UT neutral citation number: [2023] UKUT 00115 (IAC)

Chimi (deprivation appeals; scope and evidence) Cameroon

Upper Tribunal
(Immigration and Asylum Chamber)

Heard at Coventry Combined Court & Field House

THE IMMIGRATION ACTS

Heard on 16th and 22nd February 2023
Promulgated on 19 April 2023

Before

THE HON. MR JUSTICE DOVE, PRESIDENT
UPPER TRIBUNAL JUDGE BLUNDELL

Between

REINE CHIMI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss Rutherford, instructed by BHB Law
For the Respondent: Mr Clarke, Senior Presenting Officer

(1) A Tribunal determining an appeal against a decision taken by the respondent under s40(2) or s40(3) of the British Nationality Act 1981 should consider the following questions:

(a) Did the Secretary of State materially err in law when she decided that the condition precedent in s40(2) or s40(3) of the British Nationality Act 1981 was satisfied? If so, the appeal falls to be allowed. If not,

(b) Did the Secretary of State materially err in law when she decided to exercise her discretion to deprive the appellant of British citizenship? If so, the appeal falls to be allowed. If not,

(c) Weighing the lawfully determined deprivation decision against the reasonably foreseeable consequences for the appellant, is the decision unlawful under s6 of the Human Rights Act 1998? If so, the appeal falls to be allowed on human rights grounds. If not, the appeal falls to be dismissed.

(2) In considering questions (1)(a) and (b), the Tribunal must only consider evidence which was before the Secretary of State or which is otherwise relevant to establishing a pleaded error of law in the decision under challenge. Insofar as Berdica [2022] UKUT 276 (IAC) suggests otherwise, it should not be followed.

(3) In considering question (c), the Tribunal may consider evidence which was not before the Secretary of State but, in doing so, it may not revisit the conclusions it reached in respect of questions (1)(a) and (b).

DECISION AND REASONS

Introduction.

1. Whilst in this case it was the Secretary of State for the Home Department who appealed against a decision of the First-Tier Tribunal ("FTT") promulgated on 12th January 2021, we propose to use the same nomenclature for the parties that was used before the FTT. Both members of the Panel have contributed to the drafting of this decision.

2. The appellant was born on 3rd September 1977 in Cameroon. She was naturalised as a British citizen on 7th September 2016. On 3rd March 2020 the respondent issued her with a notice of a decision depriving her of her British citizenship under section 40(3) of the British Nationality Act 1981. The history of the matter is fully set out below.

3. In a determination promulgated on 21st September 2021, Upper Tribunal Judge Owens concluded that there was an error of law in the decision of the FTT and that the FTT's decision should be set aside with no findings preserved. The appeal was adjourned at this point for remaking in the Upper Tribunal Immigration and Asylum Chamber ("UTIAC") and this is the decision following a hearing for that remaking.

4. The structure of the determination is that, having heard evidence from the appellant and her husband, we will set out the factual circumstances of this case and the evidence which was received so far as is necessary to our decision. Secondly, we shall address the correct

approach in law to determining an appeal of this kind. Thirdly, we shall turn to our conclusions, measured against the established legal framework.

The Evidence.

5. The appellant gave evidence before us with the benefit of an interpreter, with whom we were satisfied she could communicate successfully. She adopted her witness statement dated 26th September 2020 (subject to a small amendment). The appellant's account of the relevant circumstances in relation to this case is as follows. As set out above the appellant was born and lived in Cameroon as a national of that country before moving to France on 7th February 2000. In France she met Jean-Pierre Perry ("JPP") who was a French national and with whom she formed a relationship. In 2006, whilst still in a relationship with JPP, she applied for French nationality to the French authorities at Mulhouse. She submitted her Cameroonian birth certificate to the French authorities and was issued with a copy of a French birth certificate. Two weeks later an appointment was made at the passport office to enrol for biometric data, and after two weeks she returned to collect her French passport as proof of her entitlement to French citizenship. Shortly afterwards her relationship with JPP finished, and the appellant decided to relocate to the UK. She initially arrived in the UK in 2006, but returned to France before travelling back to the UK in 2007.

6. On arrival in the UK, she settled in Coventry and met her husband. In 2009 they had a child, Jodie, and at this time she travelled through France to Cameroon and back to the UK without encountering any difficulties using her French passport. Subsequent to this she travelled regularly on her French passport without problems.

7. On 3rd July 2013 the appellant made an application for a permanent residence card in the UK, but that application was rejected on 31st July 2013 owing to the absence of a fee. She subsequently made a further application for a permanent residence card on 1st April 2015, which was issued on 6th September 2015. On 12th May 2016 she made an application to naturalise, and she was naturalised as a British Citizen on 7th September 2016.

8. On 30th July 2019 the appellant made an application to renew her French passport. This prompted enquiries by the French authorities, and it appears that on 9th September 2019 the respondent's Status Review Unit were provided with information from the French authorities revealing that the appellant's French passport had been obtained fraudulently. This was on the basis that the birth certificate provided when applying for the passport initially had been false.

9. In the papers before us this proposition is evidenced firstly, in the form of a letter sent to the appellant by the French Consulate dated 21st August 2019 in which the appellant was informed that the passport had been wrongly issued to her, and that she no longer could be granted the right to French nationality. The letter went on to request that she come to the French Consulate on 3rd September 2019 between 1100 hours and 1200 hours to return the passport with which she had been issued on 16th August 2006 in Mulhouse. The letter offered the opportunity for the appellant to make written submissions or request an interview in respect of this decision.

10. In a witness statement dated 27th August 2019 from M Pascal Lefebvre dated 27th August 2019 M Lefebvre explains that he is a French Immigration Liaison Officer in the UK. He attests as follows:

> "The French passport 06AP29633X issued in 2006 with the name of Reine Chimi DOB 03.09.1977 has been fraudulently obtained. The investigation conducted by the French authorities have proven that the birth certificate provided when applying for the document was a false certificate consequently the document has been cancelled since the 30.07.2007."

11. As a consequence of receiving this information, on 8th October 2019 the respondent wrote to the appellant explaining that there was reason to believe that the appellant had obtained her status as a British Citizen as a result of fraud. The matter was specified in the following terms:

> "The Secretary of State has received information that indicates that evidence you have previously presented in support of your applications for a Residence Card and Permanent Residence such as your French passport, were acquired with the submission of a counterfeit French birth certificate. The French authorities have examined the birth certificate and found that it is counterfeit".

12. The appellant was afforded the opportunity to provide an explanation, and she wrote to the respondent on 22nd October 2019 explaining that she had been helped and advised and had acted under the guidance of JPP in the whole process of applying for and obtaining her French passport. She had, in short, no reason to suppose that the French passport was anything other than entirely valid. She had been shocked to discover the allegation made, and would never have returned to the French embassy to renew her French passport had she known that false documents had been used in order to procure it.

13. In her evidence before us she explained that she had been travelling in France when the letter of 8th October 2019 had arrived, and her husband and the appellant thought they should return the passport. Her husband returned it to the French Embassy as instructed. When the appellant returned to the UK she contacted the French Embassy for more information but was told by the person to whom she spoke that there was nothing else to say and that the file had been closed.

14. Having considered the appellant's explanation, on 3rd March 2020 the respondent issued the notice of deprivation of her citizenship under section 40(3) of the British Nationality Act 1981. The respondent concluded that on the basis of the information from the French authorities her French citizenship based on her French passport had been granted as a consequence of fraud in the form of the counterfeit French birth certificate. In turn her EEA residence permit had been granted based on her being a French national, a status to which she was not entitled but which had only been obtained on the basis of fraud. It followed, in the respondent's view, that there were clear and established grounds for depriving her of her citizenship. The respondent went on to consider the impact on the appellant's article 8 rights of the decision to deprive her of her citizenship and concluded that the decision being reached was proportionate. The respondent also took account of section 55 of the Borders, Citizenship, and Immigration Act 2009 in respect of the appellant's child born on 19th August 2009, and concluded that the decision would not have a significant effect on the child's best interests.

15. The appellant was cross-examined on the issues in relation to her passport and made clear that she believed that she was French. She explained that she had started building a case in France against the French authorities' decision, and had instructed a lawyer in France to help her. However, the pandemic had impacted upon her ability to mount this case. She explained that she was not a French national when she entered France in 2000 but described, as set out

above, how JPP had assisted in the process of obtaining a French passport. She was asked how, if she was not a French national, she could have a French birth certificate. She explained that JPP had got all the documents together for her to obtain the passport and he was the one who had obtained the French birth certificate. JPP had asked for her Cameroonian birth certificate when collating the documents and when she gave it to him, she explained that he needed to have it transcribed into a French document and that was all that she knew.

16. The appellant was asked questions in examination-in-chief in relation to the impact of losing her citizenship. She explained that she was currently a student studying to be a Mental Health Nurse at the University of Northampton and that if she lost her citizenship, she would not be able to continue with her studies and graduate. Losing her citizenship would also impact upon her daughter who would not be able to study and who has not been able to attend school for a significant period of time as a result of the issues with the appellant's citizenship. There would be a moral and psychological impact upon the whole of her family, including in particular her daughter who was unable to obtain the documents she needed to continue her studies as a result of the problems with the appellant's status. The appellant explained that she had 2 children with her: her daughter Linda who had come to the UK on the basis of family reunion and her son.

17. She was cross-examined about these article 8 issues, and she explained that her partner was British, and they had been together for around 14 years. He had been selling cars up until about a year ago, and had also worked delivering medication to care homes. In addition to working as a student, the appellant explained she worked part-time in a care home in Coventry. Their home was rented, and that tenancy was in her name. She was unsure whether it would be possible to transfer that tenancy, which was with the local authority, into her husband's name. They did not have savings. Whilst her husband had been away from the UK for the past year and only returned very recently, he would be returning to work.

18. Following an adjournment of the hearing in order for further documentation to obtained and translated, when the matter resumed the appellant was recalled. She dealt with the additional documentation which she had provided. This documentation was submitted to address questions raised in cross examination. The documents related to her travel arrangements in 2019. The appellant contended they also showed that she was in France when the Embassy had made contact in August 2019. Further documentation in the form of an email dated 24th July 2019 from an immigration advisor demonstrated that she had been advised to approach the French Embassy in relation to her passport prior to the problems in respect of that passport emerging. Additionally, the appellant produced a copy of an email which she had both sent and posted to the Sub-Prefecture of Mulhouse on 16th November 2020 requiring them to provide her with all of the documentation which had been submitted in support for the request for her French passport. She received no response to this letter. Finally, the appellant submitted correspondence from 2022 undertaken after she had made several visits to the French Embassy. This material records her making enquiries in respect of entering her Cameroonian birth certificate into the civil register of the French authorities.

19. The appellant was cross-examined about the additional documentation and explained that when the letter had arrived from the French authorities in August 2019, she had had to remain in France to take care of her mother who was ill. Her husband had communicated the contents of the letter to her but as a result of her mother's ill health she was not able to return. She explained that she had written the email in November 2020 requesting the documentation provided as part of her request for a passport as she was unclear what the French authorities

thought about her status at that time. She continued to think that she was French having held a French passport for 10 years.

20. She was asked about the information she had received from the French Consulate in London about contacting the Consulate of France in Cameroon so as to enter her birth certificate into the civil register in France and she explained that she had not contacted the French Consulate in Cameroon because the closest one to her was in London. She had written to the French Consulate in Cameroon as well. She was asked about why this correspondence referred to a Cameroonian birth certificate and not a French birth certificate, and the appellant stated that she did not accept that the French birth certificate she had used for her passport was false. She had done exactly what she had been asked to do, which was why she had asked about the Cameroonian birth certificate. It was put to her that she had not mentioned a French birth certificate because she had never been entitled to one, but the appellant explained that she was unable to answer this question. In answer to a question from the Panel, the appellant explained that her French birth certificate had been kept by the French authorities as it was not a document which was returned to the applicant for a passport. It had been part of the documentation for her application for her passport and then kept by the authorities after they had processed her application.

21. The appellant called her husband, Kevin Nguefack Ymele, who adopted the witness statement which he made on 27th September 2020 (with the exception of correcting his date of birth to the 2nd March 1979). In his evidence Mr Ymele explained that he married the appellant on 4th July 2009 and that they have 2 children. In his witness statement he explains their shock at discovering the issues in relation to the suggestion that her French passport had been fraudulently obtained, and the impact which the decision was having upon their family life. In his oral evidence, he explained that he was in the UK when the applicant received the letter in relation to her passport. The applicant was in France at the time, and he had explained to her on the telephone what was in the letter. In response he returned her passport to the French embassy in accordance with the instructions in the letter. He had not asked questions of anyone at that time but was concerned to return the document within the time frame indicated in the correspondence following which he anticipated that the appellant would return and deal with the position. He explained that the appellant had embarked upon engaging with the French Embassy and had called them at the time.

22. Mr Ymele explained that if the appellant lost her citizenship, it would destroy their family. Their daughter had been unable to pursue education for a considerable period of time. The whole family would suffer psychologically from the instability that would arise if she was deprived of her British citizenship.

23. Mr Ymele was cross-examined about the arrival of the letter of 21st August 2019 and confirmed that whilst he could not be precise about when it arrived, he was able to return the passport before the deadline of 3rd September 2019. He had spoken with the appellant before he returned the passport and read the contents of the letter to her. Once the appellant returned to the UK, she called the French embassy, but in vain, a number of times in relation to the issue. He was asked why it had taken 6 months for representatives on behalf of the appellant to take issue with the French authorities and he explained that the problem had been that the French embassy were not responding to the appellant's calls and this explained the delay.

The Law.

24. The appellant brings this appeal pursuant to section 40A(1) of the British Nationality Act 1981 following the decision, as set out above, made by the Respondent pursuant to section 40(3) of the 1981 Act. The starting point, therefore, for considering our approach to this appeal is to set out those relevant statutory provisions.

25. Section 40 of the 1981 Act, so far as material to the current issues, provides as follows:

> "40 Deprivation of Citizenship
> (1) In this section a reference to a person's "citizenship status" is a reference to his status as –
> (a) a British citizen,
> (b) a British overseas territories citizen,
> (c) a British Overseas citizen,
> (d) a British National (overseas)
> (e) a British protected person or,
> (f) a British subject.
>
> (2) The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good.
>
> (3) The Secretary of State may by order deprive a person of citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of –
> (a) fraud,
> (b) false representation, or
> (c) concealment of a material fact."

26. It can be seen that section 40 creates two classes of case in which a deprivation order may be made: the first under section 40(2) relates to the Secretary of State being satisfied that deprivation is conducive to the public good; the second pursuant to section 40(3) relates to the Secretary of State being satisfied the registration or naturalisation of the person concerned was obtained by means of fraud, false representational or concealment of a material fact. Whilst there are these two classes of case, the provisions of section 40A provide a single jurisdiction for appeal in the following terms:

> "40A Deprivation of citizenship: appeal
> (1) A person who is given notice under section 40(5) of a decision to make an order in respect of him under section 40 may appeal against the decision to the First-tier Tribunal.
>
> (2) Subsection (1) shall not apply to a decision if the Secretary of State certifies that it was taken wholly or partly in reliance on information which in his opinion should not be made public –
> (a) in the interests of national security,
> (b) in the interest of the relationship between the United Kingdom and another country, or
> (c) otherwise in the public interest."

27. The question which then arises is as to the nature of the jurisdiction to be exercised by the FTT when hearing an appeal under section 40A(1), or UTIAC when called upon as here to re-make an appeal decision following the identification of an error of law in a decision of the

FTT. The nature of the jurisdiction in respect of an appeal against a decision made pursuant to section 40(2) of the 1981 Act was addressed by the Supreme Court in *Begum v Secretary of State for the Home Department* [2021] UKSC 7; [2021] AC 765. From paragraph 41 to paragraph 50 of his leading judgment, Lord Reed (with whom the other members of the Supreme Court agreed) reviewed the decisions of UTIAC in the cases of *Deliallisi (British citizen: deprivation appeal: Scope)* [2013] UKUT 439 (IAC), *Pirzada (Deprivation of Citizenship: General Principles)* [2017] UKUT 196 (IAC); [2017] Imm AR 1257 and *BA (Deprivation of Citizenship: Appeals)* [2018] UKUT 85 (IAC); [2018] Imm AR 807 in relation to the scope of an appeal under section 40A of the 1981 Act.

28. The nature of Lord Reed's analysis is critical of the conclusion reached in *Deliallisi* and *BA* that it was necessary when considering such an appeal for the FTT to exercise afresh any judgment or discretion which had been exercised by the respondent in reaching the decision against which the appeal was brought. In short, Lord Reed rejected the suggestion that a full merits review was required in an appeal under section 40A of the 1981 Act.

29. Subsequently from paragraph 51 to 62 Lord Reed considers the case of *Secretary of State for the Home Department v Rehman* [2001] UKHL 47; [2003] 1 AC 153, which was a case concerned with an appeal to the Special Immigration Appeals Commission ("SIAC") relating to a deportation decision made on conducive grounds. He notes the emphasis in that authority upon the particular expertise of the Secretary of State in respect of national security considerations in the light of the Secretary of State's democratic accountability for decisions made where national security is engaged.

30. Thereafter from paragraph 63 to paragraph 71 Lord Reed sets out the essence of the Supreme Court's decision in relation to the scope of the jurisdiction on an appeal under section 2B of the Special Immigration Appeals Commission Act 1997 against a decision under section 40(2) of the 1981 Act. Given the importance of this analysis to the issues which we have to determine it is appropriate to set that passage out in full as follows:

> "[63] Considering, against that background. The functions and powers of SIAC in an appeal under section 2B of the 1997 Act against a decision to deprive a person of their citizenship under section 40(2) of the 1981 Act, it is clearly necessary to examine the nature of the decision and any statutory provisions which throw light on the matter, bearing in mind that the jurisdiction is entirely statutory.
>
> [64] It is also necessary to bear in mind that the appellate process must enable the procedural requirements of the ECHR to be satisfied, since many appeals will raise issues under the Human Rights Act. Those requirements will vary, depending on the context of the case in question. In the context of immigration control, including the exclusion of aliens, the case law of the European Court of Human Rights establishes that they generally include, in particular, that the appellant must be able to challenge the legality of the measure taken against him, its compatibility with absolute rights such as those arising under articles 2 and 3 of the ECHR, and the proportionality of any interference with qualified rights such as those arising under article 8. SIAC must also be able to allow an appeal in cases where the Secretary of State's assessment of the requirements of national security has no reasonable basis in the facts or reveals an interpretation of "national security" that is unlawful or arbitrary: see, for example, *IR v United Kingdom* (2014) 58 EHRR SE14, paras 57-58 and 63-65 (concerning an appeal under section 2 of the 1997 Act, prior to the amendments made by the 2014 Act). A more limited approach has been adopted in cases concerned with deprivation of citizenship. The European Court of Human Rights has accepted that an arbitrary denial or deprivation of citizenship may, in

certain circumstances, raise an issue under article 8. In determining whether there is a breach of that article, the Court has addressed whether the revocation was arbitrary (not whether it was proportionate), and what the consequences of revocation were for the applicant. In determining arbitrariness, the Court considers whether the deprivation was in accordance with the law, whether the authorities acted diligently and swiftly, and whether the person deprived of citizenship was afforded the procedural safeguards required by article 8: see, for example, *K2 v United Kingdom* (2017) 64 EHRR SE18, paras 49-50 and 54-61.

[65] Section 2B of the 1997 Act confers a right of appeal, in distinction to sections 2C to 2E, which provide for "review". The latter provisions require SIAC to apply the principles which would be applied in judicial review proceedings, and enable it to give such relief as may be available in such proceedings: see section 2C(3) and (4), and the equivalent provisions in sections 2D and 2E. No such limitations are imposed upon SIAC when determining an appeal under section 2B. It is also relevant to note section 5(1)(b), which enables the Lord Chancellor to make rules regulating "the mode and burden of proof and admissibility of evidence". Clearly, appeals involving questions of fact as well as points of law are contemplated. That is also reflected in the rules made under section 5.

[66] In relation to the nature of the decision under appeal, section 40(2) provides:

"(2) The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good."

The opening words ("The Secretary of State may …") indicate that decisions under section 40(2) are made by the Secretary of State in the exercise of his discretion. The discretion is one which Parliament has confided to the Secretary of State. In the absence of any provision to the contrary, it must therefore be exercised by the Secretary of State and by no one else. There is no indication in either the 1981 Act or the 1997 Act, in its present form, that Parliament intended the discretion to be exercised by or at the direction of SIAC. SIAC can, however, review the Secretary of State's exercise of his discretion and set it aside in cases where an appeal is allowed, as explained below.

[67] The statutory condition which must be satisfied before the discretion can be exercised is that "the Secretary of State is satisfied that deprivation is conducive to the public good". The condition is not that "SIAC is satisfied that deprivation is conducive to the public good". The existence of a right of appeal against the Secretary of State's decision enables his conclusion that he was satisfied to be challenged. It does not, however, convert the statutory requirement that the Secretary of State must be satisfied into a requirement that SIAC must be satisfied. That is a further reason why SIAC cannot exercise the discretion conferred upon the Secretary of State.

[68] As explained at paras 46-50, 54 and 66-67 above, appellate courts and tribunals cannot generally decide how a statutory discretion conferred upon the primary decision-maker ought to have been exercised, or exercise the discretion themselves, in the absence of any statutory provision authorising them to do so (such as existed, in relation to appeals under section 2 of the 1997 Act, under section 4(1) of the 1997 Act as originally enacted, and under sections 84-86 of the 2002 Act prior to their amendment in 2014: see paras 34 and 36 above). They are in general restricted to considering whether the decision-maker has acted in a way in which no reasonable decision-maker could have acted, or whether he has taken into account some irrelevant matter or has disregarded something to which he should have given weight, or has erred on a point of law: an issue which encompasses the consideration of factual questions, as appears, in the context of statutory appeals, from *Edwards (Inspector of Taxes) v Bairstow* [1956] AC 14. They

must also determine for themselves the compatibility of the decision with the obligations of the decision-maker under the Human Rights Act, where such a question arises.

[69] For the reasons I have explained, that appears to me to be an apt description of the role of SIAC in an appeal against a decision taken under section 40(2). That is not to say that SIAC's jurisdiction is supervisory rather than appellate. Its jurisdiction is appellate, and references to a supervisory jurisdiction in this context are capable of being a source of confusion. Nevertheless, the characterisation of a jurisdiction as appellate does not determine the principles of law which the appellate body is to apply. As has been explained, they depend upon the nature of the decision under appeal and the relevant statutory provisions. Different principles may even apply to the same decision, where it has a number of aspects giving rise to different considerations, or where different statutory provisions are applicable. So, for example, in appeals under section 2B of the 1997 Act against decisions made under section 40(2) of the 1981 Act, the principles to be applied by SIAC in reviewing the Secretary of State's exercise of his discretion are largely the same as those applicable in administrative law, as I have explained. But if a question arises as to whether the Secretary of State has acted incompatibly with the appellant's Convention rights, contrary to section 6 of the Human Rights Act, SIAC has to determine that matter objectively on the basis of its own assessment.

[70] In considering whether the Secretary of State has acted in a way in which no reasonable Secretary of State could have acted, or has taken into account some irrelevant matter, or has disregarded something to which he should have given weight, SIAC must have regard to the nature of the discretionary power in question, and the Secretary of State's statutory responsibility for deciding whether the deprivation of citizenship is conducive to the public good. The exercise of the power conferred by section 40(2) must depend heavily upon a consideration of relevant aspects of the public interest, which may include considerations of national security and public safety, as in the present case. Some aspects of the Secretary of State's assessment may not be justiciable, as Lord Hoffmann explained in *Rehman*. Others will depend, in many if not most cases, on an evaluative judgment of matters, such as the level and nature of the risk posed by the appellant, the effectiveness of the means available to address it, and the acceptability or otherwise of the consequent danger, which are incapable of objectively verifiable assessment, as Lord Hoffmann pointed out in *Rehman* and Lord Bingham of Cornhill reiterated in *A*, para 29. SIAC has to bear in mind, in relation to matters of this kind, that the Secretary of State's assessment should be accorded appropriate respect, for reasons both of institutional capacity (notwithstanding the experience of members of SIAC) and democratic accountability, as Lord Hoffmann explained in *Rehman* and Lord Bingham reiterated in *A*, para 29.

[71] Nevertheless, SIAC has a number of important functions to perform on an appeal against a decision under section 40(2). First, it can assess whether the Secretary of State has acted in a way in which no reasonable Secretary of State could have acted, or has taken into account some irrelevant matter, or has disregarded something to which he should have given weight, or has been guilty of some procedural impropriety. In doing so, SIAC has to bear in mind the serious nature of a deprivation of citizenship, and the severity of the consequences which can flow from such a decision. Secondly, it can consider whether the Secretary of State has erred in law, including whether he has made findings of fact which are unsupported by any evidence or are based upon a view of the evidence which could not reasonably be held. Thirdly, it can determine whether the Secretary of State has complied with section 40(4), which provides that the Secretary of State may not make an order under section 40(2) "if he is satisfied that the order would make a person stateless". Fourthly, it can consider whether the Secretary of State has acted in breach of any other legal principles applicable to his decision, such as the obligation arising in appropriate cases under section 6 of the Human Rights Act. In

> carrying out those functions, SIAC may well have to consider relevant evidence. It has to bear in mind that some decisions may involve considerations which are not justiciable, and that due weight has to be given to the findings, evaluations, and policies of the Secretary of State, as Lord Hoffmann explained in *Rehman* and Lord Bingham reiterated in *A*. In reviewing compliance with the Human Rights Act, it has to make its own independent assessment."

31. The case of *Laci v Secretary of State for the Home Department* [2021] EWCA Civ 769; [2021] Imm AR 1410 concerned an appeal to the Court of Appeal against a decision in an appeal under section 40A of the 1981 Act. After the appeal had been heard in the Court of Appeal, and prior to the handing down of the judgment, the decision of the Supreme Court in *Begum* became available. Whilst at paragraphs 21 to 33 of the leading judgment of Underhill LJ observations were set out in relation to the scope and nature of an appeal under section 40A of the 1981 Act, it appears at paragraph 40 that all of those observations are specifically noted as being subject to the caveat that the decisions which Underhill LJ cited would require qualification in the light of the decision in *Begum.* As Underhill LJ observed, the questions raised in *Begum* as to the scope of an appeal under section 40A with respect to the condition precedent for the making of a deprivation decision did not directly arise in the circumstances of the decision in *Laci.* That case, was, however, concerned with the impact of delay in decision-making upon the weight to be attached to the public interest in deprivation of a person's citizenship when assessing the impact upon article 8.

32. Consideration was given to the proper scope of an appeal under section 40A of the 1981 Act in the case of *Ciceri (deprivation of citizenship appeals: principles)* [2021] UKUT 00238 (IAC); [2021] Imm AR 1909. As appears from paragraphs 12 and 13 of the decision in *Ciceri,* the appeal in that case (akin to the case of *Laci*) related to the treatment of delay in reaching a decision and its impact on the proportionality assessment pursuant to article 8. The Upper Tribunal nonetheless analysed the authorities and reformulated the approach to be taken to appeals under section 40A of the 1981 Act in the light of the decision in *Begum*. In undertaking that reformulation, at paragraph 30(1) the Upper Tribunal concluded that in examining the question of whether a condition precedent to justify deprivation under section 40(2) or (3) of the 1981 Act was established the Tribunal should adopt the approach set out in paragraph 71 of the judgment in *Begum.* We shall return to the further observations made in the case of *Ciceri* touching upon the consideration of the appeal if the Tribunal is satisfied that a relevant condition precedent is established below.

33. Shortly after the promulgation of the determination in *Ciceri,* the Court of Appeal handed down judgment in the case of *Secretary of State for the Home Department v P3* [2021] EWCA Civ 1642. This case was an appeal from SIAC. The judgments in SIAC had been handed down prior to the decision of the Supreme Court in *Begum.* The first question which the Court of Appeal had to consider was what approach SIAC should take in a human rights case to the Secretary of State's assessment of the interests of national security. The answer to this question was provided by Elisabeth Laing LJ in her judgment as follows:

> "[95] The decision in *Begum* is clear about the approach which SIAC should take to this issue in a case which does not involve Convention rights. The question is whether SIAC may take a different approach in a human rights case, and in particular, whether SIAC may make its own assessment of the interests of national security. The key point is that when the House of Lords considered the appeal in *Rehman* SIAC had full jurisdiction to decide questions of fact and law (see paragraph 74, above), and could exercise differently any administrative discretion conferred on the Secretary of State (see paragraph 73,

above). Despite that full jurisdiction, SIAC's role on an appeal was limited in the way that Lord Hoffmann described.

[96] The Supreme Court considered obiter, in passages which are, nonetheless, strongly persuasive, what approach SIAC should take to Convention rights. In the passages which I have quoted or summarised in paragraphs 72, 83, and 85 the Supreme Court said that when SIAC has to decide whether the Secretary of State has acted incompatibly with an appellant's Convention rights, SIAC's function is not a secondary reviewing function. It has to decide for itself whether the impugned decision is lawful. It has to decide the matter 'objectively on the basis of its own assessment'; it 'must reach its own view…as an independent tribunal, rather than reviewing the decision of the Secretary of State'.

[97] The parties' submissions might suggest that there is a tension between those passages. I do not consider that there is. Even when SIAC had full jurisdiction in fact and law, and had power to exercise the Secretary of State's discretion afresh, there were narrow limits on its institutional capacity to review the Secretary of State's assessment of the interests of national security. SIAC has full power to review the compatibility of the Secretary of State's decisions with Convention rights. That means that SIAC must assess the risk of any breach of article 3, and the proportionality of any interference with qualified rights for itself. It does not entail, in my judgment, however, that SIAC can, in assessing proportionality, substitute its evaluation of the interests of national security for that of the Secretary of State. The starting point for an assessment of proportionality is that the Secretary of State's assessment goes into one side of the balance, unless it is susceptible to criticism in one of the ways described in *Rehman*.

[…]

[102] In my judgment, SIAC must apply the approach which is described in *Begum* to the Secretary of State's assessment of the interests of national security in an article 8 case, just as much as it should in a case in which Convention rights are not at issue. That was the approach of the Supreme Court in *Lord Carlile*'s case. I accept that there are significant procedural differences between an appeal to SIAC and the application for judicial review in that case. Nonetheless, there is a common principle, which is that in both contexts, what is balanced against the Convention rights of the appellant or claimant is the assessment of the executive, tested in the limited ways which are described in *Rehman* and endorsed in *Begum*. Despite its expert membership, SIAC does not have the institutional competence to assess the risk for itself as a primary decision-maker. Nor is it democratically accountable. If SIAC were to call the risk incorrectly, the executive, not SIAC, would suffer the political fallout. The executive can be removed at a general election; SIAC cannot. I have had the advantage of reading Sir Stephen Irwin's judgment in draft. I do not understand him to be differing in any way from my statement of the test which SIAC should apply in an appeal, such as this, in which article 8 rights may be engaged."

34. In a postscript to her judgment Elisabeth Laing LJ provided further clarification of the correct approach to deprivation appeals before SIAC in the following terms:

"[115] The 1997 Act clearly distinguishes between appeals and applications for statutory reviews (see section 2C-E of the 1997 Act). SIAC must apply the principles which apply on an application for judicial review to the latter, but not the former. On the appeals which are not statutory reviews, SIAC is not confined, on all issues which might arise on that appeal, to applying public law principles, still less to considering only the materials which were before the Secretary of State when the Secretary of State made the impugned decision. There are at least two relevant distinctions. First, on some issues, the law does

> not require SIAC to apply a traditional public law approach at all (for example, on issues about Convention rights, as is clear from many of the passages in *Begum* which I have quoted or summarised above) and see paragraph 82, above. Secondly, even where SIAC is limited to applying public law principles (for example, when it considers the Secretary of State's assessment of the interests of national security), it does not necessarily follow that SIAC should confine itself to material which was before the Secretary of State. For example, SIAC is entitled to take into account material which comes to light on an exculpatory review; and that material might not have been before the Secretary of State when she made the decision. Moreover, SIAC may exclude material which the Secretary of State took into account, for example, if it decides that there is a risk that it was obtained as a result of article 3 ill treatment. In any event, SIAC hears evidence on an appeal, which was not before the Secretary of State, and is entitled to make of that evidence what it may."

35. Subsequently, in the case of *U3 v SSHD* SC/153/2018 & SC/153/2021, SIAC had occasion to consider the impact of the decisions of *Begum* and *P3* upon the jurisdiction that they were exercising in an appeal where the appellant had been deprived of British Citizenship on conducive grounds pursuant to section 40(2) of the 1981 Act. The evidence in this case included, in particular, a national security assessment which, it was contended, justified the conclusion that deprivation was within the scope of the statutory power in section 40(2). A matter of contention was the role of SIAC in reviewing the respondent's national security assessment and whether its jurisdiction was limited to the four functions identified by Lord Reed in paragraph 71 of his judgment. As set out above, this description of the jurisdiction amounts to an assessment of whether the respondent had acted in a way in which no reasonable Secretary of State could have acted; a consideration of whether the respondent had erred in law including by finding facts which were unsupported by evidence or based on a view of the evidence which could not reasonably be held; thereafter determining whether the order would make the appellant stateless; and finally considering whether the respondent had acted in breach of the any other legal principles including the obligation under section 6 of the Human Rights Act 1998 to act compatibly with ECHR Rights.

36. At paragraph 23 of SIAC's judgment it is observed that *Begum* is properly to be read as a decision concerning cases where the interests of national security are engaged because those interests are constitutionally reserved to the executive. At paragraph 24 of the judgment SIAC regarded that approach as being supported by the observations of Lord Reed at paragraph 69, that the relevant principles which an appellate body is to apply depends upon "the nature of the decision under appeal and the relevant statutory provisions". At paragraphs 26 and 27 of the determination SIAC concluded that the grounds upon which SIAC was entitled to interfere with the respondent's judgment on a deprivation appeal based upon reasons of national security were not limited to those identified in *Rahman* or in *Begum*. This discussion leads to the conclusion reached by SIAC at paragraph 28 of the judgment in the following terms:

> "[28] We therefore conclude that Mr Underwood was correct to submit that the grounds on which a deprivation decision taken for national security reasons can be impugned include all grounds which would be available in a claim for judicial review. He was also, in our view, correct that, if the national security assessment were shown to be flawed by a material public law error, and SSHD was unable to show that the outcome would inevitably have been the same irrespective of this error, the proper course would be to set the decision aside so that the assessment could be conducted again by the Home Secretary."

37. SIAC went on to reject the submission that permissible grounds of challenge could go beyond those which were available in public law at paragraph 30 of their determination. Their consideration then moved on to an assessment of what evidence might properly be received by SIAC in the context of the exercise of this jurisdiction. In making their observations it is clear that SIAC had particular regard to the specific circumstances in which deprivation on the ground of national security often, if not invariably, occurs namely by the making of decisions without any opportunity for the affected person to make any representations in respect of the proposed decision. Thus, the appellant's evidence (which would be ordinarily received by SIAC as part of their proceedings) would not be before the respondent. SIAC considered there were, however, at least 3 ways in which the appellant's evidence could properly be taken into account whilst still applying the public law approach required by *Begum*.

38. Firstly, such evidence might identify a matter of significance which was not considered by the respondent, but which might nonetheless give rise to a conventional ground of challenge, for instance, in relation to taking account of relevant material considerations. Secondly, and in the particular context of decisions reviewed by SIAC, national security assessments are invariably updated to take account of an appellant's evidence, and thus can give rise to material uncovered by way of an exculpatory review of the respondent's material. In the context of assessments which are being updated and reviewed the appellant's evidence would, therefore, be relevant. Thirdly, it may be that some further decision is made by the respondent in the context of SIAC proceedings, such as a decision in relation to entry clearance. Any evidence adduced before SIAC on a subsequent entry clearance appeal would be relevant to the public law examination of the deprivation decision.

39. Thereafter at paragraph 40 of their decision SIAC record the position as follows:

> "[40] SIAC is, accordingly, not debarred from considering evidence that was not before the decision-maker at the time of a decision. But there are strict limits to what it can do with such evidence when its purpose is to undermine a national security assessment. It is important that there should be clarity about those limits and their implications for a case such as the present:
>
> (a) The present case is one where the deprivation decision turns on a national security assessment. So, in practical terms, does the entry clearance decision; if the SSHD was and remains entitled to conclude that U3 poses a risk to the national security of the UK, and we cannot interfere with that assessment, the national security risk is likely to outweigh the Article 8 interests of U3's family to be together.
>
> (b) The statutory appeal regime, as interpreted by the higher appellate courts, does not allow SIAC either on the deprivation appeal or on the entry clearance appeal, to reach its own view about whether U3 poses a risk to national security.
>
> (c) This is so even though we have the advantage, which SSHD has not had, of hearing oral evidence from U3 herself and from factual and expert witnesses called on her behalf."

40. In the case of *Berdica (Deprivation of citizenship: consideration)* [2022] UKUT 00276 (IAC) a panel of UTIAC determined an appeal in which the approach to be taken in the light of the decision in *Ciceri* fell to be considered. After the hearing before the FTT, and prior to the promulgation of her decision, the judge became aware of the decisions both in *Laci* and also *Ciceri.* The judge, having called for further submissions on the scope of her jurisdiction from

the parties, undertook an error of law review assessment of the respondent's decision on the condition precedent based on material before the respondent at the date of the decision. She then went on to record further evidence given by the appellant at the oral hearing in relation to the finding that he had been dishonest as to his country of origin at an earlier stage in his immigration history, and reached further conclusions as to whether or not the finding that the appellant was dishonest remained open to the respondent on public law grounds taking all of the evidence together including this further material. The judge concluded that on either basis the appeal fell to be dismissed.

41. The headnote of the decision in *Berdica* and the relevant section of the determination provide as follows:

> "*1. In deprivation of citizenship appeals, consideration is to be given both to the sustainability of the original decision and also whether upon considering subsequent evidence the Secretary of State's maintenance of her decision up to and including the hearing of the appeal is also sustainable. The latter requires an appellant to establish that the Secretary of State could not now take the same view.*
>
> *2. Decisions of the Upper Tribunal are binding on the First-tier Tribunal, not only in the individual case by virtue of section 12 of the Tribunal, Courts, and Enforcement Act 2007, but also as a matter of precedent."*
>
> […]
>
> [43] The judge did not materially err in law by stating that she was bound to follow *Ciceri*. "As a superior court of record, the Upper Tribunal's decisions are binding on the First-tier Tribunal, not only in the individual case by virtue of section 12 [of the Tribunal, Courts, and Enforcement Act 2007], but also as a matter of precedent" (Jacobs, *Tribunal Practice and Procedure*, Fifth Edition, 13.66, citing *R (Cart) v Upper Tribunal* [2010] 1 All ER 908). This is compatible with section 107(3) of the Nationality, Immigration and Asylum Act 2002 and the Practice Directions of the First-tier Tribunal and the Upper Tribunal, which provide for starred cases to be authoritative in respect of the Upper Tribunal, as well as the First-tier Tribunal. In any event, as Jacobs says: "In practice, it may not matter whether or not there is a formal rule of precedent. If the Upper Tribunal will set aside a decision that differs in law from one of its decisions, that is precedent in all but name".
>
> [44] We note, finally, Mr. Saini's second complaint on this ground: namely that *Ciceri* ought to have been decided differently, that the logic of *Begum* should properly be regarded as confined to appeals under section 40(2) of the 1981 Act, and that the correct approach in deprivation appeals under section 40(3) should remain the merits-based assessment espoused by Leggatt LJ in *KV (Sri Lanka)*, at [6].
>
> [45] The complaint fails to engage with the approach adopted by the Judge, who proceeded on a cumulative basis in reaching her decision, considering the respondent's decision both from the point of view of reviewing that decision on a strictly public law basis – that is on the material originally before the respondent - and also through the prism of the new evidence that was placed before her on appeal. So, she considered both the sustainability of the original decision and also whether upon considering subsequent evidence the respondent's maintenance of her decision up to and including the hearing of the appeal was also sustainable. The latter required the appellant to establish that the respondent could not now take the same view. The Judge came to the same decision on each basis. The new evidence has been taken fully into account. This ground is dismissed accordingly."

42. Prior to the hearing the Panel invited submissions from the parties in respect of the correct approach to an appeal under section 40A of the 1981 Act pertaining to a decision taken under section 40(3) of that Act. We are grateful to both parties for the clear and coherent submissions which they made orally and in writing in connection with these questions.

Submissions.

43. On behalf of the respondent, it was submitted by Mr Clarke that the decision of the Supreme Court in *Begum* was clear authority as to the intention of Parliament in relation to appeals under section 40A(1) and that the language of section 40(2) and section 40(3) was similar in relation to the condition precedent. The question was whether "the Secretary of State is satisfied" that the condition precedent was met. Applying the reasoning in *Begum* it was clear that the appeal jurisdiction was to be exercised on the basis of examining to see whether or not there was an error of law. Whilst Mr Clarke conceded that the conclusions of UTIAC in *Ciceri* were strictly speaking *obiter*, given that the legality of the condition precedent had been conceded, nonetheless he submitted that the guidance in *Ciceri* was consistent with that set out in *Begum*. Furthermore, Mr Clarke submitted that, in reaching the conclusions which it did in *Begum,* the Supreme Court directly assessed the merits review approach to section 40(3) appeals in particular from the decision of UTIAC in *Deliallisi* and concluded that that decision had been wrongly decided. This approach to section 40(3) reflected the statutory scheme in relation to applications for naturalisation under Section 6 of the 1981 Act which also required the Secretary of State to be "satisfied that the applicant fulfils the requirements of Schedule 1 for naturalisation".

44. Mr Clarke further submitted that there was nothing in the case of *P3* which suggested that the principles in *Begum* did not apply to appeals following decisions under section 40(3) of the 1981 Act. In relation to the reception of evidence by the Tribunal when applying the error of law jurisdiction Mr Clarke submitted that in so far as reliance might be placed upon the headnote from the decision in *Berdica,* the proposition which the headnote records is wrong in law and should not be followed. If it is contended that the headnote in *Berdica* suggests that a merits-based review approach has survived the decision of the Supreme Court in *Begum* it is incorrect; alternatively, the headnote is not grounded in that which the Tribunal found, namely that there was no substance in the appellant's submissions on the basis that the judge had decided the case in the alternative. That finding is distinct from the proposition that it is open when undertaking an error of law review to continue to receive evidence subsequent to the decision with a view to examining whether the appellant can show that the Secretary of State could not now take the same view.

45. In her submissions Ms Rutherford, on behalf of the appellant, firstly submitted that there was an important distinction to be drawn between decisions which were reached under section 40(2) of the 1981 Act and those reached under section 40(3) of that Act. The condition precedent under section 40(3) of the 1981 Act is a factual question as to whether or not one of the forms of deception which the subsection identifies has been deployed in order to obtain citizenship. By contrast, Ms Rutherford submits that section 40(2) involves an evaluative assessment of a variety of matters and a judgment being reached on the basis of the public interest. This is a different form of assessment to that which is required by section 40(3).

46. The decisions in the cases of *P3* and *U3* were decisions in which the assessment was critically related to national security which plainly created a very different context from those where

national security is not in issue. Thus, appeals of the kind with which the present case is concerned should be treated differently from those addressed by *Begum, P3* and *U3* since an understanding and assessment of national security risk is not an element of this kind of deprivation appeal. Ms Rutherford further notes that the Supreme Court does not appear to have taken account of the decision of the Court of Appeal in *KV (Sri-Lanka) v Secretary of State for the Home Department* [2018] EWCA Civ 2483 in which Leggatt LJ observed that an appeal under section 40A of the 1981 Act was not a review, but a full reconsideration of the deprivation decision, in which it was for the Tribunal to find the relevant facts on the basis of the evidence which it received. We asked Ms Rutherford to address us on what we should make of Lord Reed's criticism of the decisions in *Deliallisi* and *AB* in *Begum*. She maintained her submission that *Begum* was confined to the national security field and that a wider, merits-based analysis was appropriate in an appeal against a decision under s40(3) of the 1981 Act.

47. As to the evidence which can be admitted as part of the appeal Ms Rutherford relies on paragraph 1 of the headnote of *Berdica* and submits that it encapsulates the correct approach to appeals of this kind. The provisions in Section 40A do not limit the scope of the evidence which the Tribunal can receive for the purpose of resolving an appeal, and similarly there is nothing in *Begum* which limits the scope of evidence to be considered by the Tribunal. Ms Rutherford draws attention to the decisions in *P3* and *U3* both of which support the suggestion that evidence which was not before the decision maker is capable of being adduced before the Tribunal. In particular, as recorded above, the decision of SIAC in the case of *U3* notes the possible circumstances in which evidence which was not before the respondent would be properly before the Tribunal in exercising its appeal jurisdiction.

Conclusions.

48. Having reflected on the extensive consideration of this issue in the authorities, and the submissions which have been made to us, our views in relation to the nature of the appeal jurisdiction of the FTT (and UTIAC when called upon to re-make a decision) in an appeal from a deprivation decision made pursuant to sections 40(2) or 40(3) of the 1981 Act are as follows.

(i) The Condition Precedent Question

49. The first question which falls to be addressed concerns the Tribunal's examination of the Secretary of State's conclusion as to the condition precedent for deprivation. Where the decision was taken under s40(2), the condition precedent is that 'the Secretary of State is satisfied that deprivation is conducive to the public good'. In a s40(3) case, the condition precedent is that 'the Secretary of State is satisfied that registration or naturalisation was obtained by means of fraud, etc'. In our view it is clear that the Tribunal must review *either* conclusion using conventional public law tools, rather than by subjecting it to a full merits reconsideration. Our reasons for reaching that conclusion are as follows.

50. The decision of the Supreme Court in *Begum* in relation to national security deprivation cases under section 40(2) of the 1981 Act is clear: the appeal in relation to the condition precedent is to be determined exercising an error of law jurisdiction. Whilst it is understandable that Ms Rutherford draws attention to the importance of a national security assessment in decisions of the kind that the Supreme Court were examining in the case of *Begum* that, in our judgment, is far from a complete explanation for the approach taken by the Supreme Court.

51. Firstly, the reasoning of the Supreme Court is based upon the statutory language deployed in section 40(2) which speaks of the respondent being "satisfied that deprivation is conducive to the public good". At paragraph 66 of Lord Reed's judgment, he makes clear that this statutory language indicates that Parliament has conferred the exercise of this discretion on the Secretary of State and no-one else. Paragraph 67 of Lord Reed's judgment reinforces this. This is not a conclusion which is contingent upon the involvement of national security interests. Furthermore, the use of the statutory language of the Secretary of State being "satisfied that" is replicated in section 40(3). Appeals from decisions reached using the power in section 40(2) and section 40(3) of the 1981 Act are both determined by the same provision contained in section 40A(1), although the forum for that appeal depends on whether the Secretary of State has issued a certificate under s40A(2) of that Act. Applying the reasoning from paragraph 68 of Lord Reed's judgment these are appeals in which the statutory provisions providing jurisdiction do not expressly provide for the possibility of the FTT determining for itself how the statutory discretion conferred upon the respondent ought to have been exercised and making the decision afresh. In short, therefore, there is nothing in either the statutory language or the applicable reasoning to distinguish appeals under section 40(3) of the 1981 Act from appeals under section 40(2) of that Act.

52. Secondly, a further reason for reaching this conclusion is that the analysis undertaken by Lord Reed expressly considers, and effectively disapproves of, the reasoning in *Deliallisi,* which was an appeal in relation to a decision made under section 40(3) of the 1981 Act. In reaching the conclusion which he did in the paragraphs which have been quoted above, Lord Reed analysed the relevant authorities and concluded that the approach in *Deliallisi and BA* was incorrect. Lord Reed must in our judgment be taken to have endorsed the 'different approach' adopted in *Pirzada*, which he cited at paragraph 44, that "[t]here is no suggestion that a Tribunal has the power to consider whether it is satisfied of any of the matters set out in sub-sections (2) or (3); nor is there any suggestion that the Tribunal can itself exercise the Secretary of State's discretion." Although Lord Reed did not consider any of the Court of Appeal's decisions which followed the 'full merits' approach adopted in *Deliallisi* and *BA*, the result of his analysis must be that those decisions have been overtaken insofar as they adopted that approach. Decisions which fall into that category include *R (KV) v Secretary of State for the Home Department* [2018] EWCA Civ 2483; [2018] 4 WLR 166.

53. Thirdly, whilst Ms Rutherford is entitled to draw attention to the potentially qualitative differences between the nature of the condition precedent under section 40(3) of the 1981 Act and under section 40(2) of that Act, in our judgment that does not amount to a proper basis for distinguishing *Begum* or drawing any distinction between them. The similar structure of both of these subsections and their closely allied language vests the exercise of the discretion in the respondent. There is nothing in the nature of the decisions which are made under section 40(3) which renders them unsuitable for scrutiny applying a public law error approach. Furthermore, the language of section 40A which provides an appeal against decisions reached under both of these sections without differentiation does not contain any specific provision which would support a wider, full merits, appeal jurisdiction.

54. It is clear that the jurisdiction of SIAC and the involvement of national security considerations gives rise to specific considerations in respect of the deference to be afforded to the Secretary of State's executive responsibility for these matters. Those considerations, and the potential complexities and sensitivities to which they can give rise, do not apply in the context of appeals of the kind we are considering. We accept that these considerations were clearly of obvious importance in the decisions in *U3* and *P3*. However, the approach in both of those

authorities to the appeal jurisdiction in respect of the relevant condition precedent, applying *Begum* and requiring an approach based on error of law rather than a full merits review, is entirely consistent with our approach.

55. It follows from our conclusion that we are satisfied that when considering an appeal under section 40A(1) of the 1981 Act against a decision made by the respondent exercising the power under section 40(2) or 40(3) of the 1981 Act the task of the Tribunal is to scrutinise, using established public law criteria, whether or not the conclusion that the condition precedent to depriving the appellant of citizenship has been vitiated by an error of law. It is not the task of the Tribunal to undertake a merits-based review and redetermination of the decision on the existence of the condition precedent, as it were standing in the shoes of the respondent. This is consistent with paragraph 1 of the headnote in *Ciceri* which requires the adoption of the approach set out in paragraph 71 of the judgment in *Begum*.

56. We would, however, wish to amplify this understanding of the position to provide some clarity in relation to the application of this approach in practice. In common with the observations of SIAC in paragraph 27 of *U3,* we do not consider that in paragraph 71 of Lord Reed's judgment in Begum he was intending to provide an exhaustive list of the potential types of public law error which it is open to the Tribunal to conclude have affected the decision on the condition precedent under consideration. We see no basis for reading what Lord Reed said in *Begum* as excluding other types of public law error which were not specifically identified from being potential grounds upon which a decision could be impugned. We see no reason to conclude that Lord Reed's reference in paragraph 71 to a consideration of whether the respondent has "erred in law" should be restricted to whether the respondent has acted in a way that no reasonable decision maker could have acted or taken account of irrelevant considerations or disregarded matters which should have been taken into account. Questions of fairness beyond procedural impropriety may be relevant to the assessment in some cases, as may the jurisdiction arising from an error of established fact derived from the case of *E v Secretary of State for the Home Department* [2004] EWCA Civ 49; [2004] QB 1044, or a failure to undertake sufficient enquiries commonly referred to as the *Tameside* duty, from *Secretary of State for Education Science v Tameside Metropolitan Borough Council* [1977] AC 1014. Thus, we would elaborate upon paragraph 1 of the headnote in *Ciceri* to make clear that the task of the Tribunal is to scrutinise the condition precedent decision in any section 40(2) and section 40(3) decision under appeal to see whether any material public law error has been established in the respondent's decision. A public law error in the decision under challenge will be material unless it is established that the decision would inevitably have been the same without the error: *Smith v North East Derbyshire PCT* [2006] EWCA Civ 1291; [2006] 1 WLR 3315.

(ii) The Respondent's Discretion

57. The second question which arises is in relation to the Tribunal's examination of the Secretary of State's discretionary decision under s40(2) or 40(3). It is clear from the statutory language that deprivation is not the automatic consequence of deception having been employed in the acquisition of nationality, or even of the Secretary of State having concluded that deprivation is conducive to the public good. In either category of case, the Secretary of State *may* deprive the individual of their citizenship; she is not required by the 1981 Act to do so. In our judgment, the Tribunal must undertake its consideration of that discretionary decision in the following way.

58. Firstly, it will only be necessary for the Tribunal to consider this issue in a case in which it has resolved the condition precedent question in favour of the Secretary of State. In the event that the Tribunal concludes that the Secretary of State's decision is vitiated by a material public law error, the appeal will be allowed and it will, as we explain below, be for the Secretary of State to consider whether or not to make a fresh decision.

59. Secondly, it is clear that this part of the Tribunal's enquiry must also be undertaken in accordance with what was said by Lord Reed in *Begum*. The Tribunal must therefore consider whether the respondent erred in law when deciding in the exercise of her discretion under s40(2) or 40(3) to deprive the individual of their citizenship. It is not therefore for the Tribunal to consider whether, on the merits, deprivation is the correct course. It must instead consider whether, in deciding that deprivation was the proper course, the respondent materially erred in law.

60. Thirdly, and because the issue regarding the respondent's discretion is framed in that way, we consider that the Tribunal should consider that question *before* it comes to assess any submissions made by an appellant in reliance on Article 8 ECHR. The analysis of the respondent's decision under s40(2) or 40(3) is confined to a public law review of that decision, whereas the Article 8 ECHR analysis must, as we shall see, be on a somewhat broader canvas. Because the nature of the statutory part of the analysis differs from that conducted in relation to Article 8 ECHR, we consider that the Tribunal should conclude the former analysis before it proceeds to consider human rights issues. The structure of the analysis formerly required by the authorities we have cited above (*Deliallisi* etc) assumed that the Tribunal was to conduct a full merits assessment at each stage of its analysis. When each stage of the Tribunal's consideration was to be conducted on that basis, it made every sense for the consideration of the discretionary question to come last. In that way, the Tribunal could carry forward into its own analysis of the discretion all of the conclusions it had reached previously, including any it had drawn in relation to Article 8 ECHR. Since we have decided that Begum must govern the analysis of the condition precedent question and the discretion question, however, we consider that the structured approach set out at paragraph 6(4)-(5) of R (KV) v SSHD should be amended. Our suggested structure for the analysis appears below and in the headnote to this decision.

(iii) Evidence

61. The question which then arises is as to what if any material which was not before the respondent at the time the decision was reached could be taken as admissible in respect of this jurisdiction. Again, we are clearly of the view that the evidence to be considered in relation to the exercise of the error of law jurisdiction in respect of the statutory decision (as distinct from any human rights consideration) is not limited to that before the respondent at the time when the respondent's determination was made. However, any evidence must be strictly relevant and admissible only because it directly pertains to an error of law which the appellant has specifically pleaded. Furthermore, the evidence will bear upon the facts and circumstances pertaining at the time when the decision was reached. The principles are identical to those which apply in judicial review, further guidance in respect of which might be found at paragraph 23.3.3 of the Administrative Court Guide 2022 and 16-081 of De Smith's Judicial Review, Eighth Edition.

62. It is relatively straightforward to imagine examples of where material which was not before the respondent could be admissible in order to support an argument that an error of law has occurred. The jurisdiction in respect of an established error of fact may require material to be

produced so as to demonstrate that there was such an established error of fact bearing upon the decision which was reached in relation to the condition precedent and that it was material. Mr Clarke was correct, therefore, to accept in this case that a witness statement from Mr Lefebvre, admitting that he had confused the appellant's case with that of someone else, would have been admissible through this gateway. In order to support an allegation that there had been a breach of the *Tameside* duty again it may be necessary to receive evidence which was not before the decision maker as to what the decision maker ought to have researched and brought into account when making the decision in order for that contention to be established.

63. It follows that in our judgment the approach to be taken in exercising this jurisdiction is that it is for the appellant to specify or plead within the appeal proceedings such errors of law as they wish to rely upon in respect of the respondent's decision that the condition precedent exists, and then, in so far as it is necessary and relevant to those pleaded contentions, evidence which is relevant to those grounds can be considered by the Tribunal. That approach is, in principle, similar to the approach adopted by SIAC in *U3,* as endorsed at paragraph 35 of its more recent judgment in *Begum,* and reflects the approach which is taken in error of law jurisdictions more generally.

64. Before we leave the question of the evidence which might be considered by the Tribunal in examining the two limbs of the respondent's decision under s40(2) or 40(3), we must consider an observation made orally by Mr Clarke. He suggested during his submissions that the Tribunal might as a matter of course consider not only evidence which was before the Secretary of State when she took the decision under challenge but also *any* evidence which was adduced by the appellant in compliance with rule 24A(1)(b) of the FtT Procedure Rules. We have described this as an observation and we do not think it appropriate to describe it in any other terms. It was certainly not a concession. Had it been, we would have been minded not to accept it, since the Procedure Rules cannot enlarge the statutory task of the Tribunal, as defined by the Supreme Court in *Begum*.

65. If, via this process, the door was open for the appellant to adduce *any* evidence which was not before the Secretary of State at the time of the initial decision, the analysis undertaken by the Tribunal could not logically be a public law review of that decision. We consider that the adoption of that approach would possibly give rise to a further difficulty. The decision which is to be reviewed by the Tribunal is that which is under appeal and not any subsequent decision in which the Secretary of State might provide altogether different reasons for that decision. That is the established position in judicial review (*R v Westminster City Council ex parte Ermakov* [1996] 2 All ER 302) and we see no reason to adopt a different approach in appeals of this nature. The focus in such an appeal must therefore be on the decision actually taken by the Secretary of State and the evidence which was before her at that time, subject to the limited exceptions we have set out above. As in the Administrative Court (as to which see paragraph 28 of *Kenyon v Secretary of State for Housing & Anor* [2020] EWCA Civ 302; [2021] Env LR 8) the Tribunal must be astute to guard against a 'rolling review' in such cases.

66. The process contained in rule 24A of the FtT Procedure Rules nevertheless continues to serve an important purpose in cases of this nature. It provides the appellant with an opportunity to identify public law errors in the Secretary of State's decision and it provides the Secretary of State with an opportunity to withdraw that decision in the event that a public law failing on her part is properly identified by the appellant. Again, the position is akin to that which obtains in judicial review.

67. The approach which we have set out in relation to the potential for evidence which was not before the respondent at the date of decision to form part of the consideration of the Tribunal in exercising the error of law jurisdiction differs from what might be assumed to be the position from paragraph 1 of the headnote in *Berdica.* We share the concern expressed by the respondent that the substance of that decision, as reviewed above, may not be appropriately reflected in the headnote. Paragraphs 44 and 45 of *Berdica* are simply the acknowledgement that there is no substance to the appellant's complaint that a merits-based assessment ought to have been adopted by the judge on the basis that, without prejudice to the question of whether that is right, the judge did in fact undertake an assessment based on all of the evidence before her, and concluded that the respondent's decision was valid. As the Tribunal observed "the judge came to the same decision on each basis"; that is to say both on an error of law basis on the basis of the evidence before the respondent and also on the basis of all the evidence presented in the case. The Tribunal were not suggesting that the observations in *Ciceri,* and the approach set out above as to the application of an error of law jurisdiction to the decision in relation to the condition precedent, was wrong. For the avoidance of any future doubt, we are satisfied that the conclusions which we have reached and are set out above are the proper approach to these questions. Insofar as *Berdica* might suggest otherwise, we have heard further submissions on the point and are satisfied that it should not be followed.

68. If there is found to have been an error of law in the respondent's decision as to the existence of the condition precedent, or in the consideration of her discretion, then the appeal will be allowed. The consequence of such a decision is that the question of whether to deprive the appellant of his or her citizenship will be before the Secretary of State, to be reconsidered in light of any findings made by the Tribunal. Alternatively, if the FTT reaches the conclusion that the respondent's decision to deprive the appellant of British citizenship was lawful then the FTT will be obliged to consider issues arising under section 6 of the Human Rights Act 1998, and whether the deprivation of British citizenship would be incompatible with the appellant's rights under the ECHR.

(iv) Human Rights

69. Consideration of an appellant's rights under Article 8 ECHR will commence with an examination of whether or not those rights are engaged. It will be recalled in that connection that the right to citizenship is not as such guaranteed by the Convention or its Protocols: *Ramadan v Malta* (App No 76136/12); [2016] Imm AR 1288. A decision to deprive an individual of their British citizenship will not automatically engage Article 8 ECHR, therefore, and the focus must instead be on the reasonably foreseeable consequences of that deprivation.

70. In this connection the case of *Ciceri* is in our view authoritative. It was a case specifically concerned with the consideration of article 8 rights, against the background of a valid finding that the condition precedent was met, and the determination was reached following an assessment informed by an examination of the recent relevant authorities. The need to consider the compatibility of the respondent's deprivation decision with the appellant's right under the ECHR was identified in paragraph 69 of Lord Reed's judgment in *Begum.*

71. The Tribunal in *Ciceri* set out the approach taken to the question of delay in *Laci* including, in particular, the specific facts of that case which led to the conclusion that the appeal could be allowed on article 8 grounds. The judicial headnote distilled the relevant principles as follows:

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

(3) In doing so,

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

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

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

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

72. As can be seen, in considering issues arising under section 6 of the 1998 Act the exercise is qualitatively different from the public law review of the Secretary of State's decision on the condition precedent and the exercise of her statutory discretion. The question of whether the *lawfully determined* deprivation decision under section 40(2) or (3) would give rise to a violation of the appellant's rights under the ECHR is one for the FTT (or UTIAC on re-making) to determine for itself, and in respect of which evidence will be admissible which may be different from that which was before the respondent at the time of making the decision. In exercising this jurisdiction the assessment will be made on the basis of the state of the evidence and the relevant findings at the date of the appeal decision. Further assistance in relation to the consideration of Human Rights claims in this context is provided in *Muslija (deprivation: reasonably foreseeable consequences) Albania* [2022] UKUT 00337 (IAC).

73. We emphasise the importance of the words 'lawfully determined' in the preceding paragraph. Whilst the Tribunal is required to consider for itself whether the deprivation decision is lawful under section 6 of the Human Rights Act 1998, this stage of the enquiry will only be reached when it has been concluded that the deprivation decision itself is otherwise lawful. A Tribunal which has detected no public law error in the Secretary of State's decision under s40(3) will not revisit that decision in the context of its human rights analysis. That analysis provides an opportunity to weigh that assessment against the reasonably foreseeable consequences for the appellant, and nothing more. Neither the statutory scheme nor the authorities of the ECtHR require a different approach and what was said by Elisabeth Laing

LJ at paragraphs 95 to 102 of P3 is as applicable in this context as it is to an appeal to SIAC against a decision under s40(2). (Insofar as it might be suggested that Sir Stephen Irwin adopted a different and wider approach in his judgment in P3, we disagree and we cannot improve on what was said by SIAC at paragraph 30 of *U3* in that connection.)

74. On the date of the hearing SIAC handed down its decision in that case of *Shamima Begum v SSHD* SC/163/2019 and so this was not available for the parties' submissions. We have concluded that there is no need for us to seek their views in relation to this recent authority. Having reviewed the decision of SIAC in *Shamima Begum*, built on the decision of SIAC in *B4 v SSHD* SC/159/2018, we are satisfied that whilst those decisions were clearly taken in the context of considerations related to national security, they are consistent with the establishment of the principles which we have set out above.

75. Before we move to consider the facts of the appellant's individual case, we summarise our conclusions on the law as follows.

(4) A Tribunal determining an appeal against a decision taken by the respondent under s40(2) or s40(3) of the British Nationality Act 1981 should consider the following questions:

(d) Did the Secretary of State materially err in law when she decided that the condition precedent in s40(2) or s40(3) of the British Nationality Act 1981 was satisfied? If so, the appeal falls to be allowed. If not,

(e) Did the Secretary of State materially err in law when she decided to exercise her discretion to deprive the appellant of British citizenship? If so, the appeal falls to be allowed. If not,

(f) Weighing the lawfully determined deprivation decision against the reasonably foreseeable consequences for the appellant, is the decision unlawful under s6 of the Human Rights Act 1998? If so, the appeal falls to be allowed on human rights grounds. If not, the appeal falls to be dismissed.

(5) In considering questions (1)(a) and (b), the Tribunal must only consider evidence which was before the Secretary of State or which is otherwise relevant to establishing a pleaded error of law in the decision under challenge.

(6) In considering question (c), the Tribunal may consider evidence which was not before the Secretary of State but, in doing so, it may not revisit the conclusions it reached in respect of questions (1)(a) and (b).

Findings and Conclusions.

76. It will be obvious from the analysis of the legal principles which we have set out above that the first question for determination is whether or not there was any error of law in the conclusion reached by the respondent that appellant had obtained her British citizenship on the basis of fraud. In particular, paragraph 11 of the respondent's decision dated 3rd March 2020 sets out that following the Status Review Unit referral it had been revealed by the French authorities that the appellant's French passport issued in 2006 was obtained fraudulently on the basis of a false birth certificate leading to the passport having been

cancelled since 30th July 2007. It was recorded that this was supported by the witness statement obtained from the French authorities made by M Lefebvre leading to the letter of 21st August 2019 from the French embassy informing the appellant of their findings, and that the appellant no longer had the right to French nationality.

77. In support of her submission that this decision included an error of law Ms Rutherford submitted that the decision which the Secretary of State had reached was not one which was reasonably open to her and therefore was unlawful. Ms Rutherford submitted that the appellant had been candid throughout that her place of birth was Cameroon and had explained to the respondent, in response to the letter indicating that an investigation was on foot in October 2019, that she had not been responsible for the passport application and described how she was assisted throughout by JPP in the making of the application. She had used her own details throughout and given a reasonable explanation for how the misunderstanding in relation to her French birth certificate may have come about. She played no part in the creation of any of these difficulties and had made no secret of her origins at any time.

78. Mr Clarke submitted that the decision was entirely reasonable and certainly one which was open to the respondent as a decision available to a reasonable decision-maker. There was clear evidence in the form of the witness statement from M Lefebvre that the birth certificate was a counterfeit, and thus the documentation and any status obtained in reliance upon it had been fraudulently obtained. This was a fraud which continued to infect the appellant's immigration history to the extent that it affected her British citizenship which had its root in the use of the French passport obtained by fraud.

79. Mr Clarke submitted that there were significant credibility issues in relation to the appellant's account of how she came to be in possession of a French birth certificate. The appellant was not and never could have been entitled to a French birth certificate bearing in mind that she was born in Cameroon. The suggestion that the French authorities would have swapped her Cameroon birth certificate for a French one was wholly lacking in credibility. In short, she must have known that a French birth certificate was being used in order to obtain her French passport and French nationality and that she was not entitled to such a birth certificate. There was, therefore, a fraud at the time of obtaining the French passport of which the appellant must have been aware, and this fraud continued to the point of her obtaining her British citizenship.

80. We are entirely satisfied that there was no error of law in the respondent's decision that the condition precedent relied upon in the appellants case, namely that she had obtained the benefit of British citizenship by fraud. We take the pleaded public law challenge in this case to be one of *Wednesbury* rationality. At the time of the respondent's decision the available material included the witness statement from M Lefebvre setting out in clear and unequivocal terms that the investigation undertaken by the French authorities had established that the birth certificate provided when applying for the appellant's French was passport was false. As the deprivation decision at paragraph 14 pointed out, on the basis that it was necessary to produce a French birth certificate to obtain a French passport, and the appellant had in fact been born in Cameroon, she could never have been entitled to a French birth certificate.

81. Whilst the respondent had regard to the explanation which the appellant had provided in her letter of 22nd October 2019, which was essentially the same as she provided in her witness statement and oral evidence for the hearing, namely that it was JPP who orchestrated her passport application and the dealing with the French authorities, in the circumstances that the

documentation presented to the French authorities contained a French birth certificate to which the applicant was never entitled it was a reasonable response for the respondent to conclude in paragraph 20 of the deprivation decision that there was no plausible or innocent explanation in respect of this fatal flaw in the passport application. The French passport having been obtained by fraud it was entirely reasonable for the respondent to conclude that the subsequent decisions leading up to and including the grant of British citizenship to the appellant were decisions which were infected by the fraud that had originally been used to obtain the French passport. The appellant had declared herself to be a French citizen throughout, including in Form AN, and the truthfulness of that assertion was not to be determined by her holding a French passport but by her underlying entitlement to citizenship. The respondent was clearly entitled to conclude that she was not entitled to a French birth certificate, or to French nationality, not least because of the strong presumption in favour of mutual recognition between Member States of the European Union, as France and the United Kingdom were at the time of the decision under challenge.

82. The evidence which was heard at the appeal in relation to further details of the dealings leading up to the obtaining of the French passport and the appellant's response to the receipt of the letter of 21st August 2019 (including the additional further correspondence) add little of relevance to the substance of the issue of whether the respondent's decision was *Wednesbury* unreasonable. We are satisfied that the respondent's decision that the condition precedent under section 40(3) of the 1981 Act was valid and lawful.

83. We state clearly that we would have reached the same conclusion if it had been open to us to stand in the shoes of the Secretary of State and subject this aspect of her decision to the kind of full merits review which was required pre-*Begum*. We heard the appellant's oral evidence *de bene esse* and we found her to be a thoroughly unsatisfactory witness. Whilst she was able to give fluent and credible evidence in respect of many matters, she could not begin to give a credible explanation for the critical question in this case, which is how she was able as a Cameroonian citizen who was born in Cameroon to a Cameroonian mother and father, to obtain a French birth certificate. The French authorities regarded that as fraudulent and we were unable, having heard the appellant on the subject, to begin to understand how we might reach a different conclusion. Had it been for us to decide, we would have concluded on the balance of probabilities that the appellant had knowingly used fraud to obtain the French birth certificate and that all subsequent steps up to and including the acquisition of British citizenship were built upon that fraud.

84. Ms Rutherford did not suggest orally or in her skeleton argument that the respondent separately erred in law in her consideration of the discretionary element of s40(3). We can detect no public law error in that aspect of her decision, which was clearly open to her in light of the strong public interest in maintaining the integrity of the nationality system established by Parliament.

85. We move on then to consider whether rights under the ECHR are engaged in this case. There was no dispute between the parties that article 8 was engaged in this case and that an assessment needed to be made in accordance with the principles set out in *Ciceri* as to whether or not the deprivation decision would be consistent with the article 8 rights engaged by the decision. Based on the evidence adduced at the hearing Ms Rutherford submitted that as a consequence of deprivation of citizenship it would be necessary for the appellant to regain Cameroonian citizenship, and that in the interim period she would be present in the UK without leave to remain. (We should perhaps note, however, that there was no suggestion on

Ms Rutherford's part that the appellant would be rendered stateless by the decision under challenge.) Her studies would be affected, and her family would find the situation particularly stressful and unsettling with obvious concerns in relation to her status. Even were she to be granted limited leave to remain she would have to reapply for such status every 30 months. It was pointed out by Ms Rutherford that the appellant had a child who is a British citizen who would have a right to remain in the UK. Thus it was submitted that there would be a disproportionate impact on the article 8 rights of the appellant and her family.

86. In response to these submissions Mr Clarke contended that it was clear from the evidence that the appellant's husband was able to work and that they would be able to remain in the UK with their son who is a British citizen. In these circumstances the impact of the deprivation decision was not one which could possibly be described as disproportionate.

87. Article 8 rights are engaged in the present case and in our view the key question, which appeared to be accepted by the parties, is whether when applying the relevant principles in the authorities we are satisfied exercising our own judgment that the decision to interfere with the article 8 rights engaged in this case would be disproportionate. As recognised in *Ciceri,* regard must be had to the importance of maintaining the integrity of British nationality law in making our assessment. There is no need to carry out what would be an impermissibly speculative prediction of the prospects of the appellant being removed, nor was it suggested by the parties that it would be relevant to do so. The circumstances of any future determination of these issues cannot be anticipated with any reliability in the context of this decision. The evaluation will be focussed on the material pertaining to the limbo period, before any decision is reached in relation to the status of the appellant, including in particular the reasonably foreseeable consequences of the deprivation decision on the article 8 rights that are engaged in the case.

88. We would observe that this is not a case in which there had been any significant delay in between the identification of the fraud and the respondent taking action in relation to it. No reliance was placed by Ms Rutherford on delay in making her submissions. As was pointed out in *Muslija* being placed in limbo as a result of a deprivation decision is usually insufficient to tip the proportionality balance in favour of an individual retaining fraudulently obtained citizenship. We accept that on the basis of the evidence which we received it will be a reasonably foreseeable consequence of the deprivation decision that the appellant's studies at the University of Northampton will be lost, along with the prospects which they bring for her self-improvement. We also think it likely that the family will suffer some financial hardship as a direct result of the appellant losing her citizenship. They are largely reliant on her income at present, although as Mr Clarke noted in his submissions, there is no obvious reason that the appellant's husband cannot take a job which will pay an equivalent sum. There will also be an impact on the appellant and her family as a result of the stress to which the limbo period will give rise. It would no doubt be in the best interests of the children to remain in the UK with the family, but the uncertainty created by the deprivation decision is a factor which needs to be taken into account not merely in assessing the article 8 issues but also the question of their best interests pursuant to section 55 of the 2009 Act. The appellant has no criminal convictions and clearly there would be administrative issues to be grappled with in securing her Cameroonian citizenship so as to avoid her becoming stateless. All of these factors weigh in the balance in the appellant's favour in the article 8 assessment.

89. Set against these factors is what in our judgment is a significant and weighty factor, namely the need to preserve a robust system of national law in relation to citizenship which is

undermined when citizenship is obtained by fraud. We do not consider that as a result of the deprivation decision the appellant and her family would be rendered destitute, since as Mr Clarke points out her husband is able to work and would be able to make provision for the financial security of the family. The appellant's son is a British citizen with the accompanying rights to remain in the UK.

90. Weighing up these factors we have reached the conclusion that the decision to deprive the appellant of her British citizenship would not be disproportionate under article 8 of the ECHR, taking account as we have of the best interests of the children in this case. We do not therefore consider that this appeal can be allowed on the basis of human rights.

91. For all of the reasons set out above and having taken account of all of the matters drawn to our attention we have reached the conclusion that this appeal must be dismissed.

Notice of Decision

The decision of the First-tier Tribunal having been set aside, we remake the decision on the appeal as follows. The appeal is dismissed.

Signed Ian Dove Date: 19 April 2023

The Hon. Mr Justice Dove
President of the Upper Tribunal
Immigration and Asylum Chamber