uncle used to bring him to the UK. He could not remember why he had not told the respondent it was not his real name: he was vulnerable, having gone through a lot of trauma, and not in his right mind. Also, nobody asked him that question.

131. The 2006 deed poll was so that the appellant could have the name of his father's family, not his mother's, but he kept the family name as Joseph, because at that time he did not want to completely remove his mother's details from his name. His parents normally called him Prince Ogaga Enaghinor. The 2006 deed poll would be with the appellant's previous representatives, Lighthouse Solicitors. He did not have it himself.

132. Following a 10 minute break, the appellant confirmed he was content with the arrangements to accommodate his vulnerability and had felt comfortable giving his evidence thus far. When cross-examination resumed, he was asked why he changed his name again in 2015: he said he was confused. He did have a solicitor and the appellant now asserted, for the first time, that his solicitor completed all the forms without going over them with him. He was asked to sign the form, and did so. He did not tell his solicitors that he had mental health problems and was confused in 2006.

133. The appellant said that he had never told the Home Office that the document was not read back to him. He had never deceived the Home Office. He had never read a document which explained how to get British citizen status.

134. The appellant could not remember whether he had a solicitor in 2001 when he applied for asylum in the UK. He did not know what he was signing on 14 March 2005. He could read English now, but not before. He could not read it in 2005 or in 2006: his solicitors did everything for him. The appellant had not read the deed poll in 2005, his solicitor did it for him. He had understood and read the second deed poll in 2015.

135. There was no re-examination or questions from the Tribunal.

Submissions

136. The oral and written submissions at the hearing are a matter of record and need not be set out in full here. For the respondent, Ms Cunha argued that there was no public law error in the deprivation decision. The appellant had signed the naturalisation application and attested that he was of good character, which he was not.

137. His evidence now that he did not know his country of origin, and his very late assertion that he could not read in 2005/2006 (when he would have been 30/31 years old) had not been raised before the First-tier Tribunal or to the respondent at any previous time.

138. The appellant had a stutter and psychiatric problems which were attributable to being attacked at work in the UK. His mental health post-dated his asylum application and the naturalisation: the incident occurred in March 2016 (see First-tier Tribunal decision at [38]).

139. The appellant had entered the UK with his uncle, intending to travel on to the United States. His account of his parents' deaths at the hands of the RUF diverged in different versions. The appellant now said his solicitors had invented that account, which was not credible. He knew exactly what he was doing. When he made his deed poll in 2015, he had already made the change in his name. The Upper Tribunal should not suspend its disbelief, as the appellant's account was not true or plausible.

140. There was no evidence from the cousin, Mr Oghenovo. The appellant's evidence should not be given weight as it was inconsistent and lacked credibility. The Secretary of State's decision had been open to her on the evidence before her and the appeal she be dismissed.

141. For the appellant, Mr Saini relied on his detailed grounds of appeal before the First-tier Tribunal and invited us to find the appellant's evidence to be credible and consistent. The appellant spoke English at the asylum interview, and Mr Aneke in 2010 did not know if he was Sierra Leonean or Nigerian. Mr Aneke's evidence was that the appellant spoke no particular dialect indicative of a transient migration. The asylum interview was not a proper basis for retrospective criticism.

142. Mr Saini accepted that there had been two bizarre changes of name, the first before the naturalisation but after indefinite leave to remain had been granted. The appellant had nothing to gain by changing his name in 2005. He had been naturalised in 2007, and again, he had nothing to gain by disclosing his different name and nationality some 8 years later in 2015. That spoke to the veracity of his account.

143. The name the appellant used was a hybrid, neither obviously Sierra Leonean or Nigerian. Culturally, in Nigeria the use of the father's name was important: people in Africa could not be taken to know how to get

asylum in the UK, and the appellant had claimed asylum at port. Mr Saini asked us to find that the respondent's section 40(3) decision was erroneous and allow the appeal.

144. We reserved our decision, which we now give.

Discussion

145. We reminded ourselves of the names used by the appellant over time:

- **29 March 2001:** Prince Namno JOSEPH, Sierra Leone (asylum interview). The appellant signed the interview record just 'Namno'.
- **31 March 2005:** Prince Namno JOSEPH, Sierra Leone (indefinite leave to remain application).
- **26 September 2006:** Prince Ogaga Enaghinor JOSEPH (naturalisation application), Sierra Leone. The appellant's name had been changed by deed poll in 2005 from Prince Namno Joseph to Prince Ogaga Enaghinor Joseph. He showed the case worker the deed poll. His father's name was given as Prince Enaghinor Joseph, Sierra Leone.
- **30 October 2014 :** Prince JOSEPH (letter from Mr Aneke, then a key worker with Hounslow Community Mental Health Resource service). Mr Aneke considered that the appellant had bipolar syndrome, avoidance personality disorder, general personality disorder and 'post-traumatic personality disorder' all due to 'the experiences back in Africa', which he considered should be inserted in the appellant's medical records. We do not have access to the pre-2015 records.
- **5 March 2015:** Ogaga ENAGHINOR (second deed poll).
- **3 June 2015:** Ogaga ENAGHINOR, Nigeria (NPC attestation of birth)
- **2015:** Ogaga ENAGHINOR, Nigeria (passport application).
- **May 2018:** Ogaga ENAGHINOR (psychology discharge, following 20 sessions, of which the appellant attended 16).
- **30 July 2018:** Ogaga ENAGHINOR, Nigeria (solemn declaration by James Oghenovo confirming the meeting in February 2015 at the London College of Business and Management Sciences).
- **13 August 2018:** Ogaga ENAGHINOR, Nigeria (solemn declaration by the appellant confirming meeting with James Oghenovo in February 2015, when he told the appellant of his Nigerian name and origin).

146. We are satisfied that the respondent has discharged the primary burden upon her of showing the condition precedent of fraud. We have considered whether the appellant has shown an innocent explanation for the deceit which was maintained over 17 years post-entry. We do not find that he has.

147. The appellant was an adult when he entered the UK in 2001 (he would have been 25 years old then). We do not find it credible, to any standard, that he would have been unaware of his family background.

148. The appellant's account of his parents' deaths varied and evolved across his various accounts, and his late assertion that he had been unable to read English (although he spoke it at interview) and that his solicitors simply invented the factual matrix in his original application does the appellant no credit. We do not believe it. We give very little weight to Dr Raffi's evidence, but we note that the account of the appellant's history which he recorded differs from other accounts given by the appellant, and that when this was put to him, the appellant blamed Dr Raffi.

149. Nor are we persuaded by Mr Saini's assertion that the appellant had nothing to gain by the second deed poll. There might be many reasons for his wishing to resume his real name and nationality, having once achieved British citizen status.

150. We remind ourselves that Mr Aneke, who met the appellant in 2010, said that the appellant spoke Nigerian pidgin English, although he later said that three pidgins from Nigeria, Sierra Leone and Liberia were mutually comprehensible. We remind ourselves that Mr Aneke's evidence was that he "knew the appellant was Nigerian by the way he spoke." Mr Aneke is himself Nigerian and would know whether it was a Nigerian pidgin or one from Sierra Leone or Liberia.

151. We reject the appellant's account of his meeting with Mr Oghenovo in 2015, only for the second or third time in his life, and having learned of his nationality for the first time from that source. We note that the appellant did not seek to rectify his false name and nationality for a further three years after that alleged conversation. We place weight on the absence of any witness statement or appearance by Mr Oghenovo, who has conveniently disappeared.

152. We are satisfied that the respondent's decision was open to her on the evidence before her and that there is no public law error therein. This appeal must therefore fail.

Notice of Decision

153. For the foregoing reasons, our decision is as follows:

The making of the previous decision involved the making of an error on a point of law.
We set aside the previous decision. We remake the decision by dismissing the appeal.

Judith A J C Gleeson
Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 1 August 2023