



Home Office

Nullity of British citizenship

Version 1.0

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About this guidance

This guidance explains how to decide if a grant of British citizenship should be declared null and void, (that is, whether it is a nullity).

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email Migrant Criminality Policy team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

Publication

Below is information on when this version of the guidance was published:

- version **1.0**
- published for Home Office staff on **10 May 2023**

Changes from last version of this guidance

- review of content and transfer from existing template to Word-based guidance format
- clarification of the use of nullity following the Supreme Court's judgment in [Hysaj and Bakijasi \[2017\] UKSC 82](#)
- previous versions on the Deprivation and nullity guidance can be found in the Migration and Borders Guidance platform archive

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Introduction

This section explains the background to the concept of nullity.

Background

The concept of nullity – where a person’s citizenship is declared null and void and regarded as never having been granted in the first instance – has developed through caselaw and has no statutory basis.

A grant of citizenship considered ineffective from the outset, that is a nullity, applies in the circumstances described below where a person has used a false identity or false personal identifier (name, nationality, date of birth or place of birth) to obtain citizenship.

The nullity test

The test for establishing whether a grant of citizenship is null and void is where a person (X) adopts the identity of another person (Y), where Y is a real person who, at the time X makes an application, has the characteristics required to obtain citizenship, and X then applies for and is purportedly granted citizenship as Y. This approach is consistent with the Supreme Court’s judgment in the cases of [Hysaj and Bakijasi \[2017\] UKSC 82](#). These appeals were against the Secretary of State’s declaration of nullity made on the basis of previous binding Court of Appeal case law. The Supreme Court considered whether misrepresentations about identity submitted in an application for British citizenship made the grant of citizenship a nullity rather than rendering those liable to be deprived of that citizenship on the grounds of fraud under section 40(3) of the [British Nationality Act 1981](#) (BNA). It also reviewed the findings of previous case law but considered that some of the authorities had erred and therefore overruled them.

Examples of cases which would not be a nullity

The following are examples of when a case would **not** be a nullity:

- X adopts the identity of Y, where Y is a false identity created by X, and Y has the characteristics required for citizenship
- X adopts the identity of Y, where Y is a real person, and in adopting the identity of Y, X acquires the characteristics required for citizenship
- X adopts the identity of Y, where Y is a false identity created by X, and in adopting the identity of Y, X acquires the characteristics required for citizenship

Where the person already has British citizenship

A person cannot be granted British citizenship more than once. Where an applicant has erroneously applied for registration or naturalisation and it is discovered that they already have British citizenship, for example because they acquired citizenship by birth, the naturalisation or registration will be null and void. This means that the

subsequent registration or naturalisation has no legal effect. For example, a person may be unaware that they were automatically British at birth, for example they were born in the UK but left when they were a baby and lived abroad for several years, and so may erroneously apply to naturalise or register as a British citizen.

This is not the same as the nullity concept which was the subject of the Supreme Court ruling. Any action to treat the grant of citizenship as null and void in these circumstances is based solely on the fact that citizenship is already held, rather than using a false identity as per the Supreme Court test.

In order to minimise errors, checks on a pre-existing claim or right to citizenship must be undertaken when an application for citizenship is made. In such cases, it will also usually be appropriate to refund any fee submitted with the application.

The best interests of a child

The duty in [section 55 of the Borders, Citizenship and Immigration Act 2009](#) to have regard to the need to safeguard and promote the welfare of children who are in the UK means that consideration of a child's best interests is a primary, but not the only, consideration in nationality decisions affecting them. This guidance sets out how we ensure that we give practical effect to these obligations.

While a declaration of nullity is not a nationality decision per se, the effect of that declaration may have an impact on a child because it affects their status in the UK. You must therefore carefully consider all information and evidence concerning the best interests of a child in the UK (that is a person who is under the age of 18 and it is evident from the information available that they will be affected by the decision) and the impact the decision may have on the child. See [Effect of a nullity declaration](#) for further guidance.

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Decision to declare citizenship a nullity

This section tells you how to determine whether a grant of citizenship is a nullity.

To determine if a grant of citizenship is a nullity, you must decide whether there is wholesale impersonation of another real person or if there are merely fictitious elements of the identity. This means you must carefully consider whether the person has merely falsified some of their own details or has assumed the complete identity of another person.

Where there is evidence that the person who was granted citizenship (person X) obtained it by using the identity of another person who at the time of application had the characteristics required to obtain citizenship (person Y), the grant of citizenship will be a nullity. This is the case where the person being impersonated has never applied for citizenship.

Cases where there is an element of fictitious identity, that is a person has falsified some of their own details, but not wholesale impersonation are **not** nullity cases. Such cases should be considered for deprivation on the grounds of fraud under section 40(3) of the [British Nationality Act 1981](#) (BNA). See guidance on deprivation of citizenship for further information.

If it is concluded that a registration or naturalisation is a nullity, the grant of citizenship will be treated as never having taken place. In such cases there is no need to take separate deprivation action, either under section 40(2) of the BNA on the ground it is conducive to the public good, or under section 40(3) of the BNA on the grounds of fraud, as the person is regarded as never having been granted citizenship in the first place. To conclude that a registration or naturalisation is a nullity you need only be satisfied that the citizenship registration or naturalisation was not technically obtained in law.

Notice of intention to declare citizenship a nullity

If you decide that the grant of citizenship is a nullity, you must notify the person that you are intending to make such a declaration. You must give them an opportunity to respond to the allegations and provide any information they wish to be taken into account. You must give them 21 calendar days to respond.

Notice of nullity declaration

Once the person has responded, or if there is no response within 21 days, you must consider the case based on the information available to you. You must consider whether, on the facts of the case, the circumstances meet the Supreme Court [nullity test](#).

Once you have completed your consideration, you must notify the person that their grant of British citizenship has been declared a nullity. You must set out clearly how their circumstances meet the Supreme Court test.

Appeals

There is no right of appeal against a declaration that a grant of citizenship is a nullity. Should a person wish to challenge the decision to declare their grant of citizenship a nullity they must do so by way of a judicial review.

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Effect of a nullity declaration

This section tells you about the effect of a nullity declaration.

Where a person's citizenship has been declared a nullity, they will normally revert to their previous immigration status because their grant of citizenship is treated as never having taken place. This is different from deprivation of citizenship where a person does not revert to their previous immigration status.

Because the nature of a nullity is that someone is considered to have adopted the identity of another person who has the required characteristics to qualify for citizenship, it is unlikely that a person whose citizenship has been declared a nullity will revert to having indefinite permission to stay in the UK. This is because if they had valid indefinite permission themselves, they would not have needed to adopt another identity to apply for British citizenship.

A person may have previously had temporary permission to stay in the UK in their true identity when they were granted citizenship in the impersonated identity. As their grant of citizenship is treated as never having taken place, they revert to holding the original temporary permission if it is still valid. However, even if someone initially retains their previous immigration status following a declaration that their grant of citizenship was a nullity, it does not prevent that permission being cancelled at a later stage, for example if the Secretary of State is satisfied that permission was obtained by deception.

Persons with existing valid permission to stay in the UK

Once you have decided that a grant of citizenship is a nullity, you must consider if there are grounds to cancel a person's temporary permission. Permission to enter or stay can be cancelled under [Part 9 of the Immigration Rules](#) on any of the following grounds:

- the person has made false representations or did not disclose material facts in a previous application for permission (9.7.3.)
- the person has not complied with their conditions of permission (9.8.8.)
- the person ceases to meet the requirements of the rules under which permission was granted (9.23.1.)
- a person's presence in the UK is not conducive to the public good because of their character, conduct or associations (9.3.2.)
- it is not desirable to let the person remain in the UK because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard (lack of respect) for the law (9.4.2.)

Further information can be found in the guidance on cancellation of entry clearance and permission.

Persons with no permission to stay

If a person has no valid permission to stay in the UK after you have declared their grant of British citizenship a nullity, you must consider whether administrative removal or deportation action should be taken.

Referral for deportation

If the person has previously been convicted of a criminal offence (in the UK or overseas), you must refer the case to the Foreign National Offenders Returns Command (FNO RC) who will consider deportation action based on the person's convictions and whether they meet the criteria for deportation. See [Deporting foreign nationals](#) for further information.

Referral for administrative removal

If the person has no criminal convictions in the UK or overseas, the case must be referred to Returns management.

Family members

A decision to declare a person's registration or naturalisation a nullity could affect the position of that person's spouse, partner or other relatives whose own immigration or citizenship status was secured on the basis of the person's claimed citizenship status. It might also render them liable to deportation or removal. In such cases you must always consider whether any action is in [the best interests of a child](#).

Children

For children born in the UK, if a parent was settled in the UK prior to becoming a citizen, the child may be a British citizen. However, the parent must be settled in their own right so for nullity cases it is likely that the child will not be British and will need to regularise their stay. For information on acceptable evidence of settled status please see [British citizenship: automatic acquisition](#).

For children born overseas, because the parent was not a British citizen at the time of the birth, the child cannot be a British citizen by descent, and so will not have the right of abode in the UK. They will need to regularise their stay.

For children registered at the same time as the parent registered or naturalised, if this was based on the parent's false identity, then the registration will only be a nullity if the child has also registered in the identity of another real person. Where the child registered as a British citizen in their own true identity then, notwithstanding that the grant to the parent is a nullity, it would not be appropriate to take nullity action against the child.

In all cases, when considering the impact of a nullity declaration on children you must remember to have due regard to [the best interests of a child](#). Any letter must demonstrate that all the information and evidence provided concerning the best

interests of a relevant child has been considered. You must carefully assess the quality of any evidence provided. Documentary evidence from official or independent sources will be given more weight in the decision-making process than unsubstantiated assertions about a child's best interests.

Spouses and partners

A foreign national may have obtained permission to stay in the UK on the basis of being the spouse or partner of a British citizen. In such cases, if you have declared that the grant of British citizenship is a nullity you must consider if the permission of the foreign national spouse or partner should be cancelled.

A person may have registered as a British citizen under section 6(2) of the [British Nationality Act 1981](#) on the basis of being the spouse or partner of a British citizen. If you have declared that the grant of British citizenship to the original person is a nullity, you must consider if it is appropriate to deprive the subsequent spouse or partner on the grounds of fraud. See guidance on deprivation for further information.

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