Home Office
UK Border Agency

PRECEDENT BASED SCENARIOS ON THE EXCEPTIONAL EXERCISE OF THE HOME SECRETARY'S DISCRETION IN RELATION TO NATIONALITY GROUP CASEWORK.

THESE MUST BE READ IN CONJUNCTION WITH PREVAILING LEGISLATION AND NATIONALITY STAFF INSTRUCTIONS.

INDEX OF CASENOTES

8. DEPRIVATION

NC36. 6(2) Bigamous marriage
NC37. 6(2) Bigamous marriage
NC38. 6(2) Bigamous marriage
NC39. Deprivation on "conducive" grounds

9. DEPRIVATION: 1948 ACT PRECEDENTS

NC40. Disloyaly
NC41. Criminal conviction
NC42. Criminal conviction
NC43. Disloyalty
NC44. Criminal conviction
NC45. False representation
NC46. False representation
NC47. Criminal conviction
NC48. Criminal conviction
NC49. Disloyalty

10. DISCLOSURE OF INFORMATION

NC50. Police advised to release naturalisation interview notes to court on subpoena

11. FULL CAPACITY

NC51. Not capable of understanding oath of allegiance
NC52. Meaning of oath explained slowly by translator
NC53. Broadmoor inmate incapable of understanding anything
NC54. Application submitted by the applicant
NC55. Applicant mentally disabled
NC56. Application submitted by a parent

12. MARRIAGE

NC57. 8(1) Domicile reassessed in polygamous marriage
NC58. 8(1) Review of refusal based on immigration decision
NC59. 6(1) Bigamous marriage
NC60. 8(1) Mixed race marriage in South Africa
NC61. 6(2) Muslim child marriage
NC62. 6(2) Applications received from 2 wives of a British citizen
NC63. 6(2) Bigamous marriage
NC64. Mixed race marriage in Burma

NATURALISATION

13. NATURALISATION: GOOD CHARACTER

NC65. 6(1) Savak-Iranian secret police
NC66. 6(1) Domestic violence
NC67. 6(1) Murderer
NC68. 6(1) Murderer
NC69: 6(1) Murderer
NC70. 6(1) Mentally ill applicant who was unlikely to be violent
NC71. 6(1) Interview because of immigration history revealed he was working and claiming benefit
NC72. 6(1) Unsatisfactory tax and financial position reflected on wife
NC73. 6(1) Possible mental illness
NC74. Non-payment of community charge
NC75. 6(2) Conviction for political offence
NC76. 6(2) Mentally disturbed applicant with a persecution complex
NC77. 6(2) Conviction for obtaining British passports by deception
NC78. 6(1) Breach of immigration laws and marriage of convenience

NC79. 6(1) Hospital order under the Mental Health Act 1983
NC80. 6(1) Conviction for armed robbery
NC81. 6(2) Convicted of murder
NC82. 6(1) Nature of business activities
NC83. 6(1) Prosecution under s. 46(1) BNA 81
NC84. 6(2) Murderer released on licence
NC85. 6(1) Bogus marriage
NC86. Conviction for manslaughter
NC87. 6(1) Complicity in commission of immigration offences by spouse
NC88. 6(1) Subject to restrictions under the Mental Health Act
NC89. 6(1) Speeding conviction
NC90. 6(1) Life sentence for manslaughter

14. NATURALISATION: KNOWLEDGE OF ENGLISH

NC91. Mental conditions
NC92. Mentally disabled
NC93. Lifestyle presented limited opportunities to improve English
NC94. Oaths translated by applicants' son
NC95. Applicants elderly
NC96. Long-term ill health
NC97. Illness limited ability to attend language classes
NC98. Epileptic child

15. NATURALISATION: KNOWLEDGE OF LIFE

NC99. Medical condition
NC100. Medical condition

16. NATURALISATION: TECHNICAL ABSENCE

NC101. 6(1) Dependants of member of mission
NC102. 6(1) Membership of mission does not have to be notified to qualify for exemption
NC103. 6(1) Applicant given indefinite leave to enter while in exempt employment

17. NATURALISATION s. 6(1): CROWN SERVICE

NC104. Insufficient reason to deport from usual criteria
NC105. Service not exceptional
NC106. Outstanding service
NC107. Insufficient connections with UK
NC108. No connections with UK apart from employment
NC109. Accepted as meeting future intentions requirement although normal criteria not met
NC110. Civilian specialist recruited Crown service
NC111. Outstanding service
NC112. Outstanding service
NC113. Employed in undermanned specialisation

18. NATURALISATION s. 6(1): FUTURE INTENTIONS

NC114. International organisation of which the UK is a member
NC115. Not domiciled in UK for tax purposes
NC116. Doctor working abroad
NC117. Applied for residency abroad
NC118. Voluntary service abroad
NC119. Company established in the UK
NC120. Applicant temporarily working overseas
NC121. Definition of company established in the UK and whether an application can be reopened
NC122. Applicant accompanying spouse on posting abroad
NC123. Same-sex partner of Crown servant

19. NATURALISATION s. 6(1): RESIDENCE

NC124. Seaman with excess absences
NC125. Seaman with excess absences
NC126. Not resident in UK
NC127. Absences due to career
NC128. Discretion exercised for sportsmen
NC129. Involved in accident while abroad
NC130. Excess absences
NC131. Merchant seaman
NC132. Breach of immigration laws
NC133. Excess absences due to business reasons
NC134. Absences unavoidable consequence of career
NC135. Excess absences due to compassionate reasons
NC136. Applicant issued with a British passport in error
NC137. Excess absences in final year due to employment overseas
NC138. Excess absences due to research
NC139. Excess absences on compassionate grounds
NC140. Excess absences due to nature of career and long prior residence
NC141. Future intentions in doubt- no reason to overlook excess absences
NC142. Excess absences due to medical reasons
NC143. Excess absences due to secondment overseas
NC144. Excess absences due to compassionate reasons
NC145. Excess absences due to parent's work abroad
NC146. Excess absences due to health reasons
NC147. Applicant encouraged to believe excess absences would be waived
NC148. Excess absences due to employment with UK based company
NC149. Excess absences too great to overlook
NC150. Excess absences due to health reasons
NC151. Excess absences due to compassionate reasons
NC152. Excess absences due to compassionate reasons
NC153. Compelling occupational reasons
NC154. Abducted by father
NC155. Excess absences in the last 12 months due to employment
NC156. Absences due to ill health
NC157. Breach of the immigration laws
NC158. Excess absences due to occupational training
NC159. Not settled for 12 months
NC160. Absences unavoidable consequence of the nature of career
NC161. Applicant unavoidably detained while abroad
NC162. Excess absences due to legal custody ruling
NC163. Post-graduate work experience abroad
NC164. Excess absences due to child's medical treatment
NC165. Excess absences for business reasons
NC166. Excess absences for business reasons
NC167. Excess absences due to business/compassionate reasons
NC168. Excess absences due to sporting career
NC169. Excess absences due to employment
NC170. Excess absences due to work experience overseas
NC171. Absences due to sporting career waived on account of importance for Olympic bid
NC172. Excess absences due to career
NC173. Excess absences due to nature of sporting career
NC174. Business not free of immigration time restrictions

20. NATURALISATION s. 6(2): CROWN SERVICE SPOUSE

NC175. Possible security risk in Northern Ireland
NC176. Citizenship neither of UK nor country of posting
NC177. Exceptional circumstances – delayed consideration

21. NATURALISATION s. 6(2): DESIGNATED SERVICE SPOUSE

NC178. Retention of services of essential officer
NC179. Less than 3 years marriage: difficulties over documentation

22. NATURALISATION s. 6(2): RESIDENCE

NC180. Absences in final year due to medical treatment
NC181. Excess absences in final year
NC182. Absence due to career
NC183. Absences too large to waive
NC184. Presence on British Naval ships not UK residence
NC185. Excess absences as a result of nature of career
NC186. Excess absences
NC187. Excess absences more than double the statutory limit
NC189. Applicant in reach of immigration laws for the whole of the naturalisation qualifying period
NC190. Excess absences more than double the statutory limit
NC191. Excess absences due to voluntary work
NC192. Excess absences
NC193. EEA national without leave to remain or right of residence
NC194. In breach of the immigration laws for the whole of residential qualifying period
NC195. Excess absences not overlooked
NC196. Offshore employment
NC197. Excess absences due to compassionate reasons
NC198. Absences due to accompanying spouse
NC199. Absences due to ill health and family business
NC200. Merchant seaman
NC201. Excess absences
NC202. Immigration time restrictions on date of application

23. NOTIFICATION OF DECISION

NC204. 6(1) Applicant's address not known

24. NULLITY

NC205. False identity
NC206. False identity
NC207. Bogus son using own identity: no illegal entry
NC208. Decision on false identity reversed
NC209. Already a BC
NC210. Decision invalid because not in accordance with prevailing practice
NC211. Forged declaration of renunciation
NC212. Date of birth error did not constitute assumption of false identity
NC213. Use of an alias did not constitute impersonation
NC214. Assume sister's identity
NC215. Status of decision post-Ejaz
NC216. Application by mother for deceased child

25. OATH OF ALLEGIANCE

NC215. S 10, BNA Had moved abroad when oath was issued
NC216 6(1) Oaths sent after refusal did not reverse decision
NC217 6(1) Oath administered by applicant's husband
NC218 3(1) Mentally handicapped
NC219 6(2) Oath of allegiance taken by applicant's husband

26. PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION

NC221 Complaint that IND were taking an unreasonably long time to process an application not upheld

NC222 PCA identified shortcomings in our handling of a naturalisation application

27. PRIORITY

NC223 6(2) Crown Service operational needs

NC224 3(1) Athlete required British passport to compete for Great Britain

28. RECONSIDERATION

NC225 27(1) Registration in error

NC226 6(1) Refused for non-production of documents when passport was in registry

NC227 6(2) Invalid decision reversed

NC228 6(1) No notification of successful appeal against conviction

NC229 306(1) Embassy employee exempt from control. Application to be re- opened

NC230 6(1) Applicant impersonated in criminal proceedings

NC231 6(1)

NC232 6(1)

NC233 6(1)

NC234 6(1) Notified of conviction after oath had been taken

NC235 Validity determined application could not be re-opened

NC236 6(1) Arrested in connection with investigations into the BCCI

NC237 6(2) Correspondence from applicant accepted as having been lost

NC238 6(1) Applicant emigrated prior to issue of oath of allegiance

NC239 6(1) Applicant issued with a "green card" in the USA

NC240 6(2) Undeclared conviction for a driving offence

29. REGISTRATION

NC241 Entitlement not lost if parents lost settled status

30. REGISTRATION s. 1(3)

NC242 No evidence of UK birth

NC243 Excess absences due to parent's employment

31. REGISTRATION s. 1(4)

NC244. Exceptional registration of children of BC-D mother living abroad

NC245. Illegitimate child of BC father living abroad

NC246. Child abroad with Crown service parent

NC247. Inconsistent decision on applications by sisters registered in independent commonwealth country by UK High Commission

NC248. Child of father registered under section 4(5)

NC249. Applicants resident abroad

NC250. Unsatisfactory character and immigration status

NC251. 3rd generation born abroad to father in long-term business overseas

NC252. Entitlement to registration lost due to incorrect official advice

NC253. Future entitlement under s. 1(4)

NC254. Uncertain immigration status of illegitimate child of BC father and EU mother

NC255. Registered on compassionate ground outside normal criteria

NC256. Mother born in the Falkland Islands

NC257. Illegitimate child of deceased BC father

NC258. Parents previously given incorrect advice

NC259. Illegitimate (surrogate) children of a BC father

NC260. Illegitimate minor - father's consent not given

NC261. 2nd generation born abroad NC262. Delayed applications for registration

NC263. Dutch "recognition"

NC264, Less than 2 years residence in the UK

32. REGISTRATION s. 3(1)

NC265. By descent father in designated service
NC266. Adult adoptee
NC267. Neither parent a BC
NC268. Legal adoption had not taken place
NC269. Adoptive father not married
NC270. Doubts about adoptive father's character
NC271. Legal adoption had not taken place
NC272. Adoption by foreign nationals
NC273. Adoption by a foreign national

33. REGISTRATION s. 3(1): ADOPTION

NC274. Aunt 'in loco parentis' was BC
NC275. Legal guardians BCs
NC276. Registration in child's best interests
NC277. Required BC for sporting career
NC278. Minor firmly based in UK
NC279. Applying to join British armed forces
NC280. Step-father a BC
NC281. Strong family ties with the UK
NC282. BC grandparents in loco parentis
NC283. Legal custody given to grandparents
NC284. Brother was legal custodian
NC285. Aunt acting in loco parentis
NC286. Child brought up by uncle and aunt while father was in diplomatic employment
NC287. Whereabouts of natural parents not known
NC288. Registration in line with older siblings
NC289. Older minor firmly based here
NC290. Parents deceased - application made by guardians
NC291. Neither parent BC
NC292. Neither parent BC
NC293. Neither parent BC

34. REGISTRATION s. 3(1): NEITHER PARENT A BC

NC294. Father's objection well founded
NC295. Father's objection disregarded
NC296. Outstanding legal proceedings
NC297. Objecting father had been given custody by US court
NC298. Consent dispensed with due to fear for safety
NC299. Court ordered father to give consent
NC300.
NC301. Minor the subject of a foreign divorce court order

35. REGISTRATION s. 3(1): PARENTAL CONSENT

NC302. Late application due to ignorance of provision
NC303. Late application for child with Downs Syndrome

36. REGISTRATION s. 3(2)

NC304. Murderer was not served with a deportation order before he lodged application
NC305. Absences due to attendance at American university
NC306. Reasons not sufficiently compelling to waive excess absences
NC307. Excess absences due to nature of career
NC308. Excessive excess absences overlooked due to previous administrative errors and wholly exceptional circumstances
NC309. Excess absences overlooked: no prior residence
NC310. Excess absences

37. REGISTRATION s. 4(2)

NC311. Brave wartime service not rule out of account on technical grounds
NC312. Service did not benefit the UK

38. REGISTRATION s. 4(5)

NC313. Whether the Secretary of State could exercise discretion over the requirement for the applicant to hold no other citizenship than British

39. REGISTRATION s. 4B

NC314. Entitlement subject only to statutory requirements and to principle that applicant should not benefit from own criminality
NC315. Cut off date for 4C applications

40. REGISTRATION s. 4C

NC316. Returning resident had not been continuously ordinarily resident

41. REGISTRATION s.7

NC317. Family's stay not at risk to the point of deportation
NC318. Child and family not facing any difficulty
NC319 Incorrect advice by a British post resulted in statelessness NC320. Misadvised by British post resulting in loss of entitlement
NC321. Family's stay not at risk to the point of deportation
NC322. Not at risk of deportation
NC323 Cousin of children registered previously

42. REGISTRATION s. 27(1)

NC324. No imminent danger of deportation
NC325. No evidence of statelessness or risk of deportation
NC326. Criteria for registration not met

43. REGISTRATION s.32

NC327. Proof of application for renunciation sufficient for Maltese authorities
NC328. No need to enquire into reasons for renunciation

44. RENUNCIATION

NC329. Post pro-Nazi sympathies disregarded
NC330 Obtainment of BC passport after renunciation disregarded
NC331. Resumption under section 10(1) requires qualifying connection in section
NC332. Normal criteria not met

45. RESUMPTION

NC333. Burden and standard of proof
NC334. Effect of acquisition of British nationality by annexation
NC335. Pre-1973 right of abode at common law
NC336 S. 2(2) IA 1971 - consequences of repeal
NC337. Standard of proof
NC338. Effect of mistaken recognition of right of abode
NC339. Effect of mistaken recognition of right of abode
NC340. No right of appeal against erroneous CoE cancellation
NC341. Meaning of "by naturalisation ...in the United Kingdom"
NC342 Meaning of "by naturalisation ... in the United Kingdom"
NC343. Pre-1949 residence effect of s.2(3)(c) IA 1971
NC344. Burden of proof
NC345. Illegitimacy NC346. Failure to provide a non-British passport: whether CoE may be granted
NC347. Consequence of Pakistan's withdrawal from and readmission to the Commonwealth

NC348. Pre-IA status not relevant
NC349. Illegitimacy/Adoption
NC350. Whether s.2(1)(b) IA 1971 (as amended) is sexually discriminatory
NC351. 'Another living wife' does not include a divorcee

46. SCHEDULE 8: REGISTRATION/NATURALISATION

NC352. Pre-1981 Act applications determined when certificate issued

47. WITHDRAWAL OF APPLICATION

NC353. Letter of withdrawal received but not linked before issue of certificate
NC354. Change of mind after withdrawal
NC355. Letter from Public Trust Office withdrew application

1. AUTOMATIC CLAIMS

NC1. **2(1)(a)** **Birth certificate missing following adoption**
Claim established: Dec 1990 **other documentation provided**

Child born in Australia in 1983 to a UK born mother. Access was no longer available to child's original birth certificate following adoption by the mother's second husband. Letters supplied by the mother's doctor and obstetrician confirmed that she was the natural mother and she was named as the mother on the child's post- adoptive birth certificate.

NC2. **11(1)** **Father's birth certificate missing but other**
Claim established: Jan 1991 **documentation sufficient to establish claim**

Applicant who held a BS passport had applied for registration under S 4(2). She stated her father was UK born. She was born in British India in 1941 and her birth certificate showed her father was serving in the 8th Army in Karachi. His nationality was said to be English. She produced a copy of her parent's marriage certificate (the marriage took place in the UK) but could not obtain a copy of her father's birth certificate as she was unsure where he was born. She was born a BS by birth in British India and we accepted that on 1.1.49 she became a CUKC under S 12(2) of the BNA '48. She had the right of abode under S 2(1)(b)(i) Immigration Act '71 and on 1.1.83 became a BC. As her father was clearly in Crown Service at the time of her birth she was a BC-OTBD under S 14(2) '81 Act.

NC3. **11(1)** **Applicant registered in error under s.7(1)(a)**
Informed of auto-claim: Aug 1991

Applicant was born in Antigua but had been resident in the UK since 1957. He submitted a CUKC passport showing the right of abode in the UK, which was issued in February 1981, but was mistakenly registered under s.7(1)(a) as a BC. He had an exception to loss of CUKC on the independence of Antigua & Barbuda on 1.11.81 because he had the right of abode in the UK. His registration was declared a nullity. See ANTIGUA & BARBUDA p CN2, Vol 2, Section II SIs.

NC4. **11(1)** **Presumption of legitimacy where marriage Claim established**
May 1991 **legally subsisted**

Applicant had pursued a claim to British nationality by descent since 1962. He claimed to have been born in France in 1932 to a British born father and a Russian born mother (a BS by marriage). He had not been able to produce a birth certificate and circumstantial evidence suggested that he was illegitimate. A birth certificate was finally obtained which named his mother's British - born husband as the father. As the marriage still legally subsisted at the time of his birth the presumption was that he was legitimate unless the balance of evidence showed that his mother's husband was probably not the father (see Legitimacy in Vol 2 of the Nationality Instructions).

NC5. **11(1)** **Determination of IAT was evidence of**
Certificate of entitlements 2(1)(b)(1) **citizenship**
Immigration Act 1971 issued Feb 1989

In September 1988 the Immigration Appeal Tribunal determined, despite a complete lack of documentary evidence, that A was the legitimate son of B, who was UK born, and therefore a British citizen with the right of abode in the UK. C (A's mother) was married to B at the time of A's birth but claimed she left him when she was pregnant and began living with D by whom she subsequently had 4 children although they never married. She claimed to have concealed the fact that A was not the son of D to maintain family unity. Despite extensive

searches she could not find documentary evidence of his paternity. The tribunal determined that C earlier position had been satisfactorily explained and there was therefore insufficient evidence that A was illegitimate. On this basis he was issued with a certificate of entitlement. LAB advised that the establishment of a claim for citizenship depends upon all the evidence available and not the production of certain documents. The evidence in this case was the determination of the IAT: In practice the question of citizenship had been determined by the IAT.

NC6. **11(1)** **Certificate of readmission to British nationality**
Claim established: June 1988

Applicant was born in South Africa 1943 of a father born in the USA in 1901 after his father had ceased to be a BS by being naturalised in the USA in 1890. His father was subsequently included in his widowed mother's certificate of readmission to British nationality issued in 1911 under s.8 and s. 10(2) 1870 Act. (She lost BS in 1892 when she married a naturalised US citizen). Under s. 10(4) 1870 Act a child (included on a certificate of readmission) was deemed to 'have resumed the position of BS to all intents' if he had resided in the British Dominions with the readmitted person. The nationality position of a child included in such a certificate who had never had British nationality was unclear but from 1.1.15 such a child was regarded as a BS by naturalisation in the United Kingdom under s.10(4) of the 1870 Act read with s.3 and s. 27(2) of the 1914 Act. On 1.1.49 he would have become a CUKC under s. 12(1) BNA 1948 and on 1.1.83 a BC under s.11(1) BNA 1981. He proved legitimate descent from his father and established his claim to status of CUKC under s. 12(2) BNA 1948 and BC under s. 11(1) BNA 1981. His position was unaffected by the South Africa Act 1962.

NC7. **11(1)** **Effects of Statute of Westminster 1931**
No claim established: Oct 1989

Applicant claimed British citizenship on the grounds that both his parents were born British subjects. He was born in 1946 in the Dominion of South Africa to a father born in the former Cape Colony in 1896. Both, by virtue of birth in the Crown's Dominions, were British subjects under section 1(1)(a) of the British Nationality and Status of Aliens Act 1914. On 31 May 1910 the colonies of Cape, Natal, Orange Free State and Transvaal combined into the Dominion of the Union of South Africa. The Statute of Westminster 1931, which gave effect to certain resolutions passed by the Imperial Conference of 1926 and 1930, provided that in any future Act "Colony" would not include a Dominion or any province or state forming part of a Dominion. On 1 February 1949 neither son nor father became CUKCs as they were not born in a place which was a colony for the purposes of the Act. They became British subjects without citizenship. On 2 September 1949 under the South African Citizenship Act they became citizens of South Africa under section 2(1) (born in the Union prior to 2 September 1949 and were Union nationals immediately prior to that date). The Act defined the "Union" as including any part of South Africa now (ie on 2 September 1949) included in the Union. Cape Cod was included from 31 May 1910. As a foreign national his only avenue to British citizenship is now by way of naturalisation cf.

NC8. **11(1)** **The difference between 'dominions' and Dominions in the BNA 1914**
Claim not allowed: Aug 1989

Applicant was born on 19 March 1936 in Gerona. His birth was registered at the BCG in Barcelona. His father was born in Cape Colony in 1904 and his paternal grandfather was born in the United Kingdom. Due to insufficient information he was issued with a British citizen passport for 3 months in 1987. His solicitors claimed that he became a citizen of the United Kingdom and Colonies by default under s 12(4) of the British Nationality Act 1948 (and therefore a British citizen s 11(1)) as he was not a potential citizen of South Africa. He was not born there and (they claimed) his father was not a potential citizen because he was a British subject by virtue of his parentage rather than his birth. They had confused '

dominion' in s 1(1)(a) of the British Nationality Act 1914 with 'Dominions' as listed in Schedule 1 to the British Nationality Act 1914. In 1904 the Union of South Africa (one of the Dominions) did not exist. It was explained that his father was a British subject by birth in Cape Colony (which was within His Majesty's dominions) under s 1(1)(a) of the British Nationality Act 1914. He was therefore potentially a citizen of South Africa and on 2 September 1949 became such a citizen under the South African Citizenship Act 1949; he was born outside the Union prior to 2 September 1949 to a father who was born in the Union. The Act defined the Union as including any part of South Africa now (ie on 2 September 1949) included in the Union - Cape Colony was included from 31 May 1910.

NC9. **Status confirmed: Jan 1989** **Naturalisation by Act of Parliament: effect on descendants**

Clarification was requested of the nationality status of the children and grandchildren of a Isaac Aaron Abensur who was naturalised as a BS by Act of Parliament in 1896. Prior to his naturalisation he had 3 children born in Morocco and the effect of "Abensur's Naturalisation Act" upon their status created much debate at the time. Their names were eventually entered in the register of births of British subjects kept at HM's Consulate at Tangier, following the opinion of the Lord Chancellor of the day. However the implications of this for their status remained unclear. Legal advisers confirmed that the children born before Abensur's naturalisation were not BSs whereas those born after became BSs by descent. The position of descendants of those children depended upon the circumstances of their births etc.

NC10. **11(1)** **Exception to loss on independence through residence in UK**
April 1989 **Claim established:**

Applicant was a CUKC, s.4 British Nationality Act 1948, by virtue of his birth in Cyprus and retained that status on the independence of Cyprus on 16 august 1960 because he was ordinarily resident in the UK on that day. It was accepted that as he had not been issued with a UK passport since the 1940s and had never held a Cypriot one, he must have been here on the relevant date. As he had the right of abode under section 2(1)(c) Immigration Act 1971 he became a British citizen 11(1) British Nationality Act 1981 on 1 January 1983.

NC11. **2(1)(a)** **Designated service anomaly: effect on status**
14(1)(a)
Informed status couldn't be altered: Nov 1988

Applicant was born on 25 January 1983 in Germany while her BC OTBD father was serving under the auspices of the Medical Research Council. She was therefore a BC by descent because service with the Medical Research Council was not designated until the British Citizenship (Designated Service) (Amendment) Order 1984 came into effect on 21 December 1984. Whilst the Order has no retrospective effect itself, had she been born before the British Nationality Act 1981 came into force the Order, read together with section 14(2) and 14(3) of the 1981 Act, would have altered her status on 21 December 1984 to BC OTBD. Despite representations her father was informed that his daughter's status could not now be altered as there is no provision in the Act to do so.

NC12. **Application for Judicial Review** **'Father' does not include adoptive father**
Refused Dec 1988

Applicant, born a BS in 1947 of South African parents, was subsequently adopted in 1953 by his stepfather a BS by birth in the United Kingdom. In 1987 he applied for a BC passport to the BCG in Johannesburg on the grounds that his adoption by a British subject had the effect of entitling him to British Nationality. His wife applied for registration under s. 8(1) British Nationality Act 1981; both applications were rejected. The decision was challenged

by application for Judicial Review. The applicant's case rested on the principle that the word 'father' in s.12(2) British Nationality Act 1948 included a person who, by reason of adoption, is deemed to be a father. We argued that s.12(2) does not cover adoptive fathers and, even if it did, as s.12(2) is a transitional provision defining the status of a person as at 1 January 1949, a subsequent adoption would not retrospectively alter that person's status. The Queen's Bench Divisional Court held that he had no claim to British citizenship because, at the crucial date of 1 January 1949 when the British Nationality Act 1948 came into force, he did not have a British father. (R.v. Secretary of State for the Home Department ex parte Brassey and Another.)

NC13. House of Lords found in favour of Secretary of State: June 1991

'British nationality' in section 32(7) BNA '48 meant the status of British subject

Nicholas Ross-Clunis was born in Athens on 6 July 1948. His father was born in Capetown in what was then the Colony of the Cape of Good Hope on 25.3.05. His paternal grandfather was born in England.

In 1989 Mr Ross-Clunis sought judicial review of the Foreign Office decision that he did not become a CUKC under the BNA '48 but was on 1.1.49 a BSWC, potentially South African (section 13(1) read with section 32(7) 1948 Act). His main submission, that his father was not his 'nearest ancestor in the male line' for the purpose of section 32(7) was rejected. He then took his case to the Court of Appeal where it was accepted that his father had acquired British nationality by reason of his parentage rather than by birth. However, the Foreign Office successfully argued before the House of Lords that the words 'British nationality' in section 32(7) meant the status of British subject. The father was born in 1905 in a colony which owed allegiance to the Crown and the father was therefore at common law a British subject by birth. Thus, Nicholas Ross-Clunis' nearest ancestor in the male line, namely his father, acquired 'British nationality' otherwise than by reason of his parentage. Having no claim to CUKC under section 12 of the BNA '48, Mr Ross-Clunis became on 1.1.49 a British subject without citizenship, potentially South African. (R.v. Secretary of State for the Foreign and Commonwealth Office, ex parte Ross-Clunis).

NC14. 11(1) Not possible to establish claim

Applicant unable to produce evidence of birth in the UK

Applicant applied for naturalisation as a BC. He claimed he was born in Liverpool in 1964 but could not produce a birth certificate or alternative evidence, other than his Nigerian passports, stating his place of birth. We could not be satisfied in the circumstances that he had a claim to citizenship. His application was processed in the normal way.

NC15.

CUKC can also be BPP – House of Lords Ruling

Sofiya and Faruk Motala were born in Northern Rhodesia in December 1962 and June 1964, respectively. Their father Ishmail was a CUKC by registration in 1953. In October 1964 Northern Rhodesia became the independent Republic of Zambia.

In 1979 Sofiya and Faruk were refused British passports on the grounds that they were not Ishmail's legitimate children. The President of the Family Division granted them a declaration that they were legitimate and also were BOCs. The Attorney General appealed, contending that although Sofiya and Faruk were CUKCs by descent, they were also BPPs and therefore ceased on October 23, 1964 to be CUKCs by virtue of section 3(3) of the Zambia Independence Act 1964, which provided that everyone, who was born in Northern Rhodesia and was 'on 23.10.64, a BPP shall become a citizen of Zambia'. The Court of Appeal held that the status of BPP was different from and inconsistent with the status of CUKC, to which it added nothing. A person could not be both a CUKC and a BPP at one and the same time. In the case of Zambia it was decided not to include CUKC amongst those upon whom Zambian citizenship would be conferred. Sofiya and Faruk were not

BPPs immediately before Zambian independence and accordingly did not become Zambian citizens and remained CUKCs. (Attorney General V Motala, Court of Appeal 30.1.91).

Decision set aside by the House of Lords

The Attorney-General petitioned the House of Lords, and judgement was given on 7.11.91. The Lords held that, reading the BPs, PSs and PPs Order 1949, as incorporated in the definition of a BPP in the BNA 48, British Protected Person simply meant "a person born in a protectorate". There were no grounds for implying the qualifying words "unless he is a CUKC". Accordingly the Attorney-General's appeal was allowed and the order of the Court of Appeal and its declarations relating to Sofiya and Faruk set aside.

NC16. 11(1) **Domicile re-assessed in parents' polygamous marriage**

These 2 children were born in 1980, after the father was registered as a CUKC in 1974. A certificate was produced relating to the parents' marriage in Pakistan in 1968. The file showed however that in 1976 it had been concluded that the marriage - in potentially polygamous form - was not regarded as valid because the husband had acquired a domicile of choice in the UK before that date. This decision was communicated to the wife in 1976, and accordingly s.1 of the Legitimacy Act 1976 could not subsequently apply to any of the children of the union (see "Legitimacy" in Vol. 2 of the Nationality Instructions).

The case was reconsidered in the light of more recent judgements on the question of domicile, in particular Bell v Kennedy where it was held that "unless you are able to show with perfect clearness and satisfaction that a new domicile has been acquired, the domicile of origin continues" (see para. 8, "Domicile", Vol.2, Pt.2, B4 Div. Insts.). In answer to the question "in which country do you intend to live when you retire?" the children's father had replied in 1976 "Don't know yet". This it was agreed, was sufficient, in relation to the standard set by the courts, to show that he had not lost his domicile of origin at the time of this marriage. There was nothing to prevent us taking a different view from that taken in 1976, and since the matter had again come to our attention we were obliged to reconsider our position in accordance with the current interpretation of domicile. The children were accordingly accepted as having been at birth CUKCs under s. 5(1) BNA 1948, becoming BCs under s.11(1) BNA 1981 on 1 January 1983.

NC17. 11(1) **Invalid registration of renunciation Claim established**

Applicant was a BPP by virtue of his birth in the mandated territory of Tanganyika. In 1960, he was registered as a CUKC under s.7 BNA 1948 in Uganda. When Tanganyika, and later Uganda, attained independence, he did not automatically acquire citizenship of either country. In 1965, he was registered as a citizen of Uganda under s.8(5) of the Ugandan constitution on the grounds that he had been registered as a CUKC before Ugandan independence, but this was subject to him renouncing CUKC within 3 months. Although a minute on the file showed that a letter had been received from the Ugandan authorities suggesting that this deadline had been extended until 23 December 1965 (no copy of this letter had been retained), and the renunciation was registered on 17 December, an endorsement on his passport stated that he had renounced too late.

It was claimed that as his parents were born in British India he had been a British subject deemed at birth, that on 1.1.1949 he had become a CUKC under section 12(3), that his registration as a CUKC was null and void, that as a result he could not have become Ugandan under that section of the Constitution, that the registration of his renunciation was invalid, and that he was therefore a British citizen.

Legal advice was sought on these points. It was agreed that since his claim to CUKC under s.12(3) could not be established or refuted - there was not conclusive evidence of his parents' birth in British India - his registration in 1960 could be regarded simply as confirmation of his nationality status. Furthermore, LAB advised that although minutes on file referred to an extension of the deadline for the renunciation, in the absence of the letter from the Ugandan authorities itself, its contents could not be assumed and a court would be unlikely to regard the renunciation as valid.

NC18. Leave to apply for judicial review Refused: Oct 1998 **Effect of erroneous passport issue**

In 1987 the applicant had been issued with a passport describing her as a British citizen. She had, in fact, ceased to hold any form of British nationality when the former Protectorate of Northern Rhodesia became the independent Republic of Zambia in 1964. An application for a further passport was refused in April 1997, and the applicant sought judicial review of this decision. It was argued on her behalf that either a) in the absence of fraud on her part in applying for the document, the 1987 passport was conclusive evidence that she was a British citizen, or b) the Secretary of State, as the issuing authority, was "estopped" (ie prevented) from going back on the statement in the passport that he considered her to be a British citizen.

The presiding judge quoted from the 7th edition of Wade and Forsyth's *Administrative Law*, which states, on page 383, "A passport is merely an administrative device, the grant or cancellation of which probably involves no direct legal consequences, since there appears to be no justification for supposing that, in law, as opposed to administrative practice, a citizen's right to leave or enter the country is dependent upon possession of a passport". The judge went on to observe that "given the peculiar nature of a passport, as described above, it is logically impossible to understand the basis upon which the applicant's argument that the issue of one can either create an estoppel or be declaratory of rights of citizenship. If it be accepted that the holding of an apparently valid passport confers a *prima facie* right of entry to the United Kingdom which can be rebutted if adequate grounds exist to demonstrate that it had been issued in error, or on the grounds that there was fraud involved in its issue, then there is no factual basis for raising an estoppel. Estoppel is a device which operates in the field of evidence or fact rather than of law. *A fortiori* a passport wrongly issued cannot confer rights which are definitive of a person's status, which from the elaborate statutory scheme as to the requirements which have to be satisfied before that status is required, can only be achieved when all those criteria have been met. That was not the case here". (Case citation: R -v- SSHD ex p Ginwalla, CO/228/98, unreported).

NC19. Permission to apply for judicial review refused: Jan 2000 **BPPs are not EU citizens**

Applicant was a British protected person (BPP) by virtue of her birth in what was then Zanzibar Protectorate. She argued that, as a BPP, she was a "national of a Member State" for the purposes of the EC Treaty and, therefore, a citizen of the European Union. Noting the various distinctions between BPPs, on the one hand, and the holders of the various other citizenships and statuses for which provision was made by the British Nationality Act 1981, on the other, Mr Justice Tucker concluded that the Applicant was not an EU citizen. He observed, as an aside, that a BPP who was not a citizen of any country might technically be stateless. (Case citation: R –v- SSHD ex p Upadhey, CO/2787/99, unreported.)

NC20. Court of Appeal found in favour of the Secretary of State: May 2001 **Not possible to "upgrade" citizenship**

Applicant, a British citizen by descent, applied in 1997 for naturalisation as a British citizen in order to become a British citizen otherwise than by descent. There was a possibility that he and his wife (also a British citizen by descent) might return to Bangladesh, their country

of origin, for an extended stay and he wanted to be certain that any child born to them there would automatically be a British citizen. He was told that we could not grant his application because he was already a British citizen. He sought a judicial review of our decision and in October 2000, the High Court ruled in his favour and quashed our decision, taking the view that:

- the 1981 Act did not preclude applications from British citizens, and
- there were 2 "classes" of British citizen, which created an unfair anomaly – statutes should not be interpreted so as produce anomalies or absurd or irrational results – and resulted in disadvantage to the applicant

The Home Secretary appealed against that ruling. In May 2001, the Court of Appeal held that British citizenship was a unitary concept and that section 6 BNA 1981 did not apply to a person who was already a British citizen (i.e. he could not *become* what he already *was*). The apparent injustice in the fact that a foreign national could, on naturalisation, become a British citizen otherwise than by descent but a British citizen by descent could not was "proper material for debate as to whether or not proper provision has been made in the Act for children born outside the United Kingdom to those who are British citizens by descent, but cannot be used so as to give such children, or to their parents, rights which the statute does not provide." The Court of Appeal judgement can be taken to apply to any applications for British citizenship or British overseas territories citizenship made by people who already hold the citizenship they are applying for by descent.

NC21. Appeal dismissed: March 2003 Claim for declaration of British citizenship refused: July 2004 **Court rejection of claim for declaration of citizenship**

In 2001, Mr Harrison wrote via his MP seeking confirmation of his British citizenship under s.11(1) BNA 1981. He submitted a sworn affidavit stating that his father had been born on a British registered ship en route to New Zealand in 1897. If that was correct, Mr Harrison would have been a CUKC under s.12(2) BNA 1948. He would have had the right of abode in the UK and would have become a British citizen on 1.1.83. However, the affidavit contradicted a number of previous statements made by Mr Harrison since 1969 to the effect that his father had been born in Australia (supported by an Australian birth certificate). Mr Harrison also asserted that any records he had held relating to his father's birth at sea had been destroyed. The Minister replied that, on the evidence available, he could not be satisfied that Mr Harrison was a BC. Mr Harrison sought a judicial review of this "decision", and the matter eventually came before the Court of Appeal.

The Court held that British citizenship is a legal status, possession of which can be determined conclusively only by the courts. An expression of opinion by any other authority or person, including the Home Secretary, as to whether a particular individual is or is not a British citizen can never be anything more than just that: an expression of opinion or view. Mr Harrison could apply for a declaration from the courts that he was a British citizen and the courts would determine the claim on the basis of all the facts and available evidence.

The Court went on to say that Mr Harrison's rights under ECHR Article 6 (right to fair hearing in determination of civil rights) had not been breached because there had been no "determination" in his case. It also held that citizenship did not count as a "civil right" for the purposes of the ECHR. (Case citation: Peter Harrison -v- SSHD [2003] EWCA Civ 432.)

In August 2003, Mr Harrison applied to the courts for a declaration that he was a British citizen. The case was eventually heard in the High Court on 12 July 2004. In the

absence of any documentary evidence in support of Mr Harrison's claim, his case relied on:

- the affidavit that Mr Harrison had sworn in 2001 and
- Mr Harrison's personal credibility

However, the Court was also presented with earlier conflicting information given by Mr Harrison in connection with two applications for registration, one application for naturalisation, two applications for judicial review (and subsequent appeals), a libel action against his MP and the then Minister, Lord Rooker, and an unsuccessful damages claim. This included sworn statements, affidavits and declarations as well as his and his father's birth certificates). The claim was dismissed.

NC22. Application for declaration of incompatibility under s.7 of the Human Right refused: July 2007

No automatic British citizenship where person was over 18 on date of adoption

Adoption law in England, Wales and Scotland provides for the making of an adoption order in respect of a person aged over 18 provided the adoption process was begun whilst the person was still under 18. However, under section 1(5)(a) of the British Nationality Act 1981, an adoption order made by a court in the United Kingdom will only result in the automatic acquisition of British citizenship by the adopted person if he or she was under 18 on the date of the adoption order.

The adoptive father in this case, John Rae, sought a declaration under section 7 of the Human Rights Act that the BNA 1981, in failing to provide for the automatic acquisition of British citizenship by persons aged over 18 on the date of adoption, was incompatible with Article 8 of the European Convention on Human Rights (right to respect for family and private life) taken with Article 14 (the right to enjoyment of ECHR rights without discrimination on grounds of "sex, race ... or other status").

The High Court (Family Division) refused to make any such declaration. It held that issues of citizenship did not fall within the ambit of ECHR Article 8, either as an aspect of family life or as an aspect of private life. The Court observed, however, that had Article 14 guaranteed a right not to be discriminated against in any circumstances, it would have been breached in this case.

(Case citation: Rae –v- SSHD [2007] EWHC 1614 (Fam))

NC23. 2(1)(b) **Evidence of "UK recruitment" supplied by European Patent Office**

Claim not allowed: Oct 1991

Applicant was born in the UK. His daughter, was born in Germany on 5 October 1990. He had worked for the European Patent Office (service designated on 16 February 1990) since 1 August 1990. The EPO provided a certificate showing a UK "home address at the time of recruitment" and urged him to push his case for recognition of daughter's claim under section 2(1)(b). The British Consulate-General in Dusseldorf sought our advice on the definition of "recruitment in the UK" in this context and we replied as outlined in Annex F to Chapter 46 of the Nationality Instructions. The letter issued by the EPO in respect of applicant as a means of demonstrating fulfilment of the necessary requirements in this respect was clearly unsatisfactory.

NC24. **11(1)**
S.2 OR 3
BC passport issued Jan 1989
Legitimacy Act 1976

Legitimation by marriage regardless of place of domicile

Applicant was born in Barbados before independence to a Barbadian born mother and United Kingdom born father who did not marry until after the independence of Barbados. At the time of the marriage the father was probably living in Barbados and might have been domiciled there or in the United Kingdom. Barbados law on legitimation was similar to that of this country at the time in question, so the marriage would have legitimated Gerald regardless of whether his father was domiciled in the United Kingdom or Barbados under section 2 or 3 respectively of the Legitimacy Act 1976. This subsequent legitimation was regarded as giving Gerald an exception to loss of CUKC status on the independence of Barbados and therefore a claim to s. 11(1) BC status.

NC25. **11(1)**
S. 1 Claim established Feb 1989

Legitimation of child of void marriage where a parent believed the marriage legitimacy Act 1976 valid

Applicant claimed she was the daughter of her United Kingdom born father who married her mother by Ghanaian customary marriage in Ghana (then Gold Coast) circa 1939. The marriage was not valid as he did not appear to have the capacity to contract a polygamous marriage (a previous marriage in Australia had not been terminated). She was able to prove by her birth certificate and circumstantial evidence that she was related to her father as claimed, a Ghanaian customary marriage took place between her parents and, at the time of her conception, her mother believed the marriage was valid. She also provided evidence that her father had retained his domicile in England at the time of her birth. Therefore by virtue of s.1 of the Legitimacy Act 1976 she had a claim to s. 11(1) BC status.

NC26. **2(1)**
S.1 Appeal dismissed: Dec 2000
Legitimacy Act 1976

Section 1(1) Legitimacy Act 1976 requires reasonable belief that parents' marriage was valid in English law

The applicant was the child of a polygamous marriage between his father, a British citizen otherwise than by descent, and a Bangladeshi woman. The marriage was void in consequence of the father's acquisition of an English domicile prior to the date of the marriage. A certificate of entitlement to the right of abode was refused on account of the applicant's illegitimacy. On appeal, the Immigration Appeal Tribunal upheld the refusal. The applicant appealed against the IAT's determination, arguing that he benefited under s.1 of the Legitimacy Act 1976 ("Legitimacy of children of certain void marriages").

The Court of Appeal clarified two key issues relating to the test of "reasonable belief" imposed by s.1(1) of the 1976 Act. First, the Act required a belief that the marriage was valid in English law; not, as the applicant had argued, under the law of the country in which it had been celebrated. Second, it was necessary to show that the relevant parent had formed a view as to the validity of his or her marriage in English law and that the view, although mistaken, was reasonable. The test applied by the IAT in another case (Begum, 16 March 1990) –"it would suffice if one parent had no reason to believe that the marriage would be invalid in English law"- was wrong.

(Note that s.1(4) of the 1976 Act, inserted by s.28 of the Family Law Reform Act 1987, now requires a reasonable belief to be presumed "unless the contrary is shown". S.1(4) did not apply in this case because the applicant was born before s.28 of the 1987 Act came into force.)

(Case citation: Azad –v- Entry Clearance Officer Dhaka, CA, unreported.)

NC27. 3(1) **Vietnamese boat person**
Registered: June 1994

Minor was born in 1979 on an unnamed boat in the middle of the China Sea after the parents fled Vietnam for Hong Kong. As a result, it was not possible to issue a certificate showing a place or country of birth. After consultation with Computer Section, it was agreed that a manual certificate should be issued showing the place/country of birth as "Uncertain".

NC28. **1(3) Birth on a British aircraft**
Registered: July 2003

Applicant was born in 1989 in mid-air on board a British Airways plane flying from Qatar to Chicago. Enquiries established that the child was born stateless and was therefore deemed to have been born in the UK by virtue of section 50(7)(a)(ii) of the BNA 1981. It was agreed that a manual certificate could be issued showing the place/country of birth as "British Airways flight over Saudi Arabia"

5. CERTIFICATE - REPLACEMENT

NC29. New Certificate issued: **April 1990** **Fears of illegitimacy** becoming known

Stateless child who was the illegitimate son of a UK born mother was registered in 1975 in his mother's name. His mother subsequently married and they lived in Egypt. A new certificate in the child's new name (by Change of Name Deed) was requested on the grounds that in the society in which they lived knowledge of his illegitimacy could result in ostracism. Although the presumption is against issuing new certificates this case was clearly genuine and exceptionally a new certificate was issued. The name at birth was included on the certificate however.

NC30. **Duplicate certificate issued: August 1994** **Original certificate lost in** the post

Applicant had been issued with a certificate of naturalisation which had been sent to him by ordinary post following a review of postage practice. It was claimed that he had never received his certificate, and it was not possible to refute this claim. Following MP's representations, it was agreed that he should not be penalised by not being allowed to possess a certificate.

6. CITIZENSHIP CEREMONY

NC31. **Granted: March 2007** **Oath and pledge taken in written form prior to citizenship ceremony**

Applicant suffered from a severe speech impediment following a laryngectomy due to cancer of the larynx and had requested to be exempted from attending a citizenship ceremony for that reason.

Discretion to waive attendance at a citizenship ceremony is only exercised in 'exceptional' circumstances, for example, where there are national security implications or when an applicant cannot attend due to chronic illness or disability.

His condition was not severe enough to prevent him from attending the ceremony and his request was rejected. Arrangements were made instead to allow him to take the oath and pledge in written form immediately prior to the ceremony so he could still observe and enjoy the event.

NC32. **Granted: October 2006** **Applicant to attend ceremony with the support of her nephew**

Applicant was a 68 year old lady who was illiterate. She had been exempted from the knowledge of language and life in the United Kingdom requirements and she had also requested an exemption from attending the citizenship ceremony.

Home Office policy did not consider this an acceptable reason to exempt attendance at a citizenship ceremony. Instead, arrangements were made for her nephew to accompany her at the ceremony to give her some help and support.

NC33. **Granted: March 2007** **Exempt from taking oath and pledge due to mental impairment but ceremony attended**

Applicant suffered from a severe learning disability, Hydromicrocephaly and Congenital cerebral palsy. He had been exempt from the knowledge of life and language requirement because of this but he had not requested exemption from attending a citizenship ceremony.

Discretion to waive attendance at a citizenship ceremony is only exercised in 'exceptional' circumstances, for example, where there are national security implications or when an applicant cannot attend due to chronic illness or disability.

His condition prevented him from taking the oath and pledge but did not prevent him from attending the ceremony. Arrangements were made with the Local Authority so he could still observe and enjoy the event.

NC34. **Granted: April 2007** **Exempt from taking oath and pledge due to being severely autistic but ceremony attended**

Applicant was severely autistic and had had a previous application refused on full capacity prior to the introduction of the Immigration, Asylum and Nationality Act 2006. He reapplied in November 2006 and discretion was exercised to waive the full capacity requirement. His parents still wanted their son to attend the ceremony and so he was exempted from taking the oath and pledge but reasonable adjustments were made to allow him to observe and enjoy the event.

7. COLLEGE OF ARMS

NC35. Stated nothing adverse known: December 1990

Confirmation of no objection to a grant of Armorial Bearings

Applicant who was naturalised as a CUKC at the Home Office in November '74 petitioned the College of Arms for a grant of Armorial Bearings. In accordance with usual procedure the College of Arms asked us to confirm that there was no objection to the person concerned. After making the necessary checks to establish that the applicant was of good character and there being no reason why a grant of Armorial Bearings to the petitioner should cause embarrassment to the College of Arms, we wrote (at Grade 7 level) to the College confirming the date on which the petitioner became a CUKC and then BC and stated that we were not aware of any reason why a grant of Armorial Bearings should not be made.

NC36. 6(2) **Bigamous marriage**
Granted: April 1990

NC37. 6(2) **Bigamous marriage**
Granted: December 1992

NC38. 6(2) **Bigamous marriage**
Granted: April 1995

Deprivation proceedings not initiated

The above are examples of cases in which British citizen men were duped into marrying Filipino women, only to discover some years later that their "wives" already had husbands in the Philippines. The Home Secretary was urged to deprive the women of their British citizenship under section 40(1) of the 1981 Act (concealment of a material fact).

Before making a deprivation order, the Home Secretary must show not only that the person comes within subsections (1) or (3) of section 40, but also that his or her retention of British citizenship would not be "conducive to the public good" (s.40(5)(a)). Commenting on this latter requirement during the Committee Stage of the Bill in 1981, Mr Raison, then Minister of State at the Home Office, said: "It has been interpreted over the years as meaning that it is not sufficient, for example, that the person concerned should have been disloyal or deliberately concealed a bigamous marriage. It must be clear that the action has such gravity that the public good would be harmed by the continued retention of citizenship by the individual" (Commons Official Report, 7.5.81, col. 1867). Legal advice obtained subsequently has tended to support this interpretation. Thus, while concealment of a previous and subsisting marriage might be sufficient to bring a person within s.40(1), it will rarely, if ever, satisfy the "conducive" test in s.40(5)(a) of the Act.

NC39. **Deprived: July 2006** **Deprivation on "conducive" grounds**

The applicant, an Australian citizen, was being held by the US authorities at Guantanamo Bay. It was alleged that he had given active support to terrorists. He claimed an entitlement to registration under s.4C BNA 1981 on the basis of his own birth in Australia in 1975 and his mother's birth in the United Kingdom. The S of S argued that he was entitled to register but then immediately deprive the applicant of his British citizenship under s.40(2) BNA 1981 or, alternatively, that registration could be refused on 'public policy' grounds. The applicant sought a judicial review.

Held:

1. The entitlement under s.4C was subject only to the requirements laid down by s.4C itself and to the principle that an applicant would not be entitled to registration if, but for his own criminality, those requirements would not have been satisfied. On the facts of the case, the applicant was entitled to registration. (He had applied before the introduction, on 14 December 2006, of the additional requirement in s.58 of the Immigration, Asylum and Nationality Act 2006 that applicants under s.4C must be of good character.)

2. Section 40(2) applied only where the activities giving rise to the possibility of deprivation had occurred whilst the person was a British citizen. (But there was otherwise no reason in principle why the S of S could not register and then immediately deprive.)

3. The requirement in s.40(5) to give "reasons" for a proposed deprivation did not mean

that the full particulars of the case against the individual had to be given at that stage.

(Case citation: R (Hicks) –v- SSHD [2006] EWCA Civ 400)

In light of this ruling, Hicks was registered under s.4C. However, he was then immediately deprived both of his newly-acquired British citizenship and of his separate right of abode in the UK under new provisions introduced by ss. 56 and 57 of the Immigration, Asylum and Nationality Act 2006 (deprivation on grounds of conduciveness to the public good), which had by then come into force. Appeals against both deprivation orders were initially lodged with the Special Immigration Appeals Commission, but the appeals were later withdrawn

9. DEPRIVATION: 1948 ACT PRECEDENTS

NC40. Deprived: February 1951 **Disloyal**

Naturalised on 31 July 1942. Sentenced on 1 March 1950 under the Official Secrets Act to 14 years imprisonment for unlawfully disclosing information about atomic research. The Committee of Inquiry heard the case on 30 December 1950 and recommended that Fuchs by deprived of his citizenship on the grounds of disloyalty. The Home Secretary accordingly made an order under s.20(3)(a) BNA 1948.

NC41. Deprived: June 1957 **Criminal conviction**

Naturalised on 11 September 1953. Sentenced to 2.5 years' imprisonment on 22 March 1956 for various fraudulent financial offences. It was thought that if Issler was deprived of his citizenship this might hamper him in future attempts at commercial fraud. A request for a hearing by the Committee of Inquiry was withdrawn before the case was heard. The Home Secretary ordered deprivation under s.20(3)(c) BNA 1948.

NC42. Deprived: January 1952 **Criminal conviction**

Naturalised on 27 September 1948. Sentenced on 13 October 1950 to 18 months' imprisonment for a customs offence. The Committee of Inquiry heard the case on 4 December 1951 and recommended deprivation on the grounds that Levy was believed to be an international smuggler on a large scale and that withdrawal of his British nationality would therefore be in the public interest as being likely to impede his activities. The Home Secretary ordered deprivation under s.20(3)(c) 1948.

NC43. Deprived: May 1955 **Disloyalty**

Naturalised on 7 February 1948. In 1950 he left the UK and there was no definite news of his whereabouts until an article appeared in Moscow newspapers under his name in 1955. The contents of the article, together with press agency reports of a press conference which he gave, were thought to justify deprivation under s.20(3)(a) BNA 1948. The case was not referred to the Committee of Inquiry.

NC44. Deprived: March 1953 **Criminal conviction**

Naturalised on 23 September 1947. Sentenced on 7 March 1952 to 18 months' imprisonment for a customs offence. It was felt that the circumstances of the case were sufficiently similar to those in NC42 above for deprivation to be ordered on the same grounds. A request for a hearing by the Committee of Inquiry was withdrawn, and the Home Secretary made an order for deprivation under s.20(3)(c) BNA 1948.

NC45. Applicant 1 - Deprived: June 1951 **False representation**

NC46. Applicant 2 - Deprived: June 1951 **False representation**

Applicant 1 was naturalised on 10 March 1949, Applicant 2 on 9 December 1949. Applicant 1 was considered guilty of concealment of a material fact in that he had failed to mention, when interviewed in connection with his naturalisation application, that he was at that time in the pay of the Czech government to which he sent reports on Czechs living in the UK. He also acted as an intermediary between the Czech authorities and Applicant 2, who had been engaged in similar activities. The Committee of Inquiry accepted in both cases that the argument for deprivation on concealment grounds was made out, and that the circumstances were such that it was manifestly contrary to the public interest that either

Applicant 1I or Applicant 2 be allowed to retain his citizenship. The Home Secretary accordingly ordered deprivation under s. 20(2) BNA 1948. The files contain potentially still useful advice on the meanings of "concealment" and "material". In particular, Treasury Counsel thought that s. 20(2) required some recognition on the applicant's part that relevant information was being concealed.

NC47. Deprived: October 1956 **Criminal conviction**

Naturalised on 21 March 1952. Sentenced on 28 June 1955 to 2 years' imprisonment for buggery of a 14 year old boy. The case was unusual in that applicant asked to be deprived of his citizenship. He did not request a hearing before the Committee of Inquiry. The Home Secretary ordered deprivation under s. 20(3)(c) BNA 1948.

NC48. Deprived: August 1958 **Criminal conviction**

Naturalised on 2 May 1947. Sentenced in January 1952 in Iraq to 5 years' imprisonment for espionage on behalf of the Israeli government. The Committee of Inquiry recommended deprivation. It was thought that applicant, who had disappeared after his release from prison, should not have the benefit of British protection in any similar activities in which he might engage. The Home Secretary ordered deprivation under s. 20(3)(c) BNA 1948. **This is the last example of deprivation on the grounds of a criminal conviction before the British Nationality (No.2) Act 1964 introduced the proviso that deprivation could not be ordered on such grounds if the person would, as a result, become stateless. A similar proviso now appears in s. 40(5)(b) BNA 1981.**

NC49. Deprived: December 1973 **Disloyalty**

Included in a certificate of naturalisation granted to his father on 31 May 1948. Convicted in 1971 of making a sketch calculated to be of use to an enemy and of communicating information for a similar purpose, both contrary to the Official Secrets Act. Sentenced to 12 years' imprisonment. The case was not referred to the Committee of Inquiry. The Home Secretary ordered deprivation under s. 20(3)(a) BNA 1948.

NC50. **Police advised to release naturalisation interview notes to court on** subpoena

The police had been subpoenaed to hand over transcripts of applicant's naturalisation interview following a successful petition to the court that the interview would be of relevance to her divorce case. Special Branch initially considered the subpoena invalid, since the information had been obtained not in the course of their own investigations but on behalf of IND, for whom they were acting as agents. Home Office legal advice, however, which has now been relayed to Special Branch, suggests that possession, not ownership, is the crucial factor, and the court acted correctly in issuing the subpoena to the police.

Special Branch were also informed that we were content for the information to be handed to the judge, and its disclosure thereafter left to his discretion. This is in line with our current policy of only allowing copies of certificates and documents to be released on subpoena, thereby remaining impartial in the dispute and preserving, as far as possible, the implied seal of confidentiality under which information is given to us by applicants and members of the public.

Caseworkers are reminded to refer requests for Home Office documents to be produced in legal proceedings or in court to an SEO, who may wish to consult policy section.

11. FULL CAPACITY

NC51. **7(1)(a)** **Not capable of understanding oath of allegiance**
Refused: Sept 1989

Hospital applied on behalf of a severely brain damaged applicant for registration under s. 7(1)(a). The professional opinion was that she was not capable of understanding an oath of allegiance. She did not meet the full capacity requirement under s.7. Nor could she be registered under s.8, to which she had an entitlement by virtue of marriage to a British citizen, as she could not take an oath of allegiance which was required under the 1981 Act.

NC52. **3(1)** **Meaning of oath explained slowly by Registered: translator**
December 1986

Although application was received before minor's 18th birthday, the Home Office were not informed of any disability (priority would have been given) and when the application was dealt with he was required to take the Oath of Allegiance. A doctor initially stated that due to mental retardation he would not be able to understand the oath but he was registered when it was decided he could dimly grasp the meaning if explained slowly by a translator.

NC53. **7(1)(a)** **Broadmoor inmate incapable of understanding anything**
Application not invited: October 1987

Social worker from Broadmoor wrote for advice regarding a prospective applicant who had been detained in Broadmoor under the Criminal Procedure (Insanity) Act 1964 since 1968 but was being considered for repatriation to Bangladesh. He appeared to be a Bangladeshi citizen but Bangladesh did not recognise him as one and said the only way for him to be admitted to Bangladesh would be as a BC. He could then apply during the first year of stay for dual British/Bangladeshi nationality. Applicant could not be considered to satisfy the 'full capacity' requirement for registration as the social worker said he did not have the ability to understand anything. The ordinary residence requirement might also have ruled out registration as residence was to be voluntarily adopted. The social worker was advised to approach the Bangladeshi authorities again.

NC54. **6(1)** **Application submitted by the applicant**
Granted: September 1992

Although correspondence received from applicantl implied that his mental state was a little eccentric, he had lodged his application personally. He understood the purpose of his application. Current policy is that in such circumstances there is a presumption that the full capacity requirement will be met unless there is substantial evidence to the contrary.

NC55. **6(1)** **Applicant mentally disabled**
Granted: December 1992

Applicant had a severe mental condition which prevented her from learning English, although when explained to her in Gujarati, she had a basic understanding of her application for citizenship, indicated by means of non-verbal expressions. A note explaining the full capacity requirement was sent to assist the person administering the oath. (NC92 - NATURALISATION s. 6(1) - KNOWLEDGE OF ENGLISH).

NC56. 6(1) **Application submitted by a parent**
Refused: August 2004

Application was submitted by applicant's mother who indicated that her daughter had cerebral palsy, could not talk and had a mental age of a four year old. Her doctor confirmed that the applicant also had severe learning difficulties and epilepsy and advised that, in view of her medical condition, she would be unable to comprehend the purpose of the nationality application or make any rational communication.

NC57. **8(1)** **Domicile reassessed in polygamous marriage**
Registered: November 1989

The second wife of a Muslim was refused entry clearance in 1979 on the grounds that the polygamous marriage was not valid in English law as the husband had acquired a domicile of choice in England by the time of that marriage. In 1985 she was given entry clearance, in error, as a wife rather than a fiancée - the first wife having died. On re-examining the evidence of his acquisition of a domicile of choice in the United Kingdom it was not felt to be conclusive enough to displace the domicile of origin in Pakistan: although he had lived here for 17 years, his first wife had remained in Pakistan, he had property there, had made lengthy visits there and, when asked, had indicated that he did not know where he would live permanently and end his days.

NC58. **8(1)** **Review of refusal based on immigration decision**
Registered: January 1990

Registration was refused in 1984 and again in May 1989 based on a 1981 EC refusal (upheld at appeal) because the applicant did not appear to be married as claimed. Solicitors requested a review of the decision. They intended to apply for Judicial Review. In reaching a decision on a case the "Wednesbury principle" should be born in mind.

"The court is entitled to investigate the action of the (authority) with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely have refused to take into account or neglected to take into account matters which they ought to take into account".

(Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948) IKB : 223)

In reviewing the decision it was decided that the importance of consistency with the immigration decision had been rightly recognised but on the balance of probabilities it was reasonable to assume that the applicant was related as claimed.

NC59. **6(1)** **Bigamous marriage**
Granted: August 1995

In 1981, applicant was suspected of being involved in arranging marriages of convenience, and of contracting such a marriage himself in the UK in 1975. Consideration was given to deporting him on the grounds that he had obtained ILR by deception - he had declared himself to be a bachelor although the marriage was bigamous. He had then claimed that he had "pronounced divorce" from his first wife in 1974 in Turkey, but enquiries with the Turkish authorities revealed that that procedure is not a recognised form of divorce there. A valid divorce was eventually obtained in 1983. We were advised that the CPS would be unlikely now to pursue a prosecution for bigamy, and had he been charged for that offence in 1975, the conviction would now be spent.

NC60. **8(1)** **Mixed race marriage in South Africa**
Marriage recognised: June 1989

Applicant married a CUKC (who became a BC) unofficially in a Church service on 13 December 1981 in South Africa. This marriage was not registered with the civil authorities as South African law did not then allow marriages between people of different races. When the law changed to allow such marriage they married again, officially, on 15 March 1986. In two other cases marriage between persons of different races or religion celebrated abroad

were accepted as valid for our purposes; it was felt that the English courts would disregard the incapacity under foreign law on the grounds that it was penal and contrary to public policy. This marriage was accepted as valid.

NC61. **6(2)** **Muslim child marriage**
Granted: September 1992

The applicant was married in 1952 in Bangladesh, when she was aged 10. Such marriages are governed by the Child Marriage Restraint Act 1929 which prescribes punishments of imprisonment or a fine where one of the parties to the marriage is a male under 18 or female under 14. Although child marriages are illegal, they are nevertheless regarded as valid in UK law. This was the line taken in a previous case, and was no doubt the view taken by the ECO who issued an EC to her as a wife when she joined her husband in the UK in 1975. The minimum legal age for a girl to marry was raised to 16 by the Muslim Family Laws Ordinance 1961.

NC62. **6(2)** **Applications received from 2 wives**
Granted: October 1992 **of a British citizen**

Applicant, who was registered as a British citizen in 1990 married first wife in 1967 and second wife in 1976. They were issued with ECs in 1980 and 1985 respectively. The BHC, Dhaka confirmed that his first wife had retained a domicile in Bangladesh at the time of his second marriage and both marriages were valid in UK law. The BNA 1981 requires that an applicant under s.6(2) must be married to a British citizen. Both applicants satisfied this requirement. Similar cases will be rare since the Immigration Act 1988 was introduced to prevent the setting up in the UK of polygamous households.

NC63. **6(2)** **Bigamous marriage**
Refused: February 1994

Applicant contracted a marriage in the UK in 1988 at which time she stated she was a spinster. She had, however, previously married in the Philippines, but claimed her separation from her first husband was sufficient in Philippines law to terminate that marriage, and that she was therefore free to marry again. A letter of allegation had alerted us to the existence of the first husband, and a copy of an affidavit which she had purportedly signed in 1989 clearly stated that she and her first husband were still legally married. Legal advisers in Manila confirmed that the marriage had not been terminated according to Philippines law. Consideration was given to prosecuting her for bigamy and deporting her, but in view of the length and apparent genuineness of the relationship further action against her was felt to be inappropriate.

NC64. **Granted: June 2007** **Mixed race marriage in Burma**

Applicant, a Burmese national, married a British citizen, in Burma in February 2006. However, in 1998 the Chief Justice informed the Burmese judiciary not to process marriages between Burmese women and foreign men. It is therefore unlikely that this marriage was considered valid under Burmese law.

In most circumstances we would accept a foreign marriage as valid as long as it is valid in the country it is celebrated. However, where the marriage is not recognised in the country of celebration based on principles that this country would consider

repugnant (for instance, that people of different races shouldn't be allowed to marry) a UK court would disregard their non-recognition.

This marriage was therefore considered valid for nationality purposes.

13. NATURALISATION: GOOD CHARACTER

NC65. **6(1)** **Savak-Iranian secret police**
Refused: February 1991

Iranian who was a former Colonel in the Iranian secret police - SAVAK. He had fled Iran after the fall of the Shah and was given political asylum and, later, refugee status in the UK. He claimed that during his 19 years service in SAVAK he had never killed or tortured anyone, only advised them of the error of their ways. SAVAK as a whole was guilty of widespread abuse of human rights and it was inconceivable that Solimani would have been unaware of this.

NC66. **6(1)** **Domestic violence**
Refused: April 1990

Iraqi national who was interviewed by the police because he had a spent conviction in 1980 for assault on his 18 month old daughter. He had been sentenced to 6 weeks' imprisonment for beating her. He was subsequently divorced from the child's mother although they had been living together for the past 18 months. No further incidents were known to have occurred involving the children but there was a 'long running saga' of domestic violence and disputes involving the wife who had not pressed charges.

NC67. **6(1)** **Murderer**
Granted: April 1992

South African millionaire who murdered his wife in 1970 and served 5 years of a 12 year sentence. He was exceptionally allowed admission to the United Kingdom in 1979 as a person of independent means. Previous naturalisation applications had been refused in 1986 and 1988 as he was not considered to meet the good character requirement. A further application made in 1990 was also refused in July 1991. The circumstances of the case were most unusual in that only after some years in prison did he confess to killing his wife, claiming extreme provocation. This confession was brought to the attention of the trial judge who sought, and eventually obtained, his release on the grounds that he would have accepted his defence of provocation and sentenced him to a maximum of 3 year's imprisonment, with a portion of this probably suspended.

Representations were received following the 1991 refusal which drew attention to an offer which we had made at the time of the 1986 refusal to be ready to consider a fresh application in 1990. This was considered to have implied that we would by that time regard him as rehabilitated (his conduct since arrival in the UK had been exemplary), and the Home Secretary agreed that more favourable consideration could be given to a fresh application. An application was received in February 1992 and was granted.

It is not our normal policy to naturalise applicants convicted of murder -as far as we know, there are only 4 other cases where citizenship has been granted:

NC68. **6(1)** **Murderer**
Granted

Applicant was a Pakistan national who was released in 1979 after serving 9 years of a life sentence for murdering his wife's alleged lover. In deciding to grant his application account was taken of his age (70); his poor health; his insistence on working rather than living on

public funds and the fact that he had had an entitlement to registration which had not been recognised.

NC69. **6(1)** **Murderer**
Granted: 1964

Applicant was an ex-Polish serviceman who, while drunk, had shot a Polish military policeman. He was sentenced to hang in 1946 but his sentence was commuted to life imprisonment and he was released in 1953. In deciding to grant his application account was taken of his meritorious war record and determined efforts, both in and out of prison, to rehabilitate himself.

NC70. **6(1)** **Mentally ill applicant who was unlikely to be violent**
Granted: January 1990

Sri Lankan applicant suffering from schizophrenia whose stability was controlled by medication. A potentially violent incident in 1982 was followed by some 4 weeks' hospitalisation and 3 years in a rehabilitation centre. Since then there had been no similar occurrences. His doctor indicated that his mental state would deteriorate if he were to cease to accept treatment although he was not likely to become violent. In this event a community psychiatric nurse would intervene. On balance we were satisfied that he met the good character requirement and that a grant was unlikely to bring naturalisation into disrepute.

NC71. **6(1)** **Interview because of immigration history revealed he Refused**
August 1989 **was working and claiming benefit**

Pakistani applicant had a dubious immigration history including gaining entry for his 1st wife to the United Kingdom by concealing the existence of a 2nd wife whom he had married in the UK. There had also been reports of domestic violence. An interview was requested despite clear paper checks and it was discovered that he was in full time employment whilst claiming benefits for his 2 wives and 6 children. He was also likely to be charged in connection with an illegal immigration racket.

NC72. **6(1)** **Unsatisfactory tax and financial position reflected on wife**
Refused: June 1990

Mauritian applicant's financial affairs were in a state of disorder. He had overstretched himself with mortgages on 2 properties and failed to pay rates or declare rent from his flat to the Inland Revenue. He was also suspected of drug smuggling. His wife's application was refused in line as she had failed to make independent efforts to establish herself and the unsatisfactory tax and financial position reflected on her too.

NC73. **6(1)** **Possible mental illness**
Granted: July 1991

South African performed his work as a caretaker diligently but it appeared possible that he was suffering from a mild form of mental illness. He appeared to have an obsessive fear of asbestos and had delusions of grandeur. He believed that once he became British he would be accepted by the Civil Service, be able to study law and enjoy a fulfilling professional life. However, he seemed, generally, well-intentioned and conscious of his responsibilities.

NC74 **Refused: February 1991** **Non-payment of community charge**

At police interview applicant declared his intention not to pay the community charge for which he was legally liable. Non compliance is a punishable offence and he could not be

considered to meet the good character requirement for naturalisation purposes. Reason for refusal was disclosed when requested as it was a matter that the applicant could rectify.

NC75. 6(2) **Conviction for political offence**
Granted: September 1992

Applicant declared an 18 month conviction for a political offence in Hungary in 1984. The CQ was returned clear, and Special Branch confirmed that neither they nor Interpol hold records of political offences committed overseas. A letter from his wife in 1987 had given details of the offence which was clear for the purposes of his application for naturalisation.

NC76. 6(2) **Mentally disturbed applicant with a persecution complex**
Granted: January 1993

A police report indicated that applicant and his wife suffered from delusions and an acute form of persecution complex. The couple had no history of violent behaviour, and had become known to the police only as a result of "allegations" they had made. They were both reclusive and were not known to their neighbours. The applicant was not receiving psychiatric treatment and was clearly aware of the purpose of his application, and therefore satisfied the full capacity requirement. Although the police recommended that the application should be refused, granting the application was not likely to bring the process of naturalisation into disrepute.

NC77. 6(2) **Conviction for obtaining British passports by deception**
Refused: December 1992

Applicant was investigated for his involvement in bogus marriages, fraudulent applications for passports and various immigration offences. He was convicted of the passport offences and sentenced to community service. The application for naturalisation was refused prior to sentencing to pave the way for deportation action if that was recommended by the court.

NC78. 6(1) **Breach of immigration laws and marriage of convenience**
Refused: January 1995

Applicant arrived in the UK in 1984 and was granted LTE for 1 month. He remained in breach of his leave until, in 1988, he applied for ILR on the basis of marriage to a British citizen - ILR was granted in 1990. He was represented in that application by Dr Ohene-Djan, who was subsequently convicted on charges connected with his involvement in arranging bogus marriages. Evidence pointed towards him having contracted a marriage of convenience to obtain ILR, and in 1990 consideration was given to deporting him, but the couple's whereabouts were unknown. Deportation was again considered in 1994, but since his, now, ex-wife could not be traced, no action was taken.

NC79. 6(1) **Hospital order under the Mental Health Act 1983**
Granted: June 1995

Applicant, a schizophrenic, was admitted to hospital in 1989 following an assault on his mother and sister. In March 1991, he was convicted of unlawful wounding and given a hospital order under Part III of the Mental Health Act 1983. Since his discharge from hospital in November 1991 he had been undergoing treatment as an out patient, and had had no record of violence. His progress on medication was being closely monitored and he had remained free of psychotic symptoms for 5 years. It was appropriate to disregard the conviction, although it was not 'spent'.

NC80. **6(1)** **Conviction for armed robbery**
Granted: March 1996

In 1985, the applicant was convicted in connection with the armed robbery of a Post Office and sentenced to 6 years imprisonment. He had had several prior convictions for related offences. Since his release from prison on parole licence in 1988 he had not re-offended, and had actively sought to better himself by obtaining a joint honours degree and various sporting qualifications, and he was working with young people taking responsibility for their welfare and promoting awareness of drugs, AIDS etc. Reports from his college and employers were extremely favourable.

NC81. **6(2)** **Convicted of murder**
Granted: September 1995

In 1985, before she came to the UK, the applicant was convicted in Zimbabwe of killing her 2 year old daughter. The court, which had heard evidence that she had been suffering from an unusual form of epilepsy at the time of the offence, with the result that she had been unaware of what she was doing, returned a special verdict, committing her to a mental institution for treatment. It accepted that she posed no danger to herself or others, and recommended that she should be released within 72 hours (she actually remained in the institution for 7 months).

The applicant had no history of violent behaviour or child abuse either before or since the offence - she had a four year old child - had received treatment for her illness and had not come to the attention of the police or Social Services.

NC82. **6(1)** **Nature of business activities**
Refused: June 1995

Applicant came to the UK as a person of independent means having acquired considerable wealth and influence in the South African homeland of Bophuthatswana by means of his enterprises in Sun City (which included gambling and "adult" films). His business activities had resulted in absences of 1100 days in the qualifying period, with 206 days falling in the last 12 months. Consideration was given to refusing the application on the grounds of character as well as excess absences. However, his business activities were not unlawful in that territory (although there was an uncorroborated magazine article to the effect that he had bribed an official to gain casino rights) and would not have been illegal in the UK. It was agreed that it would normally be undesirable to make a moral judgement about a person's lawful business activities. An exception might be where a consensus of public opinion would find a particular kind of business activity unacceptable.

NC83. **6(1)** **Prosecution under s. 46(1) BNA 81**
Refused: April 1996

Applicant applied for naturalisation in November 1992 and was refused in January 1993 because he was unable to meet the residence requirements. He re-applied for naturalisation on the Isle of Man where his application was refused on character grounds following a conviction there for an offence under s 46(1)(a) of the British Nationality Act 1981. He was fined £1000 for stating falsely that he was resident in the Isle of Man.

He made representations to the Home Secretary via Sir Patrick Mayhew and was informed that a s46(1) offence would normally rule out naturalisation for a period of at least three years and the Home Secretary could see no reason to depart from his normal practice in this case.

NC84. 6(2) **Murderer released on licence**
Granted: October 1996

In 1972 the applicant attacked and murdered another man during an argument. Although sentenced to life imprisonment, he behaved well in prison and was released after serving just over five years of his sentence. The applicant was interviewed by the police. During the interview he was asked about his conviction and he claimed the victim had been disgracing his sister-in-law and he felt he needed to defend the family honour. We normally expect an applicant who has been sentenced to life imprisonment to have been released for at least 20 years before naturalisation is considered. In this case it was decided to grant naturalisation 18 years after the applicant's release firstly, because the short term the applicant actually served reflected the manner in which the offence had been viewed and, secondly, nothing adverse had come to light about the applicant since his being released from prison.

NC85. 6(1) **Bogus marriage**
Refused: October 1996

Applicant came to the UK in 1984 on a three-day visit but stayed over by enrolling on a language course. In July 1987 he contracted a marriage of convenience with a woman police later suspected was using a false identity. He was granted ILR on the basis of the marriage in 1987. He later admitted at interview to contracting a fraudulent marriage but the police were unwilling to commit resources to a prosecution because of the unlikelihood of deportation in the event of a conviction.

In such cases we would look at the passage of time and ask whether the applicant has made a real contribution to the community. Although he had not come to adverse notice, he had not made any exceptional positive contribution in the nine years since contracting the bogus marriage, so it was decided to refuse the application in the light of the deception. No reason was given for the refusal.

Although it was realised that we could not let the bogus marriage count against the applicant indefinitely, it was thought reasonable to advise him that any fresh application received within two years would be unlikely to be successful.

NC86. **Granted: August 1997** **Conviction for manslaughter**

Applicant applied jointly with her husband declaring a conviction for manslaughter for which she received a 3 year probation order in 1990. She had abused the child of her sister-in-law causing its death. The conviction was spent by the time of consideration. No attempt had been made to hide the conviction which was declared and openly discussed when the applicant was interviewed. Although there was some concern about granting for fear the naturalisation process might be brought into disrepute, it was decided that we should respect the decision of the court, despite the fact that the sentence seemed light, and not take into account the spent conviction.

NC87. 6(1) **Complicity in commission of**
Granted: September 2000 **immigration offences by spouse**

An application for naturalisation made in1995 was refused in 1998 on character grounds, i.e. that she had failed to report her husband to the Home Office (he had gone to ground after being served with a deportation order in 1991, 3 years before they had married). Her husband's whereabouts became known when she made her application for naturalisation, and he was deported the following year, but allowed to return after the order was revoked following a successful appeal. In her evidence to the Immigration Appeals Adjudicator, she had admitted that she became aware of her husband's Immigration status shortly after her marriage but, despite seeking legal advice, had not contacted the Home Office.

An application for judicial review of the decision to refuse her naturalisation argued that she was not culpable in her husband's evasion of immigration control. Although it appeared that she had harboured a person who had committed an offence under s.24(1)(b)(i) of the Immigration Act 1971, no charges had ever been brought against her or her husband. That fact weakened our argument that she was not of good character. It was also felt that the court which was considering the judicial review application might be reluctant to take the view that wives should be condemned for failing to report their husbands to the authorities for "victimless" crimes (the Police and Criminal Evidence Act 1984 does not normally require a person to testify against a spouse in criminal proceedings). Her application was judged to have been inappropriately refused. It was therefore re-opened, and she was invited to withdraw her judicial review application.

NC88. **6(1)** **Subject to restrictions under the Mental Health Act**
Granted: March 2002

Applicant was convicted of arson in 1981 and sentenced to a hospital order with a restriction order. Since then, she had remained in residential psychiatric care – and this was likely to continue. Her psychiatrist confirmed that she met the full capacity requirement and there was no indication that the continuing restriction order reflected on her character.

NC89. **6(1)** **Speeding conviction**
Granted: May 2003

Shortly after making his application, applicant wrote to the Nationality Directorate to advise that he had recently appeared in court where he had received a conviction for speeding and that he had been fined £300 and disqualified from driving for 3 weeks. The sentence would not be "clear" until January 2005. The applicant had no other convictions. The current policy is to disregard a single conviction for a minor offence that results in a relatively small fine. Although it was difficult to assess whether this could be regarded as a "relatively small fine", consideration was given to the fact that courts are encouraged to relate fines to the offender's means. The applicant's honesty in notifying us of his conviction was also taken into account.

NC90. **6(1)** **Life sentence for manslaughter**
Granted: February 2004

In 1972, the applicant was sentenced to life imprisonment for manslaughter. He also had a number of convictions for assault, burglary, robbery and theft and was concurrently sentenced to 2 years imprisonment. He had had no further convictions since his release from prison in 1981. It was evident that he had made a positive contribution to society by way of his voluntary work with charities and organisations concerned with the disabled (especially the blind).

14. NATURALISATION: KNOWLEDGE OF ENGLISH

NC91. Granted: August 1991 **Mental condition**

A police interview was requested under previous arrangements (prior to streamlining) as one of the referees said that the Indian applicant could speak 'very little' English. It emerged that the applicant had a very rudimentary knowledge but was also of simple mind. Whilst he met the full capacity requirement it was unlikely that he had the capacity to learn English or improve on his present level of knowledge. He was, essentially looked after by his family. Discretion was exercised to waive the knowledge of English requirement because of his mental condition.

NC92. Granted: December 1992 **Mentally disabled**

A previous application under s.5A(2) of the BNA 1948 was refused as the result of a police interview report which indicated that the applicant had insufficient knowledge of English, and, in view of the fact that she was mentally retarded, expressed doubts that she satisfied the full capacity requirement. Her doctor had stated that if the situation was explained to her in Gujarati, she would understand the purpose of the application and therefore meet the full capacity requirement. She was invited to make an application for naturalisation under the 1981 Act, which, unlike s.5A(2), had discretion to waive the knowledge of English requirement in such cases. (see also NC55 - FULL CAPACITY).

NC93. Granted: May 1993 **Lifestyle presented limited opportunities to improve English**

Applicant was 63 and worked most of the day in the kitchen of a Chinese restaurant. A previous application had been refused due to insufficient knowledge of English, and she had since taken no steps to improve. She was illiterate due to the fact that as a child she had received no education. If required she overcame any communication problem by sign language, and her son would deal with officials.

NC94. Granted: February 1995 **Oaths translated by applicants' son**

A married couple's applications were approved and oaths of allegiance issued. These were translated for the applicants by their son who lived with them and had been included for registration on their application forms. Husband owned a takeaway and wife was unemployed. Since the couple were 59 years old and it was unlikely that they mixed with anyone outside the Chinese community, it was agreed to proceed with the applications.

NC95. Granted: November 1998 **Applicants elderly**

Applicant, who was 63, had spent the majority of the previous 17 years in the UK mixing with Chinese and Vietnamese refugees along with his 58 year old wife. It was thought that their limited knowledge of English would be unlikely to improve further.

NC96. Granted: October 2002 **Long-term ill health**

Referees stated that although the 58 year old Peruvian applicant was able to find her way around London and understand directions (with some assistance from her daughters, with whom she lived), she could not read or write English, but also suggested that her poor health might be a factor. Her doctor advised that her arrival in the UK in 1994, the applicant had had a long history of ill health requiring a succession of operations and other hospital appointments and was currently undergoing treatment for depression. One

of the referees commented that the applicant might now find it difficult to learn a new language in view of her age and previous limited education in Peru.

NC97. Granted: April 2005 — **Illness limited ability to attend language classes**

Although these applicants had not yet reached 65 years of age they had both confirmed that they would find it very difficult to learn English due to illness which severely restricted their mobility and, hence, the ability to attend language classes or practice this language in the community. As it would take these applicants a number of years to learn English, by which time they would have reached 65 anyway, it was decided to waive the knowledge of English requirement.

NC98. Refused: April 2005 — **Epileptic child**

This 32 year old applicant had requested that we waive the knowledge of English requirement in her case due to her inability to attend language classes. She stated that she needed to look after her child who suffered from epilepsy. Applicant lived with her husband, the father of the disabled child, who could have shared the responsibility of care. Applicant's husband had also applied for naturalisation and met the knowledge of English requirement by providing an ESOL certificate. It was therefore decided that she should also be able to meet this requirement and so the case was refused.

15. NATURALISATION: KNOWLEDGE OF LIFE

NC99. Granted: May 2006 **Medical condition**

Applicant, a 45 year old Yugoslavian lady had requested exemption from the Knowledge of Life requirement on the grounds of suffering from an obsessive premorbid personality, moderate to severe depression and moderate to chronic post traumatic stress disorder (PTSD). She had supported her application with a medical report confirming the above. The medical report stated that the applicant had a very limited level of cognitive functioning, which would severely affect her ability to fulfill the Knowledge of Life requirement.

NC100. Granted: May 2006 **Medical condition**

Applicant, a 59 year old Ukrainian lady, suffered a stroke in August 2002 which left her disabled and dependant on her family to help with her mobility. Applicant submitted a medical report which confirmed the lady's health problems. She had lived in the UK since 1995 and there was no indication that she could speak English. As this applicant would have had difficulties learning English and passing the relevant ESOL with Citizenship qualification it was decided to waive the knowledge of life and language requirement in line with the Nationality Instructions.

16. NATURALISATION: TECHNICAL ABSENCE

NC101. 6(1) **Dependants of member of mission**
Granted: December 1988

Two sons of a locally recruited Indian High Commission employee had an entitlement to exemption from immigration control until their 18th birthdays, when, as they were no longer considered members of their father's household, the entitlement ceased. They did not apply to have their position regularised. Their period of technical absence ended before the start of their qualifying period for naturalisation. Had they applied for registration of their stay, conditions would have been re-imposed but there was no requirement for them to do this and their stay was not unlawful. By the time of consideration of their applications they would have been eligible for ILR and they met all the requirements of paragraph 1(2) of Schedule 1.

NC102. 6(1) **Membership of mission does not have to be notified to qualify for exemption**
Refused: April 1989

Applicant, Public Relations and Protocol Officer of the United Arab Emirates Embassy in London had been given ILR before commencing employment as a locally engaged (diplomatic) member of staff there. His appointment had not been notified to the FCO. He had absences in excess of 450 days in the 5 year period incurred in business travel outside the UK and did not meet the statutory requirement to have been in the UK 5 years prior to the date of application. He had previously travelled on a Fujairah diplomatic and Lebanese passport and in the absence of strong links with the UK absences were not waived.

At the time of the refusal there was a legal judgement (R v IAT ex parte Ali [1988]) to the effect that locally engaged staff of diplomatic missions did not enjoy the immunity and privileges of diplomatic employment etc unless the Embassy had notified their employment to the FCO and they were therefore not exempt from immigration control under the Immigration Act 1971. It seemed therefore that he might be able to meet the normal residence requirement for naturalisation (i.e. his presence in the UK would not be treated as absence under para 9 of Schedule 1 to the 1981 Act) and he was advised accordingly.

However, that judgement was overturned in R v Secretary of State for the Home Department ex parte Bagga and others [April 1990]. The court found that, in order for a person to be a member of a diplomatic mission (and exempt from immigration control under s.8(3) of the 1971 Act), it was not necessary that his membership of the mission should have been notified to the FCO. Even though he was settled here prior to his diplomatic employment, his residence here while so employed did not count for naturalisation purposes. He was advised that it was open to him to apply for his 'technical absence' to be waived but it was unlikely that we would do so.

NC103. 6(1) **Applicant given indefinite leave to enter while in exempt employment**
Granted: November 1992

The restrictions on applicant's stay were suspended in 1972 when she took up employment as an accountant at the Kuwaiti Embassy. She was still exempt from immigration control when, in 1989, her passport was endorsed with ILE erroneously and she was subsequently issued with a CID with a "no time limit" endorsement. It was confirmed that although the grant of ILE had no effect while she was exempt from control, it nevertheless amounted to a pledge of public faith, and that indefinite leave would be granted when she ceased exempt employment.

17. NATURALISATION S. 6(1): CROWN SERVICE

NC104. Refused: May 1990 — **Insufficient reason to deport from usual criteria**

Dominican born applicant held a valid CUKC passport with right of abode under section 2(1)(c) Immigration Act 1971 from issue in 1978 until February 1988 when he asked for his son to be included on it. At Dominican independence in November 1978 he had become a citizen of Dominica and lost his CUKC status. He had left Dominica in 1957 and worked in Crown service, in the British Army until 1974 and for the Property Services Agency in Germany since then. It was established that his service was not of the exceptional standard normally expected of applicants applying on the basis of Crown service and, despite the particular circumstances of his case, there was insufficient reason to depart from our usual practice.

NC105. Advised application unlikely to be successful: November 1990 — **Service not exceptional**

Palestinian had worked for the British Embassy in Doha, Qatar for some 25 years and had been trying to obtain BC since 1978. On retirement he was likely to leave Qatar. His quality of service did not meet the criteria set out in the Nationality Instructions. Despite representations by the Ambassador about the possibility of a threat of expulsion during the Gulf conflict, FCO were advised that the Home Secretary is only prepared to naturalise Crown servants on the basis of exceptional service and that if Mr Sabri was expelled from Qatar he would probably be allowed entry to the UK on an exceptional basis if he arrived here.

NC106. Granted: May 1988 — **Outstanding service**

Applicant, a BOC, had been in Crown Service abroad for 12 years working his way up to vice consul in Ismir (Turkey). He was said to carry responsibilities far in excess of his status and salary. Application granted in consideration of the fact that he had represented HMG as Head of Mission.

NC107. Refused: April 1992 — **Insufficient connections with UK**

Applicant had been employed as an electrician at the BHC Islamabad for 17 years during which time he had performed his duties to an exceptionally high standard. However, his connections with the UK lay solely in the presence in the UK of his wife's aunt. Length of service alone was not considered to be sufficient grounds to grant the application.

NC108. Refused: April 1990 — **No connections with the UK apart from employment**

Applicant, a Lebanese national, had been employed at the British Embassy, Beirut since 1985, during which time she had frequently risked her life to keep the West Beirut Office open and had demonstrated considerable courage and dedication. She had no family, property or previous residence in the UK, and therefore did not meet the criteria for naturalisation. An application for naturalisation made by one of her colleagues at the Embassy had previously been refused, but was re-opened and considered along with her application, in view of the similarities in their circumstances. The original decision to refuse his application was upheld at Ministerial level.

NC109. Granted: October 1993 — **Accepted as meeting future intentions requirement although normal criteria not met**

Applicant had served in Crown service (the British Army) for 34 years and was due to retire within the next year. He stated that after he retired he intended to reside in Nepal, but to travel to the UK for research and to visit his children here. Although we should expect applicants in such cases to continue in Crown service for 5 years from the date the application is considered, the application was granted in view of the length and nature of his service and his links with the UK through family and friends.

NC110. Granted: May 1994 — **Civilian specialist recruited into Crown service**

Applicant was a UK based civilian employee of the MOD. He was due to be posted to Germany. However, as an Australian citizen, he could not meet a requirement of the posting to be a national of a NATO state. The MOD confirmed that he had been the most suitable candidate for the post. The usual Crown service criteria were waived in view of the close connections he was considered to have with the UK.

NC111. Granted: November 1994 — **Outstanding service**

A previous application for naturalisation made by applicant on the grounds of Crown service in Oman had been refused as it was considered that his service, though meritorious, had not been of sufficiently direct benefit to the UK. In the light of representations on his behalf, which included letters of support from 4 successive ambassadors at the Embassy in Muscat, a fresh application was invited. The representations made it clear that he had served British interests for 23 years, and had clearly earned the high esteem of his superiors.

NC112. Granted: August 2000 — **Outstanding service**

Applicant was a Pro-Consul at the High Commission in Malta where she had worked for 34 years. In 1994, she had been awarded an Honorary MBE on the basis of her devoted assistance to British citizens. Although she had never lived in the UK and did not own property here, she had visited on many occasions. Her connections with the UK consisted of her brother, who was a British citizen and had lived in the UK for 25 years, a bank account and a number of friends in this country. At the time of applying for naturalisation, she was on the verge of retirement, and wanted to live permanently in the UK.

NC113. Granted: January 2003 — **Employed in undermanned specialisation**

Applicant was a Wing Commander and Senior Dental Officer in the RAF Dental Service, who had transferred, as a Squadron Leader, from the Royal Australian Air Force 5½ years before making the application. The MOD confirmed that she had given outstanding service, resulting in her recent promotion to Wing Commander. The RAF fully supported the application, indicating that it was vitally important to retain the applicant in the Dental Service (which was 20% undermanned). She had property in the UK and Australia, her family lived with her in RAF Quarters in the UK and her salary was paid into a UK bank account.

18. NATURALISATION S. 6(1): FUTURE INTENTIONS

NC114. Granted: April 1990 — **International organisation of which the UK is a member**

Italian chartered accountant had been resident in the United Kingdom since childhood but had large absences during the qualifying period, mainly in Italy, while working for United Kingdom established companies. He was now on a 3 year contract in Italy with the Food and Agriculture Organisation of the United Nations (an international organisation of which the United Kingdom is a member). Since his application was made he had married a British citizen and had a British citizen son. He intended to return to the United Kingdom for employment if his contract with the FAO was not renewed. He did not pay United Kingdom tax but was not liable to do so on earnings from the FAO. In view of his long previous residence and close family links we could be satisfied that he had thrown in his lot with the United Kingdom sufficiently to waive excess absences. The future intentions requirement was met by his current employment.

NC115. Refused: February 1990 — **Not domiciled in UK for tax purposes**

Iranian couple had absences in excess of 450 days in the qualifying period. At interview it was established that they had few assets in the United Kingdom; the bulk of their estate was in Iran and other assets were in other countries. They were not domiciled here for tax purposes having told the Inland Revenue that they were permanently resident abroad. This cast doubts on their future intentions.

NC116. Refused: December 1989 — **Doctor working abroad**

Egyptian doctor had spent a year working in Saudi Arabia but his absences in the qualifying period were less than 450 days. He had no established home in the United Kingdom and had lived in various hospital lodgings etc. By the time his application was considered it was known that he had been working in Canada for over a year. Although he said that he intended to return to the United Kingdom in 1990 we could not be satisfied that he would do so. He was advised to reapply on resuming permanent residence in the United Kingdom.

NC117. Refused: February 1990 — **Applied for residency abroad**

Guyanese couple were interviewed to clarify their financial/tax position as owners of a rest home. It was established that they had sold their business and applied for residency in the USA. Although there appeared to be some doubt over whether they intended to live in the USA if successful, we could not be satisfied at that stage that their future lay in the United Kingdom.

NC118. Fresh application invited: August 1990 — **Voluntary service abroad**

Canadian applicant informed us that she intended to work abroad under Voluntary Services Overseas for a period of some 2 years. By the date of consideration of her application she had changed her mind but neglected to inform us. The application was refused relying on the earlier decision. However, she had lived here since 1974, owned property here and had obtained leave of absence from her employer. We took the view that where an applicant's home genuinely appears to be in the UK an applicant ought not to be penalised on future intentions grounds if he or she intends to undertake voluntary service abroad for a limited period.

NC119. Granted: September 1992 — Company established in the UK

Applicant had been resident in Hong Kong since May 1991. He was recruited by an international law firm, which was based in the UK. Since December 1991, he had been on secondment at its Hong Kong office because of his knowledge of Mandarin. He stated an intention to return to the UK, but his employers required his continued presence in the territory. Mr Yeo had property and assets in the UK, and intended to continue to renew his UK Solicitor's Practising Certificate on an annual basis.

NC120. Granted: December 1993 — **Applicant temporarily working** overseas

Applicant came to the UK aged 3 months and had been continuously resident here for 34 years. He had a home and close family in the UK. As the nature of his employment was specialised - a structural design draughtsman - he was unable to find suitable employment in this country. He had therefore taken up a temporary contract building oil rigs in Norway for which he required a British passport. While abroad, he continued to pay the bills and mortgage for his house in the UK, and also paid UK taxes and National Insurance. In view of his strong connections with the UK, it was accepted that he met the requirement.

NC121. Leave to move for judicial review granted: January 1991 — **Definition of company established in the UK and whether an application can be reopened**

Application for naturalisation under section 6(1) was refused on future intentions grounds. Applicant had lived 15 years in the UK but was about to be posted to New York for 3 years. Home in UK sold. Solicitors challenged the refusal on the grounds that the applicant was employed by a company established in the UK (schedule 1(1)(d)(ii)). However, applicant's employing company, incorporated in USA, was registered under the Companies Acts as an overseas company with a place of business in the UK and we took the view that the company was not established in the UK for the purposes of the 1981 Act. Solicitors were advised that once an application had been determined it could not be re-opened.

Leave to move for judicial review was given to applicant whose grounds were that: the fact that he had sold his flat and was seconded by his UK employers to work in the USA was not conclusive evidence that he did not intend to make his principle home in the UK if naturalised because inter alia, the requirement is contingent upon the certificate of naturalisation being granted; applicant's employing company is established in the UK for the purposes of the BNA '81 and there is no basis under the BNA '81 for the Secretary of State's refusal to re-open his naturalisation application.

The High Court quashed the decision to refuse his application. B4 Notice 36/1992 refers.

NB. Although the issue has not been raised it is possible that our case may have been somewhat weakened by the fact that our refusal letter was badly worded and stated that the Secretary of State was not satisfied that, if naturalised, Mr Mehta's principal home would be in the UK rather than his intentions were such that, if naturalised, his principal home... which is the requirement set out in para 1(1)(d)(i) of Schedule 1. It is important (as illustrated by this case) that refusal letters properly reflect the provision of the statute on which the decision is based.

NC122. Granted: June 1998 — **Applicant accompanying** spouse **on posting abroad**

The applicant, an Australian citizen, applied for naturalisation as a British citizen under s. 6(1) in August 1995. In July 1996 she informed Nationality Directorate that she had married a British citizen and was going with him to France where he had a work contract. When the applicant replied to our enquiries it was not clear how long her husband's contract would

last, but it was clear that it was not permanent. There appeared little doubt that the couple would return to the UK after the contract had expired because all the husband's family were here. It was also thought that we should have offered the applicant the chance of converting her application to s. 6(2) nearly two years previously when she first informed the Directorate she was going to France. It was therefore decided to grant exceptionally under s. 6(1).

NC123. Refused: November 2002 **Same-sex partner of Crown servant**

The FCO had submitted an application for applicant, who was about to accompany his same-sex British citizen partner, an FCO official, on a 4-year posting to the British Embassy in Japan. They were likely to remain in Japan, with the possibility of using some of the official leave to visit the UK. The main purpose of the application was to avoid difficulties in obtaining a suitable visa in his French passport. FCO sought to make a comparison with the discretion, in respect of the s. 6(2) residence requirements, for spouses of British citizens in Crown service. However, s.6(2) is not applicable to unmarried couples (whether same-sex or different sex)* and, in any case, discretion is not normally exercised in such cases unless the marriage has lasted for at least 3 years – the applicant's partnership had existed for only 2½ years. This was a s.6(1) application and future intentions were in doubt due to the length of the intended absence from the UK. The decision was maintained despite further representations from FCO arguing that we should reverse the decision to refuse the application on the grounds that our future intentions policy allows flexibility and that it would not create a precedent (since they would draw the matter to the attention of staff with non-marital partners).

* NB. Since the introduction of the Civil Partnership Act 2006, s. 6(2) may extend, in certain cases, to same-sex partners.

19. NATURALISATION S. 6(1): RESIDENCE

NC124. Refused: April 1989 — **Seaman with excess absences**

Somalian seaman with 804 days absence in the 5 year period of which 291 were in the last year. Wife and family lived in Somalia and although it was said applicant and wife intended to retire in the UK, he had recently sold his own house and moved into lodgings. Future intentions were in doubt.

NC125. Granted: December 1989 — **Seaman with excess absences**

Yemeni merchant seaman employed on United Kingdom registered ships operating mainly between United Kingdom ports had 1,334 days' absence in the 5 year period. Due to his large absences paper checks were less useful than usual and it was established at police interview that he was of good character. His family were in the UK and his future lay here.

NC126. Refused: February 1988 — **Not resident in UK**

An eminent QC of South African nationality. The case was supported by a number of influential people. Residence requirements were clearly not met up to the date of application - the largest period spent in UK was 5 months in 1983 and 1986. The Secretary of State wrote a manuscript note to one of the referees to the effect that if we opened the door with this case it would be hard to close it again.

NC127. Granted: July 1989 — **Absences due to career**

Romanian international pianist whom we accepted as meeting the 5 year residence requirement on the basis of his diary of movements as previous Romanian passports had been retained by the Romanian Embassy. Absences in excess of 750 days in the qualifying period were waived as they were a result of his career and his established home was in the United Kingdom.

NC128. Granted: February 1989 — **Discretion exercised for sportsman**

Canadian professional ice hockey player of exceptional ability who wanted to play for the United Kingdom in the World Cup. Discretion was exercised in respect of the fact that he had not been free of condition for 12 months and in respect of absences in excess of 450/90 days in the qualifying period.

Following the decision on this case, applications for naturalisation were made by other Canadian ice hockey players who hoped to represent the UK, although they did not meet the requirement to have been free of immigration restrictions for 12 months. It was decided to exercise discretion to waive the requirement.

NC129. Granted: May 1995 — **Involved in accident while abroad**

Applicant was involved in a traffic accident while visiting relatives in the USA. In recovering from his injuries and pursuing a civil lawsuit, he accrued absences totalling 725 days. When he returned to the UK, his wife, who had also applied, remained in the USA until their children had completed the school term, and as a result she was absent for a total of 831 days. He had lived in the UK since 1978 and his wife since 1982, had no absences since their return and their links with the UK were sufficient to justify discretion being exercised in their favour.

NC130. Granted: November 1991 **Excess absences**

A Buddhist monk, Head of Monasteries in Italy, Switzerland, New Zealand and Australia amassed absences totalling 535 days (195 in the year prior to the application). His only home since 1984 has been a Buddhist Centre in the UK which relied financially on contributions from lay supporters as his order forbade the handling of money. Absences were disregarded as they were largely due to his responsibilities as Head of Monasteries abroad.

N131. Granted: May 1992 **Merchant seaman**

Applicant, an engineer in the Merchant Navy had 1179 days absence in the qualifying period, of which 290 were in the last 12 months, which were as a result of his career. His wife who had also applied for naturalisation had short absences only. Applications had been made for the registration of their children. They had owned a house in the UK since 1979 and their future could clearly be seen to lie in this country.

NC132. Refused: April 1992 **Breach of immigration laws**

Applicant entered the UK illegally in 1973. He remained in breach of the immigration laws throughout the qualifying period, and was eventually granted ILR in December 1991 under the long residence concession having already completed 15 years residence in the UK.

NC133. Granted: October 1992 **Excess absences due to business reasons**

Applicant was absent for 979 days in the qualifying period consisting of two long visits to Malawi due to business problems, at the end of which her company was wound up. During her absences, she maintained property in the UK. Although her absences in the qualifying period were more than we would normally consider waiving, she had since demonstrated that she had clearly established herself in the UK (since the latter trip to Malawi, her absences amounted to 2 days only).

NC134. Granted: October 1992 **Absences unavoidable consequence of career**

The applicant was an opera singer who had 917 days absence in the qualifying period, 193 days of which were in the last 12 months, incurred as a result of her career. She had property and assets in the UK and was domiciled in the UK for tax purposes.

NC135. Granted: February 1993 **Excess absences due to compassionate reasons**

An elderly applicant had a single absence of 1167 days in the qualifying period due to her return to Jamaica to care for her dying mother and the estate. It was appropriate to grant in view of her age and long previous residence in the UK.

NC136. Granted: April 1993 **Applicant issued with a British passport in error**

Applicant amassed absences totalling 1368 days in the qualifying period, of which 272 days were in the last 12 months. The absences were mainly as a result of a working holiday. He had been issued with a British passport in 1979 which led him to believe he was a British citizen. Agreement was given at Ministerial level for the exercise of discretion to waive the excess absences.

NC137. Granted: April 1993 — **Excess absences in final year due to employment overseas**

Applicant's absences in the final year of the qualifying period amounted to 321 days although he satisfied the other residence requirements. He did not own property in the UK, but had been resident in the UK for the previous 16 years with only short absences. He was domiciled in the UK for tax purposes. His absences in the final year were as a direct result of his secondment abroad by a British company.

NC138. Granted: June 1995 — **Excess absences due to research**

Applicant was a highly respected architect. He and his wife had absences of 906 days as a result of his extensive research abroad. He had been involved in bringing business contracts to the UK and the couple owned property here. The couple's absences in the 3 years prior to the qualifying period amounted to 110 days, and by the date of consideration they had been continuously resident in the UK, without further absences, for more than 2 years. The decision to grant the applications were approved by the Head of Division.

NC139. Granted: October 1996 — **Excess absences on compassionate grounds**

Applicant had incurred 561 days' absences in the 5 year qualifying period, 38 of which fell in the final 12 months. Business travel accounted for 132 of the days while the remaining 429, which all fell within the last three years of the qualifying period, were due to family business following a bereavement.

The applicant continued to own property in South Africa as well as in the UK but he was able to demonstrate that he had made the UK his home and had a satisfactory reason for retaining the property in South Africa, which he had inherited from his mother.

NC140. Granted: February 1997 — **Excess absences due to nature of career and long prior residence**

The applicant was absent from the UK for 916 days of the qualifying period, 168 of which were in the final 12 months. He was an Oxford University lecturer and newspaper feature writer. Half his absences were in connection with his university work and some were due to research for a book. He also spent a lot of his holidays and leisure time in Portugal.

His absences were overlooked on the grounds of his lengthy prior residence - since 1968 - and the fact that he was employed in the UK and had his principal home here. The majority of his absences were due to his career and the pattern of long absences was thought likely to continue while he continued to follow his academic career.

NC141. Refused: March 1997 — **Future intentions in doubt- no reason to overlook excess absences**

Applicant had incurred 553 days' absences in the qualifying period 61 of which were in the final twelve months. She had made several trips to Hong Kong to visit her husband who was resident there. At the time of consideration she was in Hong Kong and likely to remain there for the first half of 1997 with her husband who was due to undergo treatment for cancer. The applicant could not satisfy us that she had thrown in her lot with the UK. She had failed to demonstrate any close family ties with the UK. Although she owned a house here she also owned one in Hong Kong. Only one of her children was in the UK. Her husband had never lived in the UK.

We would normally treat circumstances such as these as an exceptionally compelling reason for overlooking absences. However, in this case the husband's illness had begun

after the qualifying period and did not account for those absences incurred during the qualifying period.

NC142. Granted: May 1997 — **Excess absences due to medical reasons**

The applicant had accumulated 658 days' absences 128 of which were in the final year. The reason given was that she had arthritis which was helped by spending time in a warm climate. Also, three relatives had died in the previous two years. The applicant had a solid UK base, had a son in the UK and owned property in London. She had been here since 1969, gained ILR in 1975 and lived at the same address since 1976.

NC143. Granted: July 1997 — **Excess absences due to secondment overseas**

Applicant had accumulated 647 days' absences in the qualifying period 265 of which were in the final twelve months. Although the absences were high it appeared the applicant had resettled in the UK having retumed in October 1996 following a period of secondment abroad. He had UK ancestry, and family here. He had only 8 months' residence prior to the qualifying period but did not begin his pattern of prolonged absences until his secondment to Paris which had ended the previous October.

NC144. Granted: October 1997 — **Excess absences due to compassionate reasons**

Applicant had accumulated 526 days' absences, 182 of which were in the final year. These were due to her mother's illness and subsequent death. She had resided in the UK since 1963. Her late husband had been registered as a CUKC in 1974 and she had children and other relatives in the UK.

NC145. Granted: October 1998 — **Excess absences due to parent's work abroad**

The applicant was aged 22 and had a total of 727 days' absence due to his father being posted abroad by a UK-based company; 78 days were in the final twelve months. He had been offered a research post at a UK university commencing October 1998. It was thought he had put down sufficient roots in the UK and the excess absences were overlooked.

NC146. Granted: December 1998 — **Excess absences due to health reasons**

The applicant, who had lived in the UK since 1987, had taken his son to India for health reasons to benefit from the climate. He suffered from a very severe form of eczema. The absences of 732 days were disregarded on compassionate grounds

NC147. Granted: February 1999 — **Applicant encouraged to believe excess absences would be waived**

The applicant was a Zimbabwean citizen working for an international humanitarian aid organisation based in Geneva. She had absences totalling 1101 days, 238 of which were in the final twelve months. She had first entered the UK in 1988 and had continued to use the UK as her base. She obtained ILR in 1994. She had stated that she intended to settle in the UK permanently but her links with this country appeared weak. We had, however, earlier indicated in a letter that we would be likely to overlook her absences if she applied for naturalisation, without including the usual paragraph stating that no guarantee could be given. It was decided, in view of what was virtually an undertaking, to overlook the excess absences and grant naturalisation

NC148. Granted: May 1999 — **Excess absences due to employment with UK based company**

Applicant worked for a UK-based oil and gas company, the largest British investor in the Ukraine. Due to his work he had absences of 538 days in the qualifying period. The rest of his family who were applying with him, had minimal absences (21 days in total) strongly suggesting that he had maintained close links with the UK.

NC149. Refused: July 1999 — **Excess absences too great to overlook**

The applicant, an Egyptian, had absences of 1192 days of which 201 were in the final year of the qualifying period. Most of the absences were due to the completion of his medical studies in Egypt. He had been in the UK since 1977 and was given indefinite leave to remain in 1984. Insufficient reason was found to overlook such a large period of absence. The applicant had re-established himself in the UK and was advised to re-apply when he could meet the residential requirements.

NC150. Granted: August 1999 — **Excess absences due to health reasons**

The applicant's absences totalled 1011 days. She suffered from tuberculosis and was advised by her doctor to go to a warmer climate. The absences consisted of two lengthy periods. She had, however, lived in the UK for 21 years without substantial absence and had been given indefinite leave to remain in 1988. Knowledge of English was also in doubt but was waived due to her age (nearly 65).

NC151. Granted: September 2000 — **Excess absences due to compassionate reasons**

Applicant had amassed 1073 days absence during the qualifying period. Absences were as a result of her arrangements to regain custody of her children after her ex-husband abducted them during a visit to India. She had lived in the UK since 1975 and there was no reason to doubt that her future intentions lay here.

NC152. Granted: October 2000 — **Excess absences due to compassionate reasons**

Applicant had 1152 days absence during the qualifying period (including 177 days in the last 12 months). The reasons were stated as being her mother's recent illness and the illness and subsequent death of her husband in Jamaica. Applicant was an elderly lady who had lived in the UK since 1963 and was now living in sheltered accommodation (where she intended to remain).

NC153. Granted: April 2001 — **Compelling occupational reasons**

Applicant, aged 74, had been in the UK since 1987. His absences during the qualifying period amounted to 1022 days due to his appointment as Secretary General of the Jordan based Arab Air Carriers Organisation. As a result, he needed to travel to conferences and meetings throughout the world. He had retired from this position at the beginning of 1999. He owned property in Jordan and Lebanon (he and his wife only rented property in this country), and had family and assets both in the UK and abroad. However, since his retirement he appeared to have based himself in this country.

NC154. Granted: January 2002 — **Abducted by father**

Applicant had lived in the UK since 1984, but had absences of 726 days in the qualifying period. On her residence questionnaire she claimed that her father took her back to Ghana on holiday in August 1996 (when she was 14) but refused to allow her to return or contact her mother in the UK. Her mother eventually brought her back to the UK in July 1998. Despite contradictory reasons for the absence (she had previously claimed it was due to continuing studies), we were satisfied that the absence was out of her control. Her home, family and stated intentions were clearly in the UK, and she had a long history of residence here.

NC155. Granted: March 2002 — **Excess absences in the last 12 months due to employment**

Applicant had 309 days absence during the final year of the qualifying period as a direct result of an overseas assignment for his UK based employers. He had no other absences in the qualifying period. He had lived in the UK for nearly 30 years, his 3 UK-born children were all living here and, although divorced and living only in rented accommodation, his only ties were with the UK.

NC156. Refused November 2002 — **Absences due to ill health**

Applicant had 1112 days absence during the qualifying period (of which 194 days fell within the last 12 months) which she claimed were due to medical reasons (heart condition). She had provided numerous doctors' letters and medical records. However, only one letter related to treatment outside the UK (accounting for an absence of approx 6 months). She had lived in the UK since 1954. Her children lived in the UK and India. The family had property in the UK, India and USA. There were no compelling reasons to justify the waiver of such extensive absences.

NC157. Refused: September 2002 — **Breach of the immigration laws**

Applicant and her 2 minor sons had arrived in the UK as visitors in October 1992 and applied for asylum. That application was refused in April 1994 and an in-time appeal against that decision was dismissed in November 1995. Despite a Deportation Order made against them in June 1997, and an unsuccessful appeal against that Order (and the removal directions), the family were granted ILR in July 2000. This was purely on the basis of a Ministerial concession that children who had spent a substantial part of their formative life in

the UK should not be uprooted. She Khan had been in breach of the immigration laws from the start of the qualifying period in October 1996 until July 2000 (i.e. the majority of the qualifying period) and her application was therefore refused. Although her sons had been minors at the time the breach first occurred (they had turned 18 in July 1997 and July 2000 respectively), their separate applications for naturalisation were refused in line.

NC158. Granted: January 2003 — **Excess absences due to occupational training**

Applicant and his wife had made a joint application for naturalisation in May 2002. They had arrived in the UK in 1990 and 1993 respectively. In May 1997, the couple had gone to Ireland so that he could attend an essential training course (a course which he could not obtain in the UK). They remained in Ireland until March 2000, returning occasionally to the UK where they maintained a home. It was not possible to calculate the couple's absences precisely – their passports had not been stamped as they had travelled within the Common Travel Area during that period – but it was likely that their absences in the qualifying period exceeded 900 days (but were no more than 980 days). He required an EU passport in order to further his career as a plastic surgeon. All indications pointed to the family's future lying in the UK.

NC159. Refused: December 2002 — **Not settled for 12 months**

Applicant applied for naturalisation in October 2002. His absences in the qualifying period amounted to 732 days, but he had property in the UK, had established family here, paid UK tax and had made a significant contribution to British business over a number of years. However, he had been granted ILR in June 2002, only 4 months before applying for naturalisation. Discretion to disregard such a period of limited leave would be exercised only in the most exceptional circumstances and where there were compelling business or compassionate reasons to justify granting the application at that time. Despite his strong UK connections and commercial interests, the reasons put forward did not warrant the exercise of discretion to such an extent.

NC160. Granted: August 2003 — **Absences unavoidable consequence of the nature of career**

Applicant had amassed approx 796 days absence in the qualifying period of which 187 fell within the last 12 months. The absences were almost entirely due to his employment as a tyre engineer for BAR, a Formula 1 motor racing team based in the UK. He had a home in the UK and had lived here since 1994. He held a UK bank account and paid UK taxes (PAYE).

NC161. Granted: June 2004 — **Applicant unavoidably detained while abroad**

Applicant was the managing director of Pakistan International Airlines and had absences amounting to 940 days in the qualifying period. Following a military coup Pakistan in October 1999, he was taken into "protective custody" by the military authorities. He was released in January 2000 but was prohibited from leaving Pakistan until October 2001. This single absence amounted to 738 days, during which time his wife and children lived in the UK.

NC162. Granted: August 2004 — **Excess absences due to Legal custody ruling**

Following her parents' divorce, the courts in the USA had granted custody to the applicant's mother along with permission to bring her and her brother to the UK on condition that arrangements were made for regular visits to the USA to spend time with their father. The

father was also involved in decisions concerning their education and had paid for her to attend a university in the USA (and had agreed to her younger brother attending university in the UK). As a result of the applicant's college attendance and visitation obligations, her absences amounted to 1126 days, with 331 days falling in the last 12 months of the qualifying period. However, she remained financially dependent on her mother and step-father and there was no reason to doubt her future intentions. Given the unique circumstances and the opinion that the case was unlikely to set a precedent, the Minister agreed to grant the application.

NC163. Granted: December 2004 **Post-graduate work experience abroad**

Applicant was studying for a degree in International Business. One of the requirements of the course was to undertake periods of work experience and studies abroad as directed by the applicant's sponsor company. These placements resulted in absences of 668 days in the qualifying period and 236 days in the last 12 months. However, since graduating, the applicant had been employed by his sponsor company which confirmed that he would continue to be based in the UK.

NC164. Granted: March 2005 **Excess absences due to child's medical treatment**

Applicant had accumulated 1049 days' absences in the qualifying period. These absences were due to applicant's child needing to be accompanied back to Colombia for specialist medical treatment. Although the absences were high all other requirements were met and case had already been ongoing for 23 months. As the family were clearly settled in the United Kingdom and had made this country their home the case was approved.

NC165. Granted: June 2005 **Excess absences for business reasons**

Applicant was employed by a UK based company, as a consulting actuary. Due to the nature of his career he was required to travel abroad quite frequently. He had a total of 598 days absences in the qualifying period with 219 in the final 12 months. 160 days of these absences were work based trips with 159 of these falling in the final 12 months of the qualifying period. His absences during the five year qualifying period and the final 12 months would have been within the 450/90 limits if it were not for the work based trips abroad.

NC166. Granted: May 2005 **Excess absences for business reasons**

Applicant had 229 days absences in the final year of his qualifying period due to a one off special assignment with his employer. His absences throughout the 5 year qualifying period were within the 450 days limit. He is a unique specialist in Supply Chain Management which had involved him in a Russian project since January 2004. As these excess absences were due to the exceptional circumstances of his career and the fact that he has established strong family links with the UK, it was decided to waive these absences.

NC167. Granted: September 2005 **Excess absences due to business/compassionate reasons**

Applicant, a European Business Manager had 874 days absences in the five year qualifying period. The majority of the absences were the result of visiting his ill father in Australia as well as work commitments for a UK based company. Of the total absences, 564 days were due to time the applicant spent in Australia with his ill father. Work-

related absences accounted for approximately 300 further days during the final 3 years of the qualifying period. The applicant had lived in the UK since 1995 and had property in the UK.

NC168. Granted: September 2005 — **Excess absences due to sporting career**

Applicant, an England cricket team head coach, had 1036 days absences in the five year qualifying period with 179 days during the final 12 months. 709 days of these absences were through cricket tours (and therefore work related) and the remaining 327 were personal trips. The normal upper limit on the exercise of discretion is 900 days and we would expect 3 years prior residence to make up for the scale of the absences as well as evidence of property ownership and family ties in the UK. He came to the UK on 7 April 1999. He had had numerous addresses in the UK but had not lived in the UK for much longer than the qualifying period. However, Ministers decided that, **exceptionally**, the application should be granted given that the absences had largely been occasioned by his professional role.

NC169. Granted: June 2006 — **Excess absences due to employment**

Applicant was employed with a renowned UK architecture company as a self–employed architect. Due to the nature of his career he was frequently required to travel abroad. He had a total of 565 days absences in the qualifying period with 290 days in the final 12 months. 301 days of these absences were work based trips with 289 of these falling in the final 12 months of the qualifying period. His absences during the five year qualifying period and the final 12 months would have been within the 450/90 day limits if they were not for the work based trips abroad.

NC170. Granted: August 2006 — **Excess absences due to work experience overseas**

Applicant had been resident in the UK since she was 21 days old. Her parents had been granted citizenship in 1986 and, if she had been included in their applications, there was no reason to believe she would not have been registered as a British citizen at that time. She had 530 days absences in the five year qualifying period with 300 days falling in the last 12 months. Her large absences in the final year of her QP were due to the fact that she was on a gap year from Bristol University, gaining work experience in Dubai. Her application showed that she had thrown in her lot with the UK and her future clearly lay here.

NC171. Granted: September 2006 — **Absences due to sporting career waived on account of importance for Olympic bid**

Applicant was a high profile basketball player. He identified strongly with the successful London Olympic bid and was the highest ranking player eligible to play for Great Britain (GB).

He had 1656 days absences in the five year qualifying period with 336 days in the final twelve months. These absences were a result of his career, both as a student on a basketball scholarship and as a professional player in the USA.

Applicant was considered essential to both the long and short term success of the GB team but was in a difficult position as far as international tournaments were concerned – international basketball rules limited him to representing only England and Great Britain internationally (as he had played for England's under 15's junior national team), but under Olympic rules, he could only represent the country of which he was a national.

He came to the UK with his family from Sudan seeking asylum aged 9. He regarded the UK as his home and all of his family had gained British citizenship. He spent his vacations in Brixton where he ran summer schools and supported youth work. He was also buying a house in the UK.

Although discretion would not normally be exercised to waive absences to this extent, Ministers agreed that the application should be granted in view of his unusual circumstances.

NC172. Granted: April 2008 **Excess absences due to career**

Applicant worked for the United Nations Development Programme (UNDP) as a specialist in International Human Rights. She was employed within the UN's Mission in Sierra Leone following a cease-fire in the country's civil war. She had 1196 days absences from the UK in her 5 year qualifying period with 207 days in the final 12 months. Although the UNDP was not an international organisation listed in the nationality staff instructions, ministers had agreed to special consideration being given to those engaged in the after math of the recent conflict in Sierra Leone. Since her absences were in connection with transitional governance there, it seemed right that discretion should be exercised to disregard the excess absences.

NC173. Refused: Jan 2008 **Excess absences due to nature of sporting career**

Applicant was a professional basketball player who felt that his naturalisation was essential for enhancing the prospects of the Great British basketball team. Unlike NC172, a basketball player granted citizenship in September 2006, he was able to represent his national team, Nigeria, in the Olympics but had chosen not to do so.

Applicant had absences at 1,640 days which far exceeded the statutory limit of 450. Although we recognised that these high level of absences were mainly due to the "globe-trotting" nature of his sporting career the Secretary of State could not exercise her discretion over these absences in such a way as to virtually ignore the residence requirements. It was decided that his connections with the UK were not strong enough to justify granting the application and the case was therefore refused.

NC174. Refused: May 2006 **Businessman not free of immigration time restrictions**

Applicant was refused citizenship in May 2006 as he had not been free of immigration time restrictions for 12 months before making his application. His Solicitor contacted us requested reconsideration on the grounds that the grant of British citizenship would greatly enhance her client's business prospects and his ability to travel on behalf of his UK based employer. We did not feel however, that the criteria for disregarding this requirement covered his circumstances and the decision to refuse this case was upheld.

20. NATURALISATION S. 6(2): CROWN SERVICE SPOUSE

NC175. Granted: June 1990 **Possible security risk in Northern Ireland**

Belizean wife of BC captain in the British Army applied 2 months after their marriage for the residence requirements to be waived. He was then stationed in Germany but due to be posted for 2 years to Northern Ireland. In answer to our enquiries the Commanding Officer stated that the security situation in Northern Ireland is such that it would be beneficial for her to hold a UK passport, particularly when travelling to and from the mainland. This was further clarified: there are few Belize passport holders in Northern Ireland and it is known that UK servicemen serve in Belize and sometimes marry local girls; She could be identified more easily as the wife of a serviceman. By the time of consideration the marriage had subsisted for 3 years and she had been resident in Northern Ireland for one year.

NC176. Granted: October 1990 **Citizenship neither of UK nor country of posting**

Belizian wife applied for the waiving of residence requirements on the grounds of her marriage to a BC serving in the British Army in Germany. Her daughter from a previous marriage was included in the application. She had neither UK nor German citizenship and the employing service confirmed this could create operational and security problems in future postings. Her daughter was registered despite being abroad as she was prevented from being in the UK by her step-father's service.

NC177. Granted: January 2001 **Exceptional circumstances – delayed consideration**

Applicant applied for naturalisation in December 1998 on the basis of her husband's service in Germany with the Ministry of Defence. Our normal practice in such cases is to consider the application on receipt. However, consideration only started in March 2000, by which time the applicant's circumstances had changed – her husband had retired (in November 1999) and died (in December 1999), and she had returned to live in the UK. Although Crown service spouse grant criteria were no longer met, refusal would have meant that she would only have been eligible to re-apply for naturalisation in 2004. Although the MOD was unable to confirm that naturalising the applicant would have been in its interests, in view of the delays in dealing with the application (which included our enquiries being misdirected by the BFPO) it was agreed to exercise discretion in the applicant's favour.

21. NATURALISATION S. 6(2): DESIGNATED SERVICE SPOUSE

NC178. Granted: November 1990 — **Retention of services of an essential officer**

Applicant's husband was a Chief Inspector in the Royal Hong Kong police force and was not due to retire until 2014. The Hong Kong police said that her naturalisation would be a major factor in retaining his services, and that the retention of officers of his calibre was essential in enabling the Hong Kong police force to discharge HMG's commitment to the preservation of the stability of Hong Kong. Decision agreed by Ministers.

NC179. Granted: December 1990 — **Less than 3 years marriage: difficulties over documentation**

Korean wife of BC Chief Inspector in the Royal Hong Kong Police applied for the residence requirements to be waived on the grounds of his service. He was in designated service by virtue of being an official in the government of a dependent territory and was recruited in the UK. He therefore met the terms of para 4(d) of Schedule 1 of the 1981 Act. The application was mistakenly refused on the grounds that he was not in designated service and then approved, once it was established that he was, and an oath sent. The marriage had not subsisted for 3 years on the date of application, however, and no compelling security or operational reasons had been put forward (see para 6.3 of Annex C to Ch. 18). It was explained that an exception had been made to the 3 year marriage 'expectation' because of her difficulties over documentation, as a Korean born in Japan she could only renew her passport there.

22. NATURALISATION S.6 (2): RESIDENCE

NC180. Granted: July 1992 — **Absences in final year due to medical treatment**

Applicant was absent from the UK for 396 days in the qualifying period of which 233 days were in the 12 months immediately prior to the application date. His absences in the final year were largely due to a brain operation which he underwent during a visit to the USA, and a period of recuperation. He would otherwise have met the residence requirements in full but for this unavoidable absence.

NC181. Granted: January 1993 — **Excess absences in final year**

Applicant applied in 1990, but failed to meet the unwaivable 3 year start date by 1 day. She was invited to redeclare her form in July 1992 as it appeared that she now met the requirements in full. The form was received on 16 November 1992, which coincided with the date of her return to the UK after an absence of 14 months while caring for her sick mother. Discretion was exercised to waive excess absence in the final year. Although the Secretary of State has no authority to waive specific residence requirements in their entirety, in this case discretion was possible since she was in the UK on the application date which counts as part of the qualifying period.

NC182. Granted: October 1989 — **Absence due to career**

Iraqi who worked as a marine officer for the United Arab Shipping Company. As a consequence of his career his absences were 527 days in the 3 year period of which 221 were in the final year. He did not meet the '3 year requirement' on his present date of application. Applicant was interviewed to ensure he was of good character prior to being asked to re-declare his form AN and having his absences waived.

NC183. Refused: February 1990 — **Absences too large to waive**

Chinese wife of a BC, who lived in the United Kingdom for a year before they returned to China to help set up offices for a British company which promotes British trade with China. After the riots in Tiananmen Square they returned to the United Kingdom and she applied for naturalisation as she did not wish to return to China without a British passport. Her absences were approximately 640 days in the 3 year period and she was out of the country for virtually all of the last year. Her application was refused at Ministerial level explaining that it would be unprecedented for the Home Secretary to waive absences on this level. Acquisition of British citizenship would not mean that she would automatically lose Chinese citizenship and under the Master Nationality Rule she could not receive British Consular protection in China whilst she still had that status. She was advised to reapply when she could more nearly meet the residence requirements.

NC184. Granted: October 1990 — **Presence on British Naval ships not UK residence**

Unofficial Chinese laundryman (not in Crown Service) serving on British Naval ships had to redeclare his form AN after gaining ILR. His commanding officer was advised that to meet the requirement to have been in the UK 3 years prior to the date of application it was necessary for Lee to have been on the mainland, in port or Inland Waters. Presence on British Naval ships does not, of itself, count as being in the UK. This requirement was met and discretion was exercised in respect of excess absences which were a consequence of his career.

NC185. Granted: June 1994 Excess absences as a **result of nature of career**

Applicant was an opera singer who had absences of approx 485 days in the qualifying period, of which approx 160 days were in the final year, which resulted from her performing in Europe and the USA. She had a lengthy period of residence in the UK prior to the qualifying period, owned property in this country and was domiciled here for tax purposes.

NC186. Refused: May 1998 **Excess absences**

Applicant went to Sweden in March 1997 and gave birth to a baby there. Because she had her passport stolen she was prevented from returning to the UK. Her excess absences amounted to more than 500 days, 264 of which were in the final year of the qualifying period, and were mainly due to accompanying her husband on business trips abroad. However, she did not have a period of previous unbroken residence or established personal links with the UK.

NC187. Granted: June 1998 **Excess absences more than double the statutory limit**

The applicant was 81 years old. The excess absences were 633 days of which 188 were in the final twelve months. They were due to medical treatment which was taking place in Hong Kong. The applicant could not speak English so she found it more convenient to be treated there. She had a daughter in the UK. Her husband had been living here since 1961 and the applicant herself since 1977. She had maintained long-standing addresses in the UK in the 10 years prior to the application. It was considered her links with the UK were sufficiently strong to overlook the excess absences.

NC188. Granted: June 1998 **Applicant in breach of immigration laws for the whole of the naturalisation qualifying period**

Applicant applied for naturalisation as a British citizen on 17 November 1994. At this date she had been in breach of immigration laws for the whole of the three-year naturalisation qualifying period, since she had entered the UK on 18/6/90 with an EC for marriage, had been given six months' leave to remain, but had failed to apply for an extension of stay when her original leave expired.

It was decided that this breach was inadvertent and we were prepared to overlook it. Although as an overstayer she had been free of immigration time restrictions on her stay when she made her naturalisation application, following an out-of-time application to AEAD made on 25/8/95 after her marriage, she was granted 12 months' leave to remain and once again had a time limit placed on her stay. Meanwhile we consulted Legal Advisers as to whether we could overlook a period of illegal residence which amounted to the whole of the residential qualifying period. We were advised that we could and naturalisation was granted after she had been given ILR.

NC.189. Granted: September 1998 **Excess absences more than double the statutory limit**

The applicant had been resident in the UK since 1972 and had only been absent from the UK three times since that date. She had one long absence during the qualifying period amounting to 667 days which was due to nursing her sick mother-in-law in India. The applicant appeared fully established in the UK, owned a house with her husband here, all her family were here and she maintained bank accounts here. It was clear that there were sufficiently strongly- established links with the UK to justify waiving the excess absences on compassionate grounds.

NC190. Granted: November 1998 — **Excess absences due to voluntary work**

The applicant had 583 days' absences in the qualifying period, 127 of which were in the final twelve months. The absences were due to voluntary work in Kurdistan and this was confirmed by letters from the charities concerned. His wife and children were British citizens living here.

NC191. Granted: 6(2) August 1998 — **Excess absences**

The applicant was a marine engineer with 541 days' absence in the qualifying period of which 210 were in the final twelve months. He had been given ILE in 1987 and had been in the UK since 1967. He owned a house here. He had only ever worked for UK-based companies and had strong UK ties.

NC192. Granted: October 1998 — **EEA national without leave to remain or right of residence**

Applicant, a Portuguese national married to a British citizen, had lived in the UK for almost 16 years before applying for naturalisation in 1996. From the information provided, she had been resident here, apart from short absences, throughout the qualifying period. She did not, however, have any right of residence under EC law, nor had she attempted to regularise her position by seeking leave to remain under the 1971 Immigration Act.

The status of EEA nationals in the UK without a right of residence under EC law, and without leave to remain under the Immigration Act, has recently been considered by the Court of Appeal in R -v- Westminster City Council ex p Castelli and Tristan-Garcia [1996] 3 FCR 383 and by the House of Lords in R -v- Secretary of State for Social Security ex p Wolke (The Times, 1 December 1997). The Court of Appeal held that there is no obligation in UK law for an EEA national who enters as but later ceases to be "a qualified person" within the meaning of the Immigration (EEA) Order 1994 to apply for leave to remain in the UK, and that such a person cannot properly be regarded as being here in breach of the immigration laws by reason of his or her failure to make such an application. The House of Lords went on to say, in Wolke, that such a person would only become unlawfully resident if he or she remained following the making of a deportation order or an order for removal under article 15(2)(a) of the 1994 Order.

It was not possible to refuse her application on the grounds that her stay remained subject to an immigration time restriction, because no such time limit had been imposed. Nor, following the cases mentioned above, could she be regarded as having been in breach of the immigration laws.

NC193. Granted: June 1998 — **In breach of the immigration laws for the whole of the residential qualifying period**

The applicant overstayed from 1990 to 1995. She had arrived in the UK with an EC for marriage in June 1990 and was married later the same year but only sought to regularise her stay in the UK as a foreign spouse in 1995. She applied for naturalisation in 1994 while an overstayer and so was able to meet the requirement to be free of immigration time restrictions on the date of application. However, she had been given leave to remain by the time her case reached its turn for consideration and had an outstanding application for ILR. Her file was referred to immigration casework who granted ILR in 1996.

The applicant had been in breach of the immigration laws for the whole of the three-year qualifying period and we sought advice from Legal Advisers Branch as to whether we could overlook such a breach. We were advised that, unlike the requirements relating to the number of days, the requirement not to have been in breach of the immigration laws is not quantitatively expressed so we could overlook a breach amounting to the whole period if we

so wished. It was decided to overlook the breach since it was not deliberate: the applicant had nothing to gain from not regularising her stay earlier.

NC194. Refused: January 2000 **Excess absences not overlooked**

Applicant was the wife of a member of the BBC Russian Service and had been living with her husband who was based in Moscow. She had incurred 984 days' absence in the three year qualifying period. She wished the absences to be overlooked on the grounds that she found it inconvenient to obtain visas for travel on her Russian passport. It was decided that absences on such great a scale could not be overlooked.

NC195. Granted: July 2000 **Offshore employment**

Applicant had lived in the UK for 19 years and had his home, family and considerable assets here. He had amassed 575 days absence in the qualifying period, of which 156 days fell within the last 12 months, as a result of his employment with a UK-based oil company working in the North Sea. He paid UK tax and had clearly thrown in his lot with the UK.

NC196. Granted: March 2001 **Excess absences due to compassionate reasons**

Since her arrival in the UK in 1995, when aged 17, applicant had had no absences until, in 1999, she returned to Pakistan to care for her mother during her illness, operation and recuperation. While she was there, her 8 month old daughter became ill, fell into a coma and later died. She therefore extended her stay in order to have the support of her family. As a result of this single trip to Pakistan, the applicant's absences amounted to 289 days, of which 247 days fell within the last 12 months of the qualifying period. However, there were clearly compassionate reasons for the absence. In addition, she had no property abroad and had recently sold her home in the UK with the means and intention of buying another property in this country. We were therefore satisfied that she had established her home, family and substantial part of her estate here.

NC197. Refused: August 2002 **Absences due to accompanying spouse**

Applicant had 898 days absence during the qualifying period, or which 285 days fell within the last 12 months. These were due to her accompanying her husband on overseas postings for British Airways, which supported the application. Before applying, we had advised her, via the British Embassy in Vienna (as the couple were currently in Austria), of the criteria for discretion to waive excess absences and that discretion would not normally be exercised where absences were more than twice the permitted limits. The couple had a home in the UK, to which they returned when they had an opportunity, and a bank account here. However, the applicant had less than 12 months residence prior to the qualifying period, had been married to her husband for only 2 years, and the reasons for applying were not exceptional (i.e. convenience of having a British passport and the need to live apart in order to satisfy the residence requirements).

NC198. Granted: January 2003 **Absences due to ill health and family business**

Applicant had 447 days absence during the qualifying period as a result of a single visit to Pakistan early in the qualifying period. She stated that this was intended to be a holiday, but was extended by personal sickness, her sister's wedding and the deaths of 3 close relatives and that she had lost track of time. Her husband and child lived in the UK (where her husband owned their property) and her assets were here. She had been absent for 6 months in the year preceding the qualifying period but had not been out of the UK since she had returned.

NC199. Granted: April 2005 **Merchant seaman**

Applicant had 744 days absence in the qualifying period of which 222 were in the last 12 months. These were as a result of his career. He was married to a British citizen and his children were also British citizens. He owned his own property in the United Kingdom and had a career as a merchant seaman with a UK-based company. His future clearly lay in the United Kingdom. On comparison with other precedents concerning excess absences due to the nature of the applicants career over a five year span it was decided to approve this application.

NC200. Granted: May 2007 **Excess absences**

Applicant was the Chief Correspondent on a magazine, a US company, based in London. He had 595 days absences in the 3 year qualifying period with 157 days in the final 12 months. He had links with the UK dating back to the early 1990's, namely the birth of his children, property he owned in the UK and his wife was UK born.

Taking all of this in to account and the fact that his absences were an unavoidable consequence of his career it was decided to grant the application.

NC201. Refused: Dec 2007 **Immigration time restrictions on date of application**

Applicant applied for naturalisation via the post abroad in Dublin, Republic of Ireland. He travelled to the Republic of Ireland with the sole purpose of applying for citizenship in order to circumvent the requirement to be free of immigration time restriction on the date of application. Although the applicant was necessarily free from immigration time restrictions as required under the British Nationality Act 1981, it would be contrary to the spirit of the Act to allow the application to succeed. The application was therefore refused.

23. NOTIFICATION OF DECISION

NC202. 6(1) **Applicant's address not known**
Refused: November 1992

Applicant had applied for naturalisation, but no fee had been paid either for that application or for his daughter who had an entitlement to registration. The fee was requested in June 1989 and the form AN returned for completion. No copy of the form or record of the address was however kept, and attempts to contact him by other means were unsuccessful. Legal advice was sought on the question of the service of notification of decisions to refuse. They took the view that we should be seen to be acting reasonably, and suggested that a signed and dated letter of refusal could in these circumstances be placed on file, to be sent to him if he contacted us in the future.

NC203. Declared nullity: October 1988 **False identity**

Applicant came to the UK in 1971 claiming to be Tazar Ali. He obtained British citizenship by registration in this false identity in 1983 despite some doubts about the authenticity of the application. Fresh evidence and an admission from applicant warranted the treatment of his registration as a nullity. He was advised that once his stay had been regularised he might be eligible for naturalisation.

NC204. Declared nullity: September 1988 **False identity**

Applicant, the third wife of a CUKC by registration assumed the identity of his first wife to gain entry to UK and registration under s. 6(2) BNA 1948 in 1982 (despite some 10 years of protestations from the first wife). It was considered a registration had been effected in a false identity of another person and therefore no actual registration took place.

NC205. Nullity not established: November 1989 **Bogus son using own identity: no illegal entry**

A confessed that he arrived in the United Kingdom in 1967 as bogus son of B. His identity was his own however and he was registered under section 6(1) of the British Nationality Act 1948 after 5 years' residence in the United Kingdom. B3 advised that when he arrived there was no requirement under the Commonwealth Immigrants Act 1962 to seek LTE from an IO, and they would not have been able to treat A as an illegal entrant. His residence was therefore lawful and his registration valid.

NC206. Declaration of nullity reversed: June 1990 **Decision on false identity reversed**

Applicant entered the UK as A, son of B, and was registered in this identity on 10 October 1974. He later changed his name. In an interview with the police, C stated that A was his brother and not his cousin, which indicated that A had entered as a bogus son. D, A's wife, had been registered under s. 6(2) BNA 1948 on the grounds that she was married to a BC. Both registrations were declared null and void. A contested our allegations that he had entered and been registered under a false identity, and produced an affidavit from C stating that there had been confusion over the meaning of 'brother' and 'cousin' and that they were indeed cousins. It was decided to reverse our earlier declaration.

NC207. Declared a nullity: June 1991 **Already a BC**

A number of cases, like this one, of children born in Bermuda before 1 January 1983 to UK born mothers, were mistakenly forwarded by the BCG in New York. Unfortunately they were registered under s. 3(1). As Bermuda is a Dependent Territory all the children were CUKC at birth and would have acquired right of abode under section 2(1)(b)(i) of the Immigration Act 1971 through their mothers. On 1.1.83 they became BCs under section 11(1) BNA 1981 and were not therefore in need of registration.

NC208. **Decision invalid because not in accordance with prevailing practice**

Applicant was registered under s. 27(1) BNA '81 on 28.9.90. A certificate was produced, but before being despatched the case was examined at HEO level. It appeared that the circumstances fell short of meeting the normal criteria for the exercise of discretion (para 39-8, B4 Div. Insts.) in that the family's continued stay in the country in which they lived did not appear to be at risk to the point of deportation. Because (1) legal advice had indicated that

a decision not taken in accordance with both law and prevailing practice might be invalid, (2) the 'decision' in this case had not been taken at the appropriate level and (3) had not yet been notified to the applicant, it was agreed that the registration was null and void and that the application could now be refused.

NC209. Declared null & void: June 1993 **Forged declaration of renunciation**

A declaration of renunciation of BOC, purportedly made by applicant in August 1991 was registered under s.29 BNA 1981 in February 1992. She and her uncle subsequently wrote claiming that her husband had forged her signature on the Form RN1. Section 29, read with section 12, of the BNA 1981 provides that once a declaration made "in the prescribed manner" is registered, "the person who made it" ceases to be a BOC. Applicant's allegations were accepted on the balance of probabilities, and as she did not make the declaration, she did not lose BOC. Since no-one else's details were included on the form, nobody could be said to have renounced citizenship as a result of that declaration.

NC210. Not declared null and void: January 1992 **Date of birth error did not constitute assumption of false identity**

Mr A was registered as a CUKC under section 7, BNA48 in 1950. In 1988 he sought to establish for legal purposes relating to his employment that his true date of birth was 15.3.36 and not 3.10.31 - the date shown on his application form and registration certificate. The latter was apparently when his deceased brother – 'A' - was born. FCO sought advice as to whether this rendered his registration invalid. This note expands on the guidance given in Chapter 55 of the Instructions on impersonation.

As a result of the Court of Appeal judgement in Regina -v- The Secretary of State for the Home Department and the Governor of Horfield Prison, Bristol, ex parte Sultan Mahmood (1978) we are able to regard as ineffective any registration that we are satisfied was obtained in a false identity since, notwithstanding the fact that the person making the application may have met the statutory requirements, there is doubt as to who, if anybody, is the beneficiary of the resulting registration. The later decision in Re: Pamez Akhtar's Application (Court of Appeal, 1980) throws more light on the question of a person's identity and whether a registration in false particulars is valid. Legal Advisers agreed that the key factors by which a person can be identified were, following Mahmood and Akhtar, his name, the names of his parents and his place and date of birth. Deception over any one of these elements could amount to impersonation. This was qualified in subsequent legal advice which was concluded that whereas a discrepancy in the date of birth amounting to, say, 10 years, might indicate that impersonation was an issue, an applicant might make minor inaccuracies in the particulars given without prejudicing his application. Moreover the registration of an applicant under a name by which he genuinely wishes to be known should be regarded as valid.

It was decided that A's registration should stand. There seemed little doubt that he was A, son of B on whose naturalisation form his details were given. Regardless of whether he was born in 1931 or 1936, A would have been eligible for registration under section 7.

NC211. Nullity not established: September 1994 **Use of an alias did not constitute impersonation**

Dr A applied for naturalisation in 1992. In the course of a police interview, information came to light which suggested that he was also known by as B, and had been registered in that name as a CUKC in 1972. He claimed that he had been known by both names as a child and that he had made the fresh application because his educational qualifications had been awarded to him in the name of A. Although we were sceptical of this explanation, it was accepted that as he was ordinarily known by both names the registration should be allowed

to stand. He was advised that his application for naturalisation could not be granted as he was already a British citizen.

NC212. Declared null & void: August 1997 Assumed sister's identity

Two sisters arrived in the UK in 1961 having assumed each other's forenames and dates of birth. They subsequently submitted applications for registration in what was effectively the other's identity- Mrs J Hall was registered as a CUKC under s 6(1) BNA 1948 in 1980 (as Mrs R M Hall); Mrs R M Gray was registered as a BC under s 7 1(a) in 1987 (as Mrs J M Gray). Although they had conducted their lives in each other's identities since arriving in the UK, the implication of the Court of Appeal's decisions in 1980 in the cases of Sultan Mahmood and Parvez Akhtar was that neither could benefit from the respective registrations.

NC213. Nullity decision reversed **Status of decision post-Ejaz**

Applicant was registered as a British citizen in 1983 under s.8(1) BNA 1981 on the basis of her marriage to a British citizen. It was later established that her marriage had in fact been bigamous. In 1989, her registration was declared null and void on the grounds of concealment of a material fact.

In 2001, she applied to renew her British passport. In view of the decision of the Court of Appeal in R –v- SSHD ex parte Ejaz [1994], it was agreed that the 1989 decision should be revoked and that her original registration should be allowed to stand.

NC214. Declared null & void: Oct 2007 **Application made by mother for her deceased child**

Applicant applied for naturalisation as a BC on 15 February 2005 and included her daughter in the application. Daughter's application was registered on 20 May 2005 under section 1(3) BNA 81. When applicant applied for a British passport for her daughter the Office of National Statistics confirmed that she had in fact died on 4 October 1997. Applicant confirmed to the passport office, whilst under caution, that daughter had died in 1997. Previous legal advice had confirmed that "a person" in **s.42B(1)** of the BNA 1981 necessarily means a living person therefore this application was declared null & void as it did not result in any person becoming a British citizen.

NC215. S 10, BNA '48 - Schedule 8 BNA '81 Refused: February 1989 — **Had moved abroad when oath was issued**

A joint application for naturalisation under s.10 British Nationality Act 1948 - Schedule 8 British Nationality Act 1981 made by a Turkish couple was approved in 1984 but the oaths of allegiance were returned undelivered as they had moved to Turkey. The applicants clearly failed to meet the future intentions requirement for naturalisation and had not taken the Oath within the prescribed time (s. 42 British Nationality Act 1981). Legal Adviser had said (in another context) that the grant of citizenship could be a nullity if we deliberately granted it knowing that the statutory requirements were not met. The application was refused.

NC216. 6(1) Refused: August 1990 — **Oaths sent after refusal did not reverse decision**

Iranian applicants were sent manual oaths of allegiance after advising that they had been promised them the previous week. No check could be made as the computer was down and they were advised that no confirmation of a grant could be given. The application had in fact been refused as the couple were not domiciled here for tax purposes and their lifestyle was not commensurate with their declared earnings. Solicitors argued that delivery of the oaths was a clear communication of the decision to approve and a pledge of public faith. It was explained that the oaths had been sent out conditionally and could not reverse the Secretary of State's decision to refuse their applications.

NC217. 6(1) Granted: September 1993 — **Oath administered by applicant's husband**

Application for naturalisation was approved in June 1992. She was invited to take the oath of allegiance. The oath was administered by her husband, a practising solicitor. Section 81(2) of the Solicitors Act 1974 prohibits a solicitor from administering an oath "in a proceeding...in which he is interested". Legal advice was sought to determine whether a solicitor would be barred from administering an oath if he is related to the declarant. Legal advisers confirmed that this section was intended to cover solicitors who act for both parties in a dispute or who have a financial stake in the subject of the proceedings. There was therefore no legal objection to him administering his wife's oath.

NC218. 3(1) Registered: June 1993 — **Mentally handicapped**

The application was approved and the oath of allegiance was forwarded to the British Consulate in Durban to be administered. We were then advised that the applicant was severely mentally handicapped, and although he was able to speak, would not do so in the presence of strangers. The Oaths Act 1978 which prescribes the way in which oaths are to be administered provides that alternative methods can be used where appropriate -- e.g. with the aid of an interpreter. Legal advisers confirmed that as long as the applicant could appreciate what taking the oath meant and understood that it was in order to become a British citizen, any suitable method could be used provided it was acceptable to all parties concerned. The applicant was able to say "I do" when the oath was read to him and to make a signature on the form (which was countersigned by his father).

NC219. **6(2)** **Oath of allegiance taken by applicant's husband**
Granted: August 1993

An oath of allegiance addressed to female applicant was taken by a man, believed to be the applicant's husband, who had claimed that "Mrs" was a misprint. When the solicitor who had administered the oath advised us of his suspicions about the declarant, the applicant and her husband were interviewed to establish why he had taken the oath on behalf of his wife. Both insisted however that she had taken the oath. The police confirmed that although there appeared to be prima facie evidence of an offence under s. 46(1) of the BNA 1981, no action would be taken to prosecute the couple. Consideration was given to refusing the application on the grounds that the applicant had not taken the oath in the time allowed but this was not thought to be appropriate.

NC220. **6(1)** **Oath and pledge taken in written form**
Granted: March 2007

For full summary, see "CITIZENSHIP CEREMONY" section.

26. PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION

NC221. **Complaint that IND were taking an unreasonably long time to process an application not upheld**

A complaint was made in September 1988 via an MP to the PCA that IND were taking an unreasonably long time to process applicant's s 6(2) naturalisation application. Her application date was 29 April 1988. The complaint was not upheld. The PCA concluded that she was not treated unfairly in relation to other applicants. The PCA also looked into the background to the delays which applicants in general have been experiencing. He concluded that the steps which the Home Office took to estimate the number of applications for naturalisation which might be received in the year ending April 1988, and to make contingency plans for dealing with them, were not unreasonable. 21 months (which was the waiting time then) was a long time for applicants to wait and he urged IND to strive to reduce this period. But he found no maladministration in our approach to the general problem.

NC222. **PCA identified shortcomings in our handling of a naturalisation application**

A Nigerian citizen, complained to the PCA via Ms Harriet Harman MP that the Home Office had reached the decision to refuse her leave to remain in the UK as a student on the basis of an illogical appraisal of certain evidence. She also complained of maladministration by the Home Office in dealing with her application for naturalisation.

She was in the UK as a student and her leave to remain was due to expire on 31 October 1988. On 30 October 1987 she wrote to IND asking for an application form for British citizenship. B4 sent her both registration and naturalisation forms, together with the explanatory leaflets and asked her to read them carefully. On 18 December she wrote again asking if she was eligible to apply for citizenship, explaining she had lived in England for 5 years, and her 'visa' would expire in October 1988. She had come to England to 'study and reside', had sold her property in Nigeria and had no family there. B4 simply sent another form AN making no comment on her eligibility. She applied for naturalisation in March 1988 and on 23 September wrote to B4 referring to her application and asking if she had to renew her 'visa' which expired on 31 October. She received no response. She was subsequently refused further leave to remain because B1 were not satisfied that she intended to leave at the end of her studies and the fact of her application for British citizenship seemed to support this. As her application for further leave had been made after the expiry of her LTR in the UK she was told that she had no right of appeal.

In November 1989 B4 refused the naturalisation application because the residence qualification was not met and no sufficient grounds could be found for exercising discretion in her favour. (In fact there was no scope for the exercise of discretion as she was not free of restrictions and the reference to discretion reflected an incautious use of stock wording in the refusal letter).

The PCA found that B4 acted reasonably in sending her both forms and information leaflets in reply to her letter of 30 October 1987. However, although accepting that the number of applications received at the end of 1987 presented the Home Office with considerable difficulties, he criticised our failure to perceive (from her letter of 18 December) that she was ineligible for naturalisation and to act accordingly. The Home Office was criticised for not sending a reply to her letter of 23 September 1988 explaining that notwithstanding her application for naturalisation she needed to seek further leave to remain. The PCA found

that the lengthy delay in sending a letter of refusal merited criticism as did the text of the letter which mistakenly referred to the possible exercise of discretion; as she remained subject to time restriction on her stay at the date of application the Secretary of State had no discretion over the decision.

The PCA did not find justified the complaint about the Home Office's handling of her request for further leave to remain in the UK. The Principal Officer, Sir Clive Whitmore (PUSS), expressed regret over the several shortcomings identified in the handling of her application for naturalisation.

NC223. 6(2) **Crown service operational needs**
Granted: December 1992

Applicant applied for naturalisation in May 1991 following his return to the UK from an overseas posting. He did not meet the 3/5 year start dates and the application was therefore refused. Representations were made on his behalf by his MP and the Ministry of Defence. His imminent posting to Turkey required him to be a British citizen, failing which the RAF would face considerable operational difficulties. He was invited to make a fresh application under s. 6(2) as he would satisfy the residence requirements in October 1992. We were informed that he was due to be posted at the end of December, and on 18 December he visited the Nationality Division with a fresh application. Arrangements had already been made for the application to be granted, and a certificate and passport issued, on the same day.

NC224. 3(1) **Athlete required British passport to compete for Great Britain**
Registered: March 1993

17 year old Irish minor had been resident in the UK for 10 years, and her future clearly lay in the UK. Neither parent was a British citizen. Letters from the British Athletics Federation confirmed that she needed a British passport to compete for Britain in the World Cross-Country Championships in March 1993. An application was invited, and the parents were advised that although no guarantees could be given that the application would succeed, priority consideration would be accorded.

28. RECONSIDERATION

NC225. 27(1) **Registration in error**
Refused: April 1990

Minor born to BOC parents in Kenya who lost Kenyan citizenship under Kenya (Amendment) Act 1985. He was mistakenly registered under section 27(1) without consulting the relevant instructions (Chapter 39.8 Staff Instructions). Nairobi held the certificate and asked us to reconsider the application. As the grant had not been notified the decision was reversed on grounds of public policy.

NC226. 6(1) **Refused for non production of documents when passport was in registry**
Approved subject to oath: July 1991

Application was refused because of failure to respond to requests for documentary evidence when, in fact, a passport had been sent in over a month earlier in response to a reminder. Due to delays in registry (and because the addressed label had not been used) the correspondence was not linked until after the decision had been taken. If judicial review had been sought there would have been a good chance of success on at least 2 grounds - unreasonableness (failing to take into account a relevant consideration) and procedural impropriety (a failure of the ability to act fairly). Subject to seeking further evidence of residence (other than that already submitted) the case was reopened.

NC227. 6(2) **Invalid decision reversed**
Granted: April 1991

Applicant met the residence requirements at the date of application but had been absent for 2 years after. All requirements were met when it was noticed that the declaration on the application form had been signed but not dated. Application was initially (mistakenly) refused on the grounds that there were excess absences making no mention of the validity of the application. A subsequent letter explained that the application was invalid as it had not been signed and dated. An unacceptable date was quoted for submission of a fresh application (the application would not have met the 3 year 'start' date).

Counsel's opinion was submitted by the Solicitor's pointing out that there is no specific legal provision that an application must be signed and dated; the British Nationality (General) Regulations 1982 provide only that an application shall contain a declaration that the particulars therein are true. This argument was accepted and the SIs have been revised accordingly. Our decision to refuse was invalid as it was not in accordance with law and current practise and on payment of the balance of the fee the application was granted.

NC228. 6(1) **No notification of successful appeal against conviction**
Granted: March 1992

The NIB check gave details of a recent conviction. Her application for naturalisation had therefore been refused. The NIB had not been notified that she had successfully appealed against the conviction. The decision to refuse was treated as invalid and the case was re-opened.

NC229. 306(1) — **Embassy employee exempt from control Application to be re-opened**

Applicant, a locally engaged employee at the S. African Embassy, had been exempt from immigration control since June 1979. She did not previously have ILR. The Immigration Act 1988 provided that locally engaged non-diplomatic staff would no longer be exempt from control if they were recruited after 1 August 1988. Current B4 policy is that those in her position should not be treated less favourably than more recently engaged staff for naturalisation purposes. As that policy was in force when her application was refused in November 1991, our decision was regarded as invalid. She has been advised to repay the balance of fee so that we can re-open her case.

NC230. 6(1) — **Applicant impersonated in criminal proceedings**
Granted: September 1992

The application was refused when the CQ check with applicant's details showed an unspent conviction. He claimed he did not have a criminal record. C3 Division arranged for a finger print check to be carried out, which revealed that his prints did not match those of the person who had been convicted and had assumed his identity at that time. A refusal on the basis of this conviction was therefore no longer tenable and the case was re-opened.

NC231. 6(1)
Refused: October 1989

Applicant and his family had been resident in the UK since 1979 when he left Pakistan and denounced the Zia regime. His application had been approved and an oath taken and returned when, in 1988, President Zia was killed, and the British press suggested he was involved. He returned to Pakistan in November 1988 and was appointed Managing Director at Pakistan Steel by President Bhutto. He did not meet the statutory requirement to intend to make his principal home in the UK and his application was refused.

NC232. 6(1)
Refused: July 1988

Applicant was sent an Oath of Allegiance after his application had been approved. It was returned unsworn indicating he was in prison and he was subsequently sentenced to 5 years imprisonment for manslaughter. Legal Advisers Branch advised that the letter accompanying the oath was formal notice of our decision to grant the application notwithstanding the fact that the letter was retumed undelivered. They advised that we should pursue the remaining formalities.

He could not be considered to be of good character as required by Schedule 1 BNA 1981 and to naturalise him would have brought naturalisation into disrepute.

The view was that despite the potential risk of judicial challenge, we would refuse the application. The decision was supported by Ministers.

NC233. 6(1) — **Future intentions requirement not met**
Refused: July 1992

The application was approved and an oath of allegiance issued. The completed oath was returned from Canada with a letter stating she would be remaining there for a further 6 months (her passport showed that she had left the UK 9 months prior to the issue of the oath). It was therefore decided to refuse on the grounds of future intentions. Although Legal Advisers have stated that sending the oath means that a decision to grant has been taken and that the decision to grant can only be reversed if there are grounds for

deprivation, it was decided that the application did not meet one of the statutory requirements and was therefore refused.

NC234. **6(1)** **Notified of conviction after oath had been taken**
Refused: September 1990

Naturalisation had been approved and an oath of allegiance taken and returned when we were notified that Zaman had been fined £3,000 for attempting to facilitate an illegal entry. He was told that the Secretary of State was considering granting his application on the information then before him, but on present information it was refused because of his conviction.

NC235. **Advised we could not reopen original application: January 1989** **Validly determined application could not be re-opened**

In 1986 applications made on behalf of 2 minor children (born abroad) of a deceased United Kingdom born mother were refused as the children were resident in Israel with their Israeli father. Following the review of policy in August 1988 (our practice now is to register any minor child of a United Kingdom born mother regardless of whether she is living or dead) we were asked to reopen the eldest child's original application as she had not reached 18 and could not make a fresh application like her young sister. When the policy changed there was no agreement to resurrect old cases; fresh applications could be made where the child remained a minor (consistent with the fact that we can not open a discretionary application once determined). We could not therefore reopen the original application.

NC236. **6(1)** **Arrested in connection with investigations into the BCCI**
Refused: March 1993

A decision had been taken to grant the application and an oath of allegiance issued. It came to our attention that he had been arrested and was being detained in Abu Dhabi in connection with investigations into the failed Bank of Credit and Commerce International and was due to face charges there for forgery and false accounting. He held a senior position at the BCCI and ICIC Foundation, which was a key part of the BCCI. In addition to obstructing the investigation into the affairs of the ICIC Foundation, he was suspected of tax evasion by the Inland Revenue, and would be liable to arrest if he returned to the UK.

Although his solicitor had sought to arrange for the oath to be sworn, the Post was advised that he should not be allowed to do so and that he should be informed that he could pursue the matter on his return to the UK.

NC237. **6(2)** **Correspondence from applicant accepted as having been lost**
Granted: June 1994

In November 1992 we asked the applicant to forward a letter from the DSS confirming payment of National Insurance contributions. Despite reminders, no such letter appeared to have been received, and the application was refused in December 1993 on the grounds of delay in replying to enquiries. It was subsequently claimed that the letter had been sent to the Home Office. There was no reason to doubt that claim, and as an extensive search could not locate it, the letter was presumed lost. The case was re-opened on the grounds that had the existence of the letter been known, the application would not have been refused.

NC238. 6(1) **Applicant emigrated prior to issue of oath of allegiance**
Refused: October 1993

The application was approved and oath of allegiance issued in May 1992. The oath was sworn in Cape Town. Although she had not notified the Home Office of any change in address or circumstances, further enquiries revealed that she had in fact returned to South Africa the previous year and that she would be remaining there indefinitely. She advised us that she was working for a South African based company and had no property or close family in the UK. In the light of this fresh information, reversal of the decision to grant her application was justified.

NC239. 6(1) **Applicant issued with a "green card" in the USA**
Refused: June 1995

The application was approved at a time when she had advised us that she was visiting her brother in the USA. However, on the Post being asked to administer the oath of allegiance, she produced her resident alien card ('green card') which, it was confirmed, would not have been issued to her as a visitor - her immigration package was one that leads to the automatic processing of a 'green card'. Her husband and daughter lived in the UK, and she claimed she intended to return to study in Edinburgh. However, she was obtaining a divorce, her husband had custody of her daughter, and no application had been made to the college in this country. She was studying in the USA, was looking after her brother's family there and had closed all her bank accounts before leaving the UK. We could clearly not be satisfied that the applicant met the future intentions requirement.

NC240. 6(2) **Undeclared conviction for a driving offence**
Refused: February 1995

The application had been approved and an oath of allegiance issued. Since the signature on the oath differed from that on the Form AN, he was asked to explain the discrepancy and submit documentary evidence of his current name. Although a satisfactory explanation was given, the driving licence which he sent us revealed an unspent drink driving conviction in 1991 which had not been declared. Although it was claimed that he had not intended to deceive the Home Office, the conviction could not be ignored and the application was refused. The decision was maintained despite representations from his MP.

29. REGISTRATION S. 1(3)

NC241. Registered: February 1990 **Entitlement not lost if parents lost settled status**

Applications were submitted on behalf of United Kingdom born minors of Guyanese couple who were given ILR under the non-statutory 10 year residence concession, despite the fact that they planned to emigrate to Canada. They had obtained settled status in Canada and had bought property there. Their United Kingdom house had been put up for sale. The children had established an entitlement to registration as the parents had become settled in the United Kingdom, ie ordinarily resident (for the time being) and free of immigration restrictions on their stay. The entitlement was not subsequently lost if the parents lost that settled status.

NC242. Refused: January 2002 **No evidence of UK birth**

An application was made under s.1(4) for registration of a minor who was allegedly born in the UK in 1983. However, a statement by the child's father indicated that her mother had been afraid to register the birth or claim any benefits and had left the UK, abandoning the child with him. Apart from attending primary school for a brief time, the child had been educated at home by the mother. As a result, the only evidence of the child's residence was that someone with her details had been allocated a National Insurance number and attended a training course in 2000, had visited a GP between 1999 and 2001 (she had never previously registered with a doctor!), and had been employed since June 2000. It was not felt to be appropriate to register under s.3(1) in view of the lack of information about her residence or immigration status.

NC243. Granted: April 2002 **Excess absences due to parent's employment**

The applicant was born in the UK in 1991. She had returned to Ghana in January 1993 for a holiday with her parents and brother. While they were there, her mother had obtained employment and they remained in Ghana until September 1993. The applicant had no other absences from the UK. Discretion to waive the excess absence of 237 days had previously been exercised in respect of her brother's application under s.1(4) and his application had been registered in September 2001 (on A1086601). For reasons of consistency, her application was therefore also granted.

31. REGISTRATION S. 3(1)

NC244. Registered: September 1989 — **Exceptional registration of children of BC-D mother living abroad**

BC-D mother living in France applied for registration of her 2 minor children who were born in France. At the time of her mother's birth in Ireland her father was in Crown Service, serving in the UK. Had he been serving outside the UK she would have become a BC-OTBD. The applications were originally refused but when it was explained that the minor's mother was only born in Ireland for safety reasons - her parents were stationed in a remote part of England far from satisfactory medical provision - it was agreed, very exceptionally, to register the children and fresh application were invited.

NC245. Granted: April 1990 — **Illegitimate child of BC father living abroad**

British citizen father applied for registration of his 6 year old Indonesian daughter who was illegitimate. He had sole parental responsibility for the child and had looked after her since she was 2 months old. He was presently working for an international company, in Indonesia, but had previously been posted to South Sumatra for 2 years, taking his daughter with him. She was attending the British international school on a temporary basis until the outcome of her application was known - Indonesians were not eligible. Although the normal expectation is that the illegitimate child of a British citizen father should be resident in the United Kingdom the father appeared to be prevented from bringing the child to the United Kingdom, for the foreseeable future, by his employment, and registration appeared to be in the child's best interests. Immigration had no objection to the registration: she would have been eligible for admission under the Rules.

NC246. Granted: December 1990 — **Child abroad with Crown service parent**

Fijian minor was born to a father serving in HM Forces in Singapore shortly after he had lost CUKC and gained Fijian citizenship at independence. The father included the child in an application for his own registration under s. 7(1)(a) which was successful. As there was some urgency at the time the minor's application was deferred and remained undetermined. Subsequent applications were refused on the grounds that the child's future could not be seen to lie in the UK. This view was thought to be unreasonable given that the father's long service with HM Forces abroad had made it impossible for the family to settle in the UK and show that the child's future lay here. The child was now of age but the original undetermined application was still extant.

NC247. Granted: January 1991 — **Inconsistent decision on applications by sisters registered in independent commonwealth country by UK High Commission**

Sisters who had been registered as CUKCs in Pretoria in 1965 acquired the right of abode by virtue of s. 2(1)(a) read with s. 2(4) of the Immigration Act 1971 (registration in independent commonwealth country by UK High Commissioner) and became BCs OTBD. They both applied for minor children, born before 1.1.83, to be registered as BCs. In the case of first sister the application was mistakenly granted without noticing that she had <u>not</u> been registered in the UK. Second sister's children were correctly refused as she fell into the category of BC OTBD whose children are not <u>normally</u> registered unless they meet the usual criteria - residence etc. In view of the inconsistency between the decisions, fresh applications were invited from second sister's children.

NC248. Refused: June 1990 **Child of father registered under section 4(5)**

BDTC son of father who had been registered under section 4(5) because of his war time service in defence of Hong Kong with the Hong Kong Naval Volunteer Reserve. An earlier application had been made with the father's and refused because the minor was resident abroad. Minor remained resident with parents in Hong Kong.

NC249. Granted: November 1991 **Applicants resident abroad**

Applications made on behalf of 2 Zimbabwean minors were refused on the grounds that they were not resident in the UK. Both parents are British citizens by descent. She had previously travelled to UK so that her eldest child would have an automatic claim to citizenship, but it seems likely that the British High Commission in Zimbabwe subsequently implied that the younger children would not have any difficulty in acquiring citizenship by registration if born abroad, and failed to explain the consequences if the children were resident abroad. We therefore invited fresh applications.

NC250. Refused: March 1993 **Unsatisfactory character and immigration status**

In 1986, the applicant's mother was due to be deported to Nigeria as an illegal entrant along with her 3 children (including the applicant). However she left the UK voluntarily taking one child with her, and arranged for the applicant and his sister to be fostered privately. His sister subsequently retumed to Nigeria, but the applicant was placed in the care of the Social Services who submitted his application for registration. The consent of the mother had not been obtained, and the father's whereabouts were not known. The applicant had several convictions. His stay had never been regularised. An application for ILR had recently been refused and consideration was due to be given to initiating deportation proceedings against him.

NC251. Refused: June 1993 **3rd generation born abroad to father in long-term business overseas**

Consideration was given to registering these minors on the grounds that their father, a BC by descent, was employed in long term business or service overseas. He was the Chairman of the BBC World Services' agent for English language teaching materials in Colombia. He was unable to provide any evidence of strong personal links with the UK and there were no compassionate circumstances to justify registration.

NC252. Registered: August 1994 **Entitlement to registration lost due to incorrect official advice**

Minors' father was born in Kenya and was a CUKC with right of abode under s. 2(1)(b)(i) IA 1971. Incorrect advice was given stating that he was a BC otherwise than by descent and that his elder daughter who at that time would have been entitled to be registered under section 9(1) or 3(2) of the BNA 1981, was already British. Registration under s. 3(1) was appropriate even though the children did not meet the normal criteria.

NC253. Registered: March 1995 **Future entitlement under s. 1(4)**

Applicant was born in the UK in 1987. At the time of consideration the mother was believed to be in the UK in breach of the immigration laws, although her precise whereabouts were unknown (there was some evidence which suggested she was abroad). The minor had been privately fostered when she was 6 months old. Her contact with her mother was intermittent, and there had been no contact for 2 years. The foster mother, a British citizen had been granted a residence order in 1994, and had parental responsibility for the applicant. Although there were concerns that the application might be a device by the natural mother to regularise her stay or obtain re-entry, the minor would soon have

entitlement to registration under s.1(4), and registration was considered to be in her best interests.

NC254. Registered: March 1997 — **Uncertain immigration status of illegitimate child of BC father and EU mother**

Applicant was the illegitimate child of a BC father and a mother who was an Italian citizen working at the Italian Consulate. The child's immigration status was uncertain and although the child had been living here for seven years it was not clear whether settled status had been acquired. It was decided registration was in the child's best interests. The views of European Directorate were sought and there were no objections to registration.

NC255. **Registered: July 1999** — **Registered on compassionate grounds outside normal criteria**

Applicant's father was a British citizen by descent. Both siblings had been registered at discretion outside the normal criteria, the first following incorrect advice given by the British Embassy in Beirut, the second because the child's mother was unable to travel to the UK to have her baby due to ill health. The applicant's father had been told at the time of the first registration that future children born outside the UK would not be automatically British citizens. It was not made clear to him, however, that applications for British citizenship for future children would not succeed and on this basis registration was allowed.

NC256. **Registered: October 2000** — **Mother born in the Falkland Islands**

Minor was born in Argentina in 1982. Her mother was born in the Falkland Islands and was therefore a CUKC who became a BDTC on 1 January 1983 and also, as a result, became a British citizen under s.1(1) of the British Nationality (Falkland Islands) Act 1983. Since the minor did not acquire BDTC by descent from her mother, she could not be registered as a British citizen under s.2 of the 1983 Act. The application did not, strictly speaking, meet the criteria for registration under the BNA 1981 s.3(1) concession for the children of U.K. born mothers. However, it was considered justified to treat these criteria as satisfied because had the minor's CUKC parent been the father, the minor would have become a British citizen under s. 1(1) of the 1983 Act.

NC257. **Registered: July 2001** — **Illegitimate child of deceased BC father**

Minor was born illegitimate in September 1990. Her father was a UK-born Baron who had died in February 1990. It was not therefore possible to obtain his consent to the registration. We were satisfied as to the paternity of the child – a claim for maintenance had been brought against his estate, and this had been supported by DNA evidence of the relationship.

NC258. **Registered: September 2001** — **Parents previously given incorrect advice**

Minors were born in Bangladesh in October 1992 and September 1998 respectively. Although their mother was a British citizen by descent, evidence was presented showing that the British High Commission in Dhaka had advised that any children she had would be British citizens by descent and, in 1994, issued a passport to the elder child. The mistake went unnoticed until, in 2000, the mother applied again for passports for her children. The children had not lived in the UK and their future lay in Bangladesh. The applicants were registered solely on the strength of the earlier incorrect advice.

NC259. Granted: May 2002 **Illegitimate (surrogate) children of a BC father**

The applicants were born in the USA in 1991 to a surrogate mother, and were the result of sperm donated by Mr A (who was born in the UK) and an egg from an anonymous donor. The surrogate mother was therefore not a genetic parent and, before the children were born, a Californian court had awarded sole legal and physical custody to Mr Mucklejohn. The children had been brought to the UK by Mr A and had been granted ILR on the authority of the Home Secretary.

As regards the issue of parentage, the Human Fertilisation and Embryology Act 1990 provides that a surrogate mother is to be treated as the mother. Under the 1990 Act, the "father" is normally regarded as the husband of the surrogate mother. However, she had divorced her husband before the implantation procedure took place. In order to treat any other man as the father under the 1990 Act, and thus under the BNA 1981, the implantation procedure would have to have been carried out by a person licensed under that Act, but that almost certainly did not happen in this case. However, DNA test results showed that Mr A was the biological father and the courts in the USA had already awarded him all parental rights. The circumstances were unusual, but the children were clearly Mr A's illegitimate children. The mother's consent to registration was dispensed with because, before the children were born, she had relinquished all future parental rights.

NC260. Granted: May 2002 **Illegitimate minor – father's consent not given**

Applicant was the illegitimate child of a UK-born BC father. She was born in the UK in 1995, but had no s.1(3) registration entitlement as the mother had not become settled here. The father had refused to consent to his daughter's registration as a BC. However, as there was no reason to believe that he had parental responsibility for the applicant, it was decided to register without his consent.

NC261. Granted: February 2003 **2nd generation born abroad**

Applicant was the 10-year old illegitimate child of BC-D mother and a German father. The child would have been entitled to registration under s.3(2) BNA 1981 had the mother been correctly advised when she contacted the British Consulate shortly after the birth. The child was now effectively stateless – the Spanish authorities confirmed that the child had no claim to Spanish nationality and the mother had indicated that her son was not regarded as German because the father refused to recognise him as his child.

NC262. Granted: September 2003 **Delayed applications for registration**

Minors' mother applied in 2000 for her younger child's birth to be consularly registered and was advised that, since she was a British citizen by descent, that was not possible and that she would have to apply for her children to be registered under the BNA 1981 (at that time, her younger child would have been entitled to registration under s.3(2)). However, there followed some protracted correspondence between the maternal grandfather, the Home Office and the British Embassy in Rome concerning whether his service with the British Council constituted Crown service. Applications for registration under s.3(2) were eventually made in February 2003, by which time the children were aged 6 and 3. Although the elder child was already too old for registration under this provision, and the reasons for the delay in making the application did not justify accepting a late application for the younger child, it was exceptionally agreed to register the children at discretion.

NC263. Granted: December 2003 **Dutch "recognition"**

Minor's step-father was a British citizen who was born in the UK. Although he had not adopted the child, he had "recognised" the child under Dutch law at the time of his marriage

to her mother and his name had been added to the birth certificate. The British Consulate-General in Amsterdam advised that "recognition in the Netherlands confers the same legal, moral and parental responsibilities as adoption would and is effectively the same". The application was considered in accordance with the criteria for minors adopted by British citizens.

NC264. Refused: April 2006 **Less than 2 years residence in the UK**

All 3 children were born in Kenya and moved to the UK in July 2005. The children's parent's were granted British citizenship under section 4B of the BNA 1981. On the date of application the children had only been resident in the UK for 7 months and so did not meet the normal requirement for the purposes of registration under section 3(1) of the BNA 1981 to have been resident in the UK for at least 2 years. One child was 17 years old on the date of application, one was 13 years old and the youngest was 10 years old. Although the Nationality Instructions state that residence is less important for a minor under the age of 13, there should still be compelling and compassionate reasons for registering on the basis of less than 2 years' residence. It was therefore decided by the Chief Caseworker to refuse all 3 applications as registration did not seem appropriate at that time.

32. REGISTRATION S. 3(1): ADOPTION

NC265. Granted: January 1990 **By descent father in designated service**

Hong Kong BDTC minor adopted by BC parents in Hong Kong. The father appeared to be by descent and the mother also (registered under 6(2) of the British Nationality Act 1948). He was in designated service with the Royal Hong Kong Police and had been recruited in the United Kingdom. He would therefore have been able to pass on his citizenship to any natural born children and registration was agreed as the bias is towards giving an adopted child the nationality he would have had if he had been born to the adopters. It later transpired that his father had been in the Armed Forces (Crown Service) at the time of his birth, making him a BC-OTBD.

NC266. Refused: March 1991 **Adult adoptee**

Canadian son of Canadian mother, living in Canada was adopted by BC OTBD stepfather after the minor's 18th birthday. An application had been lodged just prior to his birthday but it was felt that we were not bound by the terms of Article 11 of the European Convention on the Adoption of Children (1967) as the adoptee was already an adult when the adoption became effective.

NC267. Registered: June 1991 **Neither parent a BC**

4 year old minor who was born in Chile and adopted at the age of 2 months by parents who were both Italian. The mother was required to retain her Italian nationality as a civil servant in the employ of the Italian authorities. The adoption in the UK was not recognised by the Italian authorities because of the parents ages and the child could not therefore acquire Italian nationality. The adoptive parents had lived in the UK for at least 25 years and the minor's future was clearly seen to lie in this country.

NC268. Refused: April 1993 **Legal adoption had not taken place**
Fresh application not invited.

An application was made for the registration of a Colombian child, A, on the grounds of his adoption in Colombia by a British citizen couple. It became clear that no legal adoption had taken place. It was claimed that a friend had arranged for the mother to hand the child to Mr and Mrs B and that the mother had not wanted to use an adoption agency. Mr & Mrs B then managed to obtain a birth certificate showing them to be the natural parents. We were later advised that Mr and Mrs B had previously adopted a child but had not wished to adopt A formally. The couple claimed that the mother's and the "friend's" whereabouts were unknown. We could not be satisfied that there had been a genuine transfer of parental responsibility and the application was refused.

The decision to refuse the application gave rise to representations from the British Embassy in Bogota. It was now claimed that adoption proceedings had been commenced and that these were nearing completion when the lawyer's unwillingness to proceed forced the family to drop them, and they did not then want to have to return Thomas to the authorities. It was later admitted, however, that no attempt had been made to adopt A. Mrs B had acquired Colombian citizenship, and as Mr & Mrs B intended to remain in Colombia, A was not at any disadvantage by not being British. The Post was advised that should the family return to live in the UK, the Home Office would be prepared to look again at the case for registration.

NC269. Registered: September 1995 **Adoptive father not married**

An unmarried British man adopted a minor in Malaysia shortly after his arrival in that country. Whilst the normal criteria for registration were met - the Post confirmed that the adoption was not one of convenience to facilitate the child's admission to the UK - in view of the unusual circumstances of the case, further enquiries were made into the adoptive father's character, continuing links with the UK, plans for the future, the background to the adoption and the arrangements for the care of the child while he was at work.

NC270. Refused: August 1996 **Doubts about adoptive father's character**

Minor was adopted by his British citizen step father in the USA in August 1995. the step-father, who had married the child's mother in 1994, had on several occasions falsely claimed that he was the child's natural father and, having falsified the child's birth certificate, had been claiming child benefit since before their marriage. The step-father had a history of psychiatric illness, and enquiries revealed he had been convicted of sexual offences against children in 1979.

NC271. Registered: December 1999 **Legal adoption had not taken place**

A British citizen couple had been attempting to adopt the applicant in Nepal where they had been living and working. They were being faced with insurmountable administrative difficulties and were coming under pressure from their employers to return to the UK. The British Embassy in Kathmandu had indicated that it would be unlikely to grant entry clearance to the child without formal adoption. Registration was agreed exceptionally since we were satisfied that the prospective adoptive parents had done everything possible to try to satisfy the Nepalese authorities' adoption requirements.

NC272. Registered: March 2000 **Adoption by foreign nationals**

Seven year old minor was adopted in China in November 1995 by a Malaysian couple who had lived in the UK for more than 20 years. The Malaysian authorities would not document the child as they did not recognise the adoption. The adoptive parents had not applied for British citizenship as acquisition of British citizenship would have resulted in the loss of their Malaysian nationality, which would have lead to difficulties in visiting their elderly relatives still in Malaysia. The child was already attending school in the UK and her future was clearly seen to lie here.

NC273. Registered: July 2001 **Adoption by a foreign national**

Minor was adopted in Malaysia in 1985. The application was forwarded by the British High Commission in Kuala Lumpur, which confirmed that the adoption was not one of convenience (the family still lived in Malaysia), that there had been a genuine transfer of parental responsibility, and that nothing adverse was known about the child or her parents. It was established that the minor had been adopted by one parent only – a Malaysian national -and had not been adopted by the "father", who was a British citizen, even though the couple were married at the time of the adoption. An explanation for this appeared to be that a letter from the Home Office in 1985 had indicated that he would be regarded as the "father" even if the couple did not adopt the child jointly.

33. REGISTRATION S. 3(1): NEITHER PARENT A BC

NC274. Granted: February 1989 **Aunt 'in loco parentis' was BC**

Application made on behalf of a 17 year old Nigerian orphan by her BC aunt. The aunt appeared to have no legal guardianship but had acted 'in loco parentis' since the child joined her for settlement more than 2 years previously. The minor had also signed the application form. The fact that the aunt was a BC, though the natural parents were not, seemed sufficient reason to make an exception to the usual requirement that one parent is or was a BC.

NC275. Registration approved: June 1989 **Legal guardians BCs**

Application for registration of 15 year old Vietnamese refugee by her maternal grandparents - her legal guardians - who had been naturalised as BCs. She had lived here since 1979 and her future undoubtedly lay in the UK. Her father was Vietnamese and deceased, her mother Vietnamese and resident in the UK. Exceptionally registration was approved despite the fact neither parent was a BC.

NC276. Granted: October 1989 **Registration in child's best interests**

Minor's parents (divorced) are Soviet citizens living in USSR. Maternal grandparents obtained custodianship in September 1986. Child given indefinite leave to remain in February 1987. Child's future clearly lay here. Mother had remained in USSR and consented to the application for British citizen. Father's consent not sought. Application granted despite the fact that natural parents were not British citizens on grounds that registration was in the child's best interests.

NC277. Registered: January 1990 **Required BC for sporting career**

14 year old Lebanese national was exceptionally registered despite the fact that neither parent was a BC as he required British citizenship to represent the UK in the European and World Fencing Championships. His future appeared to lie in the UK.

NC278. Registered: September 1991 **Minor firmly based in UK**

Minor had been resident in the UK since he was 5, and was now over 18. His adoptive father was Portuguese and his mother Singaporean. It was confirmed in writing that the Portuguese authorities would not recognise the adoption in the UK and register the applicant as Portuguese unless the adoption was confirmed by the Court in Portugal, and the Singaporean authorities would not renew his passport unless a very large bond was paid to them guaranteeing his military service. Applicant considered the UK his home and was beginning university here.

NC279. Registered: January 1992 **Applying to join British armed forces**

Family moved to the UK following the death of the applicant's father. The mother, an Iranian citizen, had since married an Iranian. Neither parent had made an application. The applicant's brother had applied for naturalisation, and the applicant himself was pursuing an application to join the British army. The applicant had clearly laid down his roots in this country, and the application was granted in line with that of his brother.

NC280. Granted: May 1992 **Step-father a BC**

A 10 year old Indonesian citizen. Her mother, also Indonesian, married a BC in 1990. The family resided in the UK from April 1990 until January 1991 when the step-father was posted to Indonesia for 3 years. He had initiated proceedings to adopt the minor, and had he not been forced to postpone these due to his posting, it is likely that the minor would by now have become a BC under section 1(5) BNA 1981. She had a half sister who was already British. The step-father had accepted parental responsibility for the child. Although the application failed to meet the normal criteria, registration was in the best interests of the child.

NC281. Registered: March 1992 **Strong family ties with the UK**

The 15 year old minor had lived in the UK since he was aged 4. His mother was born in the UK but had renounced British nationality before his birth. Both maternal grandparents are British citizens.

NC282. Registered: September 1992 **BC grandparents in loco parentis**

A 2 year old minor was admitted to the UK for settlement to join her grandparents following an appeal against refusal of an EC. Grandparents were registered in 1987. The mother has been mentally retarded since birth and the father's identity and whereabouts are not known. Although there has been no formal adoption, the grandparents have assumed responsibility for the child's upbringing. Registration was in the child's best interests.

NC283. Registered: February 1993 **Legal custody given to grandparents**

A court in Aden had granted custody of the child to his grandparents. The grandfather had been naturalised in 1987 and application for naturalisation made by the grandmother was also being granted. The parents had given their consent to the registration.

NC284. Registered: February 1993 **Brother was legal custodian**

It was claimed that the applicants and their elder brothers were abandoned in the UK in 1976. The Ghanaian parents' whereabouts were not known. The eldest brother had acted as guardian since 1980 for his siblings and was given legal custody of the applicants in 1987. The minors had been included on their brother's application for naturalisation.

NC285. Registered: March 1993 **Aunt acting in loco parentis**

Minor was born in the UK in 1983. His aunt had assumed the role of guardian, with the full consent of his family in Ghana, following his mother's return there suffering from mental illness. The aunt was naturalised as a BC in 1992. The child had had no contact with his father, and his future was clearly seen to lie in the UK.

NC286. Registered: March 1994 **Child brought up by uncle and aunt while father was in diplomatic employment**

Married couple had applied for naturalisation and included this minor on the forms. The minor was the son of husband's brother-in-law who was a Sudanese diplomat abroad, but care and custody had been given by the father to them in 1984 when the mother was accidentally killed shortly after the child was born. The minor had since been brought up as an integral part of the family and the arrangement seemed genuine, if only temporary. The child's future lay in the UK for the foreseeable future. He did not know his true father's identity, and it was considered that registration would be in the child's best interests. The father's consent was obtained to the registration.

NC287. Granted: February 1999 **Whereabouts of natural parents not known**

The minor applicant was aged 16 and had been abandoned in the UK by his mother in 1993 after coming here in 1992. The local authority had placed him with foster parents. There was no knowledge of the whereabouts of his natural parents. The local authority were not in a position to act as the applicant's legal guardians and no court order had been granted. We therefore assumed that parental responsibility rested only with the father and mother, who were not British citizens. It was thought to be in the child's best interests to register him as a British citizen. He had indefinite leave to remain in the UK, had lived here over 6 years and there was no indication that he intended to settle anywhere else.

NC288. Registered: December 1999 **Registration in line with older siblings**

Applications were made to register two minors aged 14 and 15. They had been in the UK since 1989 without major absences and were free of immigration time restrictions. Although neither parent was a British citizen, their sisters had been registered aged 17 and 18 having spent 8 years in the UK, because it appeared their futures clearly lay in the UK. The minors were registered in line with their sisters in the interests of family unity.

NC289. Registered: October 2000 **Older minor firmly based here**

Applicant applied for registration in April 1999, shortly before his 18th birthday. He was a refugee who had arrived in the UK in 1993 and had married a BC. As a minor, he had been in the custody of his brother because his parents were deceased. We were satisfied that the applicant's future clearly lay in the UK.

NC290. Registered: September 2001 **Parents deceased - application made by guardians**

An application was made by a UK-resident British citizen couple who had become effective guardians for the minor after her mother had died. Her father, a high-profile political activist who, despite international representations, was executed by the Nigerian authorities in 1995, had nominated the couple as his daughter's legal guardians shortly before his death. Neither parent had been British, but it was considered that the minor would benefit from having the same nationality as her guardians, there had been a genuine transfer of parental responsibility and, although she was living abroad at the time, it appeared that her future lay in the UK (she had no ties with any other country).

NC291. Granted: September 2005 **Neither parent BC**

Application made on behalf of minor by her mother. Minor's mother had indefinite leave to remain in the UK but she was not a British citizen. Father's whereabouts were unknown. This child was 17 years old and she had lived in the UK for 13 years, since she was 4 years old. Her future clearly lay in the UK. In addition, her mother shared parental responsibility with the child's step-father (Residence Order seen) who was a British citizen. It was decided to grant this application despite the fact that her mother (and presumably her biological father) was not a British citizen.

NC292. Granted: December 2005 **Neither parent BC**

Registration application made,aged 17 years 11 months, under section 3(1) of the BNA 81. Applicant's mother was a German National and his father's whereabouts were unknown. His mother married a British Citizen when he was one year old and he had taken care of him ever since, although he had not legally adopted him. This case was refused in January 2005 as neither parent was a British citizen however, consideration had not been given to the full circumstances of the case. The case was therefore reconsidered. Dennis' step-father was serving in the British Army and Dennis wished to

follow in his career path. As Dennis was not a BC he was not eligible to apply. In line with the staff instructions we may exercise discretion over the usual criteria where the child wishes to follow a particular career. It was therefore decided to exercise this discretion and grant the application. As the applicant had now reached 18 years of age, the ceremony fee was waived.

NC293. Granted: July 2006 **Neither parent BC**

Applicant was aged 17 on the date of application. His PNC check was returned clear. Although neither of his parents were British citizens, his future clearly lay in the UK. It was taken into account that he (now 18) was eligible to apply for naturalisation and appeared to meet all of the requirements – he had lived in the UK for more than 6 years and had been granted ILR in January 2005. It was therefore decided to waive the requirement to have a BC parent and grant the application for registration.

NC294. Refused: October 1988 **Father's objection well founded**

Application made on behalf of a 10 year old American minor by his United Kingdom born mother. Both resident in the United Kingdom. She was divorced from American father who lived in the USA. She had custody of the child whilst he had regular access - the child stayed with him for about 8 weeks each year. The father refused his consent on the grounds that the minor had been born in the USA; lived there for 7 years; retained links through his visits and should be allowed to make the decision on his nationality himself when he reached 18. The father thought his son would lose US nationality on becoming a BC but he would not do so unless he failed to enter the US to establish a permanent residence prior to his 25th birthday. Nevertheless the father's objection appeared well-founded and the mother was advised to apply nearer minor's 18th birthday.

NC295. Granted: November 1988 **Father's objection disregarded**

United Kingdom born mother living in South Africa applied for registration of her 3 minor children. Parents divorced. She had custody while the father had reasonable access. She claimed he had refused to give his consent and there was independent evidence of unreasonable behaviour on his part. Given that the mother had applied for, and seemed likely to be granted, sole custody of the children and we were reasonably satisfied she did not intend to remove the children from the country in breach of a court order, the father's objections were disregarded on the grounds that he appeared to be motivated by ill-feeling towards his former wife and not to be acting in the best interests of the children.

NC296. Refused: November 1988 **Outstanding legal proceedings**

Two minor children of divorced US father and United Kingdom born mother. Father had joint custody with visiting rights and would not give permission for his children to leave the US/acquire British nationality. US court found that she could return to England with the 2 children for one year after which the matter would be reviewed. She had not yet taken this up. As there were outstanding legal proceedings and the father's consent was not forthcoming registration was refused. Advised open to her to apply again before the children's 18th birthdays.

NC297. Refused : March 1989 **Objecting father had been given custody by US court**

Application made on behalf of a minor by his United Kingdom born mother. Both had been resident here for 4 years. The parents were divorced and she had been granted custody by an American court. After the mother and child had left the US the father obtained a court order giving him custody of the child. He also claimed the mother had abducted the child and asked for the child's address. The Lord Chancellor's Department confirmed there was no abduction in the legal sense but as the father refused to give consent the application was refused. We could not divulge the minor's address to his father.

NC298. Registered: May 1989 **Consent dispensed with due to fears for safety**

UK born mother submitted an application on behalf of her 7 year old son who was born in Holland. Her younger son (born after 1 January 1983) was already a BC. She was divorced from the boy's Dutch father and had custody of the children. A restraining order had been served on the father preventing him approaching the mother or children as she had genuine fears for their safety. In the circumstances it was felt to be unreasonable to approach the ex-husband for his consent and it was dispensed with.

NC299. Granted: November 1990 **Court ordered father to give consent**

UK born mother asked for the consent of her Ethiopian husband to the registration of her children to be ordered by the court in New Jersey. A court order to this effect was served on the husband who, despite having had objections to the children's change of nationality, acquiesced and gave his consent.

NC300. Granted: August 1991

UK born mother applied for the registration of her daughter. The parents were divorced, and the father, who was on remand in Australia had not given his consent to the registration of his daughter as a BC. As sole custody had not been awarded to the mother, and without her prior permission, his consent was sought, in breach of the Data Protection Act 1984. His objections were not considered to be in the best interests of the child, who was living in this country with her mother and were therefore set aside.

NC301. Refused: September 1993 **Minor the subject of a foreign divorce court order**

The minor was included on an application form for naturalisation made by his mother who had divorced the child's father in Iran in 1984. In 1985, she brought the child to the UK where she married a British citizen shortly afterwards. The divorce order indicated that the father had right of access to the child, and also custody (if she remarried before the child was 18). He had written to the Home Office in 1985 expressing his concerns at her actions, and although attempts to obtain his consent to the application were unsuccessful, it was not thought appropriate to disregard his views or the order of the Iranian court which had apparently been contravened.

NC302. Refused: October 1989 **Late application due to ignorance of provision**

Three minor children of a BC-D whose own father was naturalised in the United Kingdom, were born stateless in Egypt. The children's father was born in Egypt and had lived there all his life apart from a period of 11 years spent as a merchant seaman based in the United Kingdom. Application was made under Schedule 2, paragraph 5 for the eldest (born before 1 January 1983) and under section 3(2) for the others (born after 1 January 1983). The latter applications were not made within one year of the births because the father was unaware of the requirements. The eldest child had no entitlement to registration under Schedule 2, paragraph 5 and discretion was not exercised under section 3(4) to extend the time limit for the others: although there was a financial/educational restriction imposed this was because the children were not Egyptian rather than because they were stateless.

NC303. Granted: June 1990 **Late application for child with Downs Syndrome**

Minor child with Downs syndrome whose application was not lodged within 12 months of her birth. The family lived in Australia. The father was a BC-D (formerly CUKC s. 12(1)), her brother and sister BCs (formerly CUKCs by descent)/Australian and her mother Australian. All requirements for s. 3(2) were met except that registration had not been applied for within 12 months of the birth. Discretion in s. 3(4) was sought on the grounds that the child would be dependent upon her brother and sister in the future. Discretion was exercised on family unity grounds.

NC304. Registered: October 1989 **Murderer was not served with a deportation order before he lodged application**

Hong Kong BDTC was on overstayer who obtained indefinite leave to remain on the basis of marriage to a British citizen from whom he was later divorced. In 1984 he committed a murder in the course of a robbery. Had a deportation order been made before an application for registration under s. 4(2) was received, indefinite leave to remain would have been rendered invalid and he would have lost his entitlement to British citizenship. Unfortunately the police delayed sending a conviction report because an erroneous right of abode endorsement in his passport led them to believe he was a British citizen and therefore exempt from deportation. His status was not finally sorted out until August 1987. There was still an outstanding appeal against conviction which prevented a deportation order being made against him before he submitted his application for registration in July 1989. He had an entitlement under s. 4(2) as there is no good character requirement or 'technical absence' proviso under this section.

NC305. Refused: April 1990 **Absences due to attendance at American university**

BDTC applicant has absences of 459 days in the qualifying period of which 236 were in the final year. The absences in the last year were due to her attendance at an American university, which was continuing. She did not meet the usual expectations for waiving such large absences and there seemed no reason for treating her exceptionally.

NC306. Refused: February 1992 **Reasons not sufficiently compelling to waive excess absences**

A BOC, had absences in excess of 600 days in the qualifying period. Consideration was given to exercising discretion under s.4(4) for compassionate reasons - he was 77 years old and absences were due to treatment for a heart problem -but they were felt to be insufficiently compelling to waive absences to this extent.

NC307. Registered: September 1992 **Excess absences due to nature of career**

Applicant had been absent from the UK for 536 days in the qualifying period, of which 216 days were in the last 12 months before his application. The absences were as a direct result of his employment as a technical consultant for a UK based company. He had been resident in the UK since 1979 and was domiciled here for tax purposes.

NC308. Registered: November 1996 **Excessive excess absences overlooked due to previous administrative errors and wholly exceptional circumstances**

Applicant applied in November 1982 for registration as a CUKC under s6(2) of the BNA 1948 and was (incorrectly) determined not to have a right of abode in the UK. She was registered as a BDTC in 1983, but was subsequently issued with passports describing her as a British citizen. She only became aware of the discrepancy when an application was refused on the grounds that neither parent was a British citizen.

At the same time we realised that an error had been made in determining her claim to right of abode because we had not taken into account a relevant court judgement. She should have been registered as British citizen rather than as a BDTC. However, we could not rectify the mistake by simply issuing an amended certificate because the judgement in the case of EJAZ required that the incorrect registration should stand.

Her most straightforward avenue to British citizenship was now through 4(2) registration and she subsequently applied under this section. She had very considerable excess absences (leaving only about 100 days' residence in all), but the other requirements were met. We would only consider waiving absences to this extent in highly exceptional circumstances. But for quite a unique set of circumstances combining policy decisions, court judgements and administrative errors she would have already been a British citizen. Registering her under 4(2) offered a way of rectifying this and giving her what she should have been entitled to many years ago. It was therefore decided that she be registered under 4(2) waiving excess absences and her son be registered under 3(1) waiving part of the fee.

NC309. Registered: December 1996 **Excess absences overlooked: no prior residence**

Due to travelling abroad to get orders for his export business, the applicant had accumulated absences of 620 days, 190 of them being in the final twelve months of the qualifying period. The pattern seemed likely to continue and he seemed unlikely to be able to meet the normal residential requirements in the near future. Given the special circumstances and despite the fact that he had no prior residence, it was decided to register him exceptionally along with the rest of his family.

NC310. Refused: July 2002 **Excess absences**

Applicant had absences of 792 days during the qualifying period, largely due to her returning to Hong Kong for 184 days to look after her terminally ill husband until his death as well as some further absences to take care of the funeral arrangements, estate and probate. She had lived in the UK since 1992 and owned a house here and had 3 UK bank accounts. Her son lived in the UK, but her husband and 3 daughters lived in Hong Kong where she also owned property (2 flats – one vacant and the other occupied by one of her daughters). Despite the compassionate reasons for some of the absences, it was not considered that there were exceptionally compelling reasons to justify exercising discretion.

NC311. Granted: July 1989 **Brave wartime service not ruled out of account on technical grounds**

A BDTC from Hong Kong, gave extremely brave wartime service with the NAAFI which did not, however, qualify her for the concession for ex-servicemen who fought in the defence of Hong Kong as she was not a member of the Services. She was in Crown service under the government of Hong Kong from 1950-1970 and was awarded the MBE in 1970 for particularly deserving service. An application in 1986 was refused. After representations were made it was felt that her brave wartime service should not be ruled out of account on technical grounds and a further application was invited.

NC312. Refused: November 1990 **Service did not benefit the UK**

BOC who had retired from the post of Chief Inspector in the Royal Hong Kong Police force after more than 41 years loyal and meritorious service and settled in the UK. He believed that British citizenship would enable him to safely visit his brothers and sisters in China, having himself fled China in 1947. He was born in China of Chinese parents and was probably Chinese. Under the Master Nationality Rule (SIs Vol II) British citizenship would not give him consular protection in China. Although his police career in Hong Kong was exemplary his service could not be recognised as benefiting the UK itself and he would meet the residence requirements for s. 4(2) in due course.

NC313. JR dismissed: June 2005 **Whether the Secretary of State could exercise discretion over the requirement for the applicant to hold no other citizenship than British**

(Case citation: Nirmal Shah –v- Secretary of State for the Home Department [2005] EWCA Civ 903).

Section 4B of the British Nationality Act 1981 provides that certain British nationals who hold no other citizenship and have not after 4 July 2002 renounced, voluntarily relinquished or lost through action or inaction any citizenship or nationality have an entitlement to registration as a British citizen.

Nirmal Shah, a dual Indian citizen and British Overseas citizen, applied for a British Overseas Citizen passport in 2001 but the application was refused by the Deputy High Commissioner in Mumbai in December 2001. Mr Shah did not contest the decision to refuse him a BOC passport at this time and so remained a dual Indian/BOC (as under Indian citizenship law it is the acquisition of a foreign passport that triggers loss of Indian citizenship where a person is a dual national by birth). No further contact was made with the FCO/Home Office until 2003.

In 2003 Mr Shah's solicitors sought clarification from the Home Office of his nationality status and his eligibility for registration as a British citizen under Section 4B of the British Nationality Act 1981. The Home Office confirmed that Mr Shah was a British Overseas citizen and that the decision to withhold a BOC passport appeared to have been incorrect. We advised that as Mr Shah was still an Indian citizen he could not meet the requirements for registration under Section 4B and so was not solely British (as required at S 4B(2)(b). We further advised that even if we were now to correct the error of 2001 and issue him with a BOC passport he would fall foul of the criterion at Section 4B(2)(c), since the loss of his Indian citizenship that this would cause would be post-4 July 2002 and the result of his own action. As all requirements under Section 4B are mandatory, there was no scope for discretion to be exercised in this case.

On application for judicial review, this reasoning was approved both by the Administrative Court and by the Court of Appeal.

NC314. Deprived: July 2006 — **Entitlement subject only to statutory requirements and to principle that applicant should not benefit from own criminality**

The applicant, an Australian citizen, was being held by the US authorities at Guantanamo Bay. It was alleged that he had given active support to terrorists. He claimed an entitlement to registration under s.4C BNA 1981 on the basis of his own birth in Australia in 1975 and his mother's birth in the United Kingdom. The S of S argued that he was entitled to register but then immediately deprive the applicant of his British citizenship under s.40(2) BNA 1981 or, alternatively, that registration could be refused on 'public policy' grounds. The applicant sought a judicial review.

Held:

1. The entitlement under s.4C was subject only to the requirements laid down by s.4C itself and to the principle that an applicant would not be entitled to registration if, but for his own criminality, those requirements would not have been satisfied. On the facts of the case, the applicant was entitled to registration. (He had applied before the introduction, on 14 December 2006, of the additional requirement in s.58 of the Immigration, Asylum and Nationality Act 2006 that applicants under s.4C must be of good character.)

2. Section 40(2) applied only where the activities giving rise to the possibility of deprivation had occurred whilst the person was a British citizen. (But there was otherwise no reason in principle why the S of S could not register and then immediately deprive.)

3. The requirement in s.40(5) to give "reasons" for a proposed deprivation did not mean that the full particulars of the case against the individual had to be given at that stage.

(Case citation: R (Hicks) –v- SSHD [2006] EWCA Civ 400)
In light of this ruling, the applicant was registered as a British citizen. (For subsequent developments in this case see the related note in part 5, DEPRIVATION.)

NC315. Committee ruled as inadmissible — **Cut off date for 4C applications**

Applicant claimed that she was a victim of violations by the UK of certain of her rights under the Convention on the Elimination of Discrimination against Women. The basis for her claim was that she had been prevented from passing on British nationality to her eldest son who was born in Columbia in 1954, before the cut off date of 7 February 1961 for applications under s.4C BNA 1981. The Committee considered her claim but ruled that it was inadmissible on two grounds:

1. That the alleged discrimination had taken place before the Convention had come into force or been ratified by the UK, and the law has since changed

2. That she had not exhausted "domestic remedies" by taking the matter to the UK courts – had she made an application to register her son under the 1948 Act she could have applied for judicial review.

NC316. Refused: October 1990 **Returning resident had not been continuously ordinarily resident**

Bangladeshi applicant left the UK in 1972 to work for the government in Bangladesh. He returned to the UK in 1977 when he was given permission to remain for 6 months as a visitor. An application for ILR made during the visit was refused and the refusal upheld on appeal. In 1979 an application for entry clearance as a returning resident was refused but allowed on appeal to the Immigration Appeal Tribunal in 1986 on the basis of his connections with the UK (his sons had been living in the UK throughout his absences and had become BCs). ILR was given in January 1987. Discretionary readmission to the UK under para 52 HC 79 does not require continuous ordinary residence in the UK. Despite the fact that he was eventually recognised as a returning resident we could not accept that he had been ordinarily resident throughout the period from 1 January 1973 to the date of application.

NC317. Further application not invited: January 1990 — **Family's stay not at risk to the point of deportation**

Minor born in Botswana of BOC parents who became stateless under the Botswana citizenship (Amendment) Act 1984. She was temporarily included in her father's passport by the BHC Gaborone pending the result of her application as otherwise she would not have been able to go to South Africa for (routine) medical treatment. The family's stay was not at risk to the point of deportation however and the application was refused in 1984. Reconsideration of passport facilities was requested on the grounds that she could not accompany her siblings to South Africa for inoculations, dental treatment, shopping and schooling. NTD were not prepared to include her on either parent's passport. The family were advised to approach the Botswana Authorities for travel document facilities.

NC318. Refused: February 1990 — **Child and family not facing any difficulty**

Minor born in Kenya to BOC parents. She had lost Kenyan nationality under the Kenya (Amendment) Act 1985 and was now stateless. The child was not facing health or schooling difficulties - she was at school - and had been issued with a certificate of identity by the Kenyans so she could travel. The family were not at risk of deportation: they all possessed a Kenyan re-entry pass until 1 July 1991 and the stateless minor, Bindya, held a Kenyan dependant's pass which regularised her immigration status in Kenya.

NC319. Granted: July 1990 — **Incorrect advice by British post resulted in statelessness**

Child of BOC parents was born stateless in South Africa. Her father had intended that she should be born in the UK and so acquire BOC status under Schedule 2 to the BNA 1981. However, he was misadvised by Johannesburg BCG that this was not necessary. He had previously spent time in the UK pre 1.1.83 but was unable to provide sufficient evidence to establish Right of Abode under s. 2(1)(c) and a claim to British citizenship which would have given his daughter BC-D. Exceptionally registration was approved outside the usual criteria.

NC320. Registered: July 1991 — **Misadvised by British post resulting in loss of entitlement**

Child born in Buenos Aires, Argentina in 1983 to a BC-D father. Parents were wrongly advised by the Embassy that he had no entitlement to registration under section 27(2) when the child was 6 months old. His sister, born in 1987 was successfully registered under s 27(2) in 1990. Exceptionally registration was approved outside the normal criteria.

NC321. Refused: February 1992 — **Family's stay not at risk to the point of deportation**

Applicant was born stateless in Dubai in 1989 to a BOC father and Indian mother. A registration application had already been refused in May 1990. We offered in July that year to consider a fresh application in the light of representations following Iraq's invasion of Kuwait and FCO advice to British nationals in the UAE and neighbouring areas to consider moving their dependents out of the country, although it was made clear that we should even then expect to see evidence that the Indian authorities would not accept or document Kathryn. This evidence was produced but a decision on the case was deferred pending a review of s.27(1) policy, which resulted in no change in the criteria for the exercise of discretion. By this time the Gulf War was over and although it appeared that the UAE authorities were denying Kathryn a residence visa necessary to enable her to benefit from

state school and medical facilities, there was no actual evidence that the family's continued stay was at risk to the point of deportation.

Claims of liability to deportation are often made in s.27(1) cases, but seldom substantiated.

NC322. Refused: November 1992 **Not at risk of deportation**

Application made for the registration of 2 stateless minors, whose parents are BOCs. The High Commission in Malawi stated that UK passport holders of Asian origin were considered to be under pressure to leave Malawi, although there was no indication that the family's stay in Malawi was at risk to the point of deportation.

NC323. Refused: May 1995 **Cousin of children registered previously**

Applicant did not meet any of the normal criteria for registration as a BOC. In its covering letter, the Post to which the application was made had referred to another file (J183781) on which 2 minors, the applicant's cousins, had been exceptionally registered under s.27(1). It was agreed that the policy of registering siblings of incorrectly registered children if the family's circumstances have remained the same was not a relevant consideration in this case.

NC324 Refused: August 1990 **No imminent danger of deportation**

Minor children of Thai mother and BS father were born stateless in Abu Dhabi in 1979 and 1980. Although technically illegal residents there was no indication that the family were in imminent danger of deportation. There was also a possibility that the children might acquire Thai citizenship although it seemed to be at discretion. As there were no exceptional compassionate circumstances the applications were refused in line with guidance in Chapter 45 of the Staff Instructions.

NC325. Refused: July 1991 **No evidence of statelessness or risk of deportation**

Minor children of BS father and mother (who was registered under s. 33 BNA 81) were Jordanian by birth in Bethlehem and, in the case of the eldest, Jerusalem. Following Jordan's severance of legal and administrative ties with the Israeli occupied West Bank in July 1988, it was claimed that the children had lost their Jordanian citizenship and become stateless. However their father also stated that the status of West Bank Jordanians had not been clarified and there was no evidence that they were stateless. Nor was there evidence that the children needed valid passports for schooling (as claimed) or that the family's stay was at risk of deportation

NC326. Refused: September 1992 **Criteria for registration not met**

Applications were made for the registration of the children of an Egyptian father and a mother who is a British subject with right of abode by virtue of her mother's birth in the UK. The family were resident in Egypt and the minors, who all held Egyptian nationality, were not at risk of deportation.

NC327. Registered: June 1990 **Proof of application for renunciation sufficient for Maltese authorities**

British citizen by birth in the United Kingdom had to renounce his citizenship by the date of his 19th birthday in order to retain Maltese citizenship. He did not apply for renunciation until 2 days before his birthday and the application was not received in the Home Office until some time after. Confirmation was sought from the post in Malta that he would still retain Maltese citizenship. Upon receipt of an application for renunciation the post issue a dated proforma to certify that the applicant has applied to renounce citizenship. As long as this is accomplished by the deadline set by the Maltese nationality division, then the date of the pro-forma is accepted as the date of compliance within the requirements of the division. A pro-forma was issued to Mr Pace before his birthday and he therefore retained his claim to Maltese citizenship.

NC328. Registered: June 1992 **No need to enquire into reasons for renunciation**

Dual British/US citizen was required to renounce her British citizenship in order to acquire Civilian Component Status with the US Air Force in the UK, by which she was employed. This would entitle her to certain tax-free privileges.

Paragraph 19.7.2.1 of the Staff Instructions explains that if we have any information which suggests that the declarant has misunderstood the need for or consequences of renunciation the position should be explained to the declarant before registration.

In this case, however, there was no reason to suspect that the applicant was not fully aware of the consequences of renunciation, and although it was agreed that an application to resume British citizenship in the future would be unlikely to succeed, there seemed no reason to make further enquiries. As the statutory requirements for renunciation were met, the declaration was duly registered.

NC329. 10(2) **Past pro-Nazi sympathies disregarded**
Registered: May 1985

Applicant was interned under Defence Regulation 18B as a Nazi sympathizer for most of the 2nd World War. He lived in Sweden for 30 years from 1951 and renounced CUKC status in 1972 in favour of Swedish nationality. He was therefore considered under the discretionary provision for resumption under s. 10(2) upon which the instructions are that we should register someone "unless there are wholly exceptional circumstances which suggest the registration would not be in the public interest". After AC2 and CQ checks had been made and proved clear it was decided that his pro-Nazi sympathies of the past could not be held against him and the Minister approved his registration.

NC330. 10(2) **Obtainment of BC passport after renunciation disregarded**
Registration agreed: July 1990

Applicant was born in Bootle, Lancashire in 1927. Renounced August 1972 to take up a post in the Israeli diplomatic service. Requested resumption October 1988; retiring from diplomatic service (Israeli Ambassador to the Hague) and wishing to take academic appointment in UK for which BC was required. Some doubt due to his having obtained a British passport in 1980 to which he was not entitled. He had expressed regret at the time and said that he had not been able to face up to the consequences of his renunciation. Family all BC. Links with UK considered strong enough to grant, on balance.

NC331. 10(1) **Resumption under section 10(1) requires qualifying**
10(4) **connection in section**

House of Lords found in favour of Secretary of State: June 1990

Mrs A and Mr B sought to quash decisions of the Secretary of State refusing their applications to resume British citizenship under section 10 of the British Nationality Act 1981. The cases were heard together in the High Court on 18 June because they turned on similar facts.

Both renounced CUKC after Kenyan independence (1963) in order to become Kenyan citizens. They now sought to resume British citizenship and the issue turned on whether they had an appropriate qualifying connection with the UK as required by section 10. Neither applicant could meet the definition of the qualifying connection in section 10(4) but they sought to argue that the reference to an appropriate qualifying connection in section 10(1) meant such a connection as defined in section 1(1) of the British Nationality Act 1964. (The 1964 Act was repealed by section 52(8) of and Schedule 9 to the British Nationality Act 1981.)

Judgement was given in favour of the Secretary of State because the wording in section 10 made it quite clear that 'appropriate qualifying connection' was to bear the meaning in section 10(4). Even if it has been appropriate to look to the 1964 Act, the applicants would have been defeated by section 1(5) of the British Nationality Act 1964 because Kenya was no longer a colony when the applicants applied for resumption. (R.v. Secretary of State for the Home Department ex parte Patel and Wahid. June 1990).

NC332. 13(3) **Normal criteria not met**

Registered: May 1997

The applicant made a declaration of renunciation of BC status in Karachi in July 1995 and this was registered in August 1995. The post in Karachi subsequently wrote to us in October 1995 with correspondence from the applicant's father claiming his son's mental state had affected his decision to renounce his citizenship. We refused to reconsider our position. The applicant then applied to resume under s 13(3). A sympathetic view was taken over the application in view of the medical evidence and the applicant was registered even though the normal criteria were not met.

NC333. Application for judicial review refused: May 1991 **Burden and standard of proof**

Applicant claimed to be a British citizen but was refused admission to the UK because the examining Immigration Officer was not satisfied that the passport describing him as such was genuine. Mr Justice Hutchison held that the burden of proving right of abode on seeking entry to the UK is on the applicant (s.3(8) IA 1971). That burden is one which has to be discharged on the balance of probabilities. He had not discharged the burden in this case.

NC334. Appeal to the IAT dismissed: September 1992 **Effect of acquisition of British nationality by annexation**

The appellant was born in Khartoum in 1931. His father was born in Cyprus in 1902 and was issued in 1920 with a Certificate of British Nationality under the Cyprus (Annexation) Orders in Council 1914 and 1917. Although this had resulted in his becoming a CUKC on 1.1.49 it was not a method of acquisition specified in s.2 IA 1971, as in force before 1983, and so did not result in the appellant having the right of abode under that Act. (Case citation: Antoniades (9256).)

NC335. Existence of pre-1973 common law right of abode confirmed: 1970 **Pre-1973 right of abode at common law**

The right of abode is now an entirely statutory concept; that is, its possession is regulated entirely by s.2 of the IA 1971. Before 1973, however, there existed what might be termed a common law right of abode. This was enjoyed by all British subjects, albeit in varying degrees after 1962. In DPP -v- Bhagwan [1972] AC 60, Lord Diplock referred to this right of abode as follows:

"Prior to the passing of the Commonwealth Immigrants Act 1962, the Respondent as a British subject had the right at Common Law to enter the United Kingdom without let or hindrance when and where he pleased and to remain here as long as he liked. That right he still retained in 1967 save insofar as it was restricted or qualified by the provisions of the Act."

NC336. Appeal dismissed: 1984 **S. 2(2) IA 1971 - consequences of repeal**

The appellant had married her husband, a British citizen, on 25 January 1983. Section 2(2) of the IA 1971, under which she would have acquired the right of abode had her marriage taken place just a few weeks earlier, had by then been repealed (s.39(2) BNA 1981). Concluding that Mrs Brambhatt did not acquire a statutory right of abode by virtue of her marriage, the Court of Appeal also rejected the suggestion that a common law right of entry to the UK on which she could rely had survived the introduction of the 1971 and 1981 Acts. A submission that advice given by officials had raised in Mr Brambhatt's mind a legitimate expectation that his wife would be freely admitted to the UK subject only to her obtaining a certificate of patriality was also rejected, because the law had changed with the coming into force of the BNA 1981 and "citizens of this country are expected to know the laws embodied in our statutes". (Case citation: Brambhatt -v- CIO [1984] Imm AR 202.)

NC337 S. 2(2) IA 1971 - consequences of repeal
See under **SCHEDULE 8 REGISTRATION/NATURALISATION**

Appeal dismissed: April 1992 — Standard of proof

The appellant claimed to have been born in the UK in 1963. On his return from a visit to Belgium in 1988 he produced a British Visitor's Passport as evidence of right of abode but was refused entry. The Court of Appeal ruled that the effect of s.3(8) and (9) coupled with Schedule 2 to the IA 1971 was that only if a passenger produced a UK passport describing him as a BC or a certificate of entitlement to the right of abode was an IO bound to accept it as proof of admissibility. Even then it would be open to the IO to assert that the document was a forgery or did not relate to the passenger. Where, however, some other evidence of right of abode was proffered, the IO had a discretion whether or not to accept it. Not being a document within s.3(9) of the 1971 Act, a BVP was like a birth certificate or other document tending to show, but not necessarily proving, the right of abode, and the IO had been within his rights to refuse entry. It was wrong to suggest that the burden had shifted to the IO to *disprove* Mr Minta's claim. (Case citation: Minta -v- SSHD [1992] Imm AR 380.)

NC338. Appeal to the IAT dismissed: April 1985 — **Effect of mistaken recognition of right of abode**

Where a passport is erroneously endorsed to the effect that the holder has the right of abode in the UK, the endorsement does not have the effect of conferring any such right upon him. The right of abode is a statutory concept which a person either has or does not have. The Home Secretary is not stopped from claiming, at a later date, that a person previously thought to have the right of abode does not have it. Nor can a representation to the effect that a person has the right of abode, if made in error, give rise to any legitimation expectation that the person will be allowed to remain here or be re-admitted to the UK as if he had such a right. (The Tribunal has since taken the same line in Esmail (4201) and Buch (6429). See also MENON, below.) (Case citation: Christodoulido -v- SSHD [1985] Imm AR 179.)

NC339. Appeal to the IAT dismissed: June 1993 — **Effect of mistaken recognition of right of abode**

The appellant had been erroneously issued with a passport describing him as a CUKC in 1956. On the facts of the case he had never held that citizenship and did not, therefore, have the right of abode. The IAT, following its earlier decision in Christodoulido, said: "The right of abode is a matter of status, and that status cannot be conferred simply by a representation that the person is entitled to it." The case of Gowa -v- Attorney-General (see Volume 2, Section 2 of the NDSIs under "ERROR") differed in that the representation made there was on behalf of "a Governor who had the power to grant citizenship" whereas he was claiming citizenship "as of right and not through registration, and there can be no creation of that status through a representation."

NC340. Appeal to the IAT dismissed: May 1985 — **No right of appeal against erroneous CoE cancellation**

The appellant had been issued in error with a passport describing her as having had the right of abode. When that passport expired, she asked that her new passport be similarly endorsed. By this time the error had been realised and the request was refused. Ms Gold purported to appeal against the refusal under s.13(2) of the IA 1971 on the basis that it amounted to a refusal to issue a certificate of entitlement. It was held that the Home Secretary had not "refused an application for a certificate of entitlement" but, rather, was seeking "to cancel certificates already issued". The Tribunal continued: "There is no provision in the Immigration Act for an appeal against such cancellations". (Case citation: SSHD -v- Gold [1985] Imm AR 66.)

NC341. Appeal to the IAT dismissed: July 1974 **Meaning of "by naturalisation ... in the United Kingdom"**

Citizenship of the United Kingdom and Colonies conferred by the issue of a certificate of naturalisation granted in 1956 in the former Protectorate of Uganda by the Governor of Uganda, acting with the requisite approval of the Secretary of State under s.10 of the BNA 1948, was not "citizenship by naturalisation in the United Kingdom"; consequently it did not qualify the person so naturalised for the right of abode under s.2(1)(a) of the IA 1971 as originally enacted. (Case citation: Keshwani -v- SSHD [1975] Imm AR 38.)

NC342. Application for judicial review dismissed: July 1976 **Meaning of "by naturalisation ... in the United Kingdom"**

The applicant, a British protected person resident in Kenya, was granted a certificate of naturalisation by the Governor of Kenya on the eve of Kenya's independence in 1963, namely on 11 December 1963. The certificate was made subject to the applicant taking the oath of allegiance and it bore the signature of an official described as "of the Colonial Office, London (Authorised by the Governor)". After the applicant had taken the oath of allegiance (in Mombasa on 30 April 1964) the certificate was duly registered at the Home Office (on 2 October 1964) and then (on 21 October) sent to the applicant by the Passport Office at the British High Commission in Nairobi.

On these facts the Queen's Bench Division held that the applicant was naturalised in Kenya on 11 December 1963 by the Governor exercising the power conferred on him by s.10 of the BNA 1948, and she was not therefore a person having the right of abode in the UK under s.2(1)(a) of the IA 1971 as a CUKC by "naturalisation...in the United Kingdom". (Case citation: R -v- IAT ex p De Sousa [1977] Imm AR 6.)

NC343. Claim acknowledged under s. 2(1)(c) : April 1997
Pre-1949 residence effect of s.2(3)(c) IA 1971

Applicant was a British subject under section 5(1) of the British Nationality and Status of Aliens Act 1914 having been included as a minor on his father's certificate of naturalisation issued in Southern Rhodesia in 1935. He acquired Southern Rhodesian citizenship by operation of law on 1.1.50, and was believed to have retained that citizenship despite his residence in the UK between 1936 and 1942. In 1970, he was registered in Tanzania as a CUKC under section 12(6) of the BNA 1948 (as amended by the BNA 1958 and revived by the 1965 Southern Rhodesia (BNA 1948) Order).

His 1970 registration did not bring him within s.2(1)(a) IA 1971 or within s.11(3) BNA 1981. However, the legal adviser agreed that the effect of s.2(3)(c) of the 1971 Act was that his residence in the UK as a 1914 Act British subject brought him within s.2(1)(c), and since he was a CUKC on 31.12.82, he had a claim to British citizenship under s.11(1) BNA 1981. The reference to 'a citizen of the United Kingdom and Colonies' and the use of the phrase 'while such a citizen' in s.2(1)(c) did not mean that only ordinary residence in the UK and Islands after 1 January 1949 could count towards qualification for the right of abode.

NC344. Determination of illegal entry quashed: April 1997 **Burden of proof**

The applicant had entered the United Kingdom on 13 July 1995, using a British passport issued to him on 19 May 1995 for a six-month period in the name of Chukwudi Obi. There was some doubt as to whether he was, in fact, Chukwudi Obi. On 17 October 1995, when he applied for renewal of the passport, he was arrested and served with a notice of illegal entry.

On application for judicial review the notice was quashed. Having produced a United Kingdom passport of the description in s.3(9)(a) IA 1971, the applicant had discharged the burden of proving his status imposed by s.3(8) of the Act. He remained open to all the sanctions of the law, including removal as an illegal entrant, if it could be proved that he had obtained the passport by fraud. But it was for the Home Secretary or other prosecuting authority to prove fraud, not for the applicant to *disprove* it.(Case citation: R-v-Secretary of State for the Home Department, ex parte Obi [1997] The Independent 23/4/97).

NC345. Appeal dismissed: November 1982 **Illegitimacy**

Section 2(3)(a) of the 1971 Act, as in force immediately before 1.1.83, stated that, for the purposes of subsection (1), "'parent' includes the mother of an illegitimate child". On the face of it this leaves some uncertainty regarding the significance of the *father's* nationality/place of birth in such a case. Not so, said the Court of Appeal in R -v- SSHD ex p Crew [1982] Imm AR 914: "One only has to apply to that the well known maxim of construction *expressio unius est exclusio alterius* to see that the express inclusion of the mother excludes the father of the illegitimate child". In other words, the father of an illegitimate child does not count for ROA purposes.

NC346. Decision in principle to issue CoE: Dec 1997 **Failure to provide a non-British passport: whether CoE may be granted**

The applicant had established a claim to British citizenship, and therefore to the right of abode, but had no passport. The normal procedure would have been to direct him to apply for a British passport and to invite withdrawal of the CoE application, but he appeared reluctant to follow this advice. Two questions arose: firstly, whether a request for a CoE which was not accompanied by a non-British passport in which the CoE could be placed constituted 'an application duly made' for the purposes of s 13(2) of the 1971 Act; and secondly, if it did, whether the failure to produce a passport constituted grounds for refusing the application. The papers were referred to the legal adviser.

The advice received was that, since there was no statutory procedure for making a CoE application, a simple request that a CoE be issued would suffice for s 13(2) purposes. As to the second question, the only legally prescribed requirement for the issue of a CoE, once the claim to the right of abode had been verified, was payment of the fee specified by the Consular Fees Order. The Directorate was entitled to have a policy of only placing CoEs in non-British passports, but it had to be prepared to depart from that policy where to do otherwise would be unreasonable. The Home Office had prevaricated over this applicant's nationality/immigration status for more than 5 years, no other country was prepared to document him as one of its citizens, and he therefore had good reason to expect that, once his claim to British citizenship had been accepted, the normal requirement to produce a non-British passport would be set aside in his case.

It was agreed that a CoE could be attached to a letter, formally acknowledging the claims to British citizenship and the right of abode.

NC347. Home Secretary's appeal to the IAT allowed: October 1995 **Consequence of Pakistan's withdrawal from and readmission to the Commonwealth**

A citizen of Pakistan, argued that she had the right of abode in the United Kingdom on the grounds of (a) her Commonwealth citizenship and (b) her late husband's registration as a CUKC in 1958. The Home Secretary appealed against an adjudicator's ruling to that effect.

The IAT allowed the Home Secretary's appeal. Section 2(1)(b) IA 1971, as amended, preserved the right of abode of certain Commonwealth citizens who, immediately before 1 January 1983, had the right of abode on the grounds of marriage (s.2(2) IA 1971, as

originally enacted) or parentage (s.2(1)(d)). Mrs Bibi, however, was not such a person. Her Commonwealth citizenship, and therefore her UK right of abode, had been withdrawn on 1 September 1973 (s.1(1) Pakistan Act 1973, amending s.1(3) BNA 1948) in consequence of Pakistan's withdrawal from the Commonwealth in 1972. Pakistan's readmission to the Commonwealth in 1989 was of no consequence in right of abode terms.

NC348. Claim accepted: February 1999 **Pre-IA 1971 status not relevant**

A CUKC under s.12(4) BNA 1948, was ordinarily resident in the UK without restriction under the immigration laws from 1959 to 1966. On 2 March 1968, however, lacking a sufficiently close connection with the UK, he became subject to control under the Commonwealth Immigrants Acts (s.1 CIA 1968, amending s.1(2) of the CIA 1962). The question arose whether he nevertheless qualified for the right of abode under s.2(1)(c) IA 1971 when the latter came into force on 1 January 1973.

Following consultation with Legal Adviser's Branch, it was agreed that he did so qualify. There was nothing in the 1971 Act which limited the right of abode to those who were not subject to control under the earlier legislation.

NC349. Claim accepted: October 2001 **Illegitimacy/Adoption**

The applicant, a citizen of Zimbabwe, was born in Southern Rhodesia in 1972 to unmarried parents. Her natural father was a UK-born CUKC, her mother Zambian. In 1979, she was adopted in Zimbabwe-Rhodesia by her natural father. The question arose whether the adoption had resulted in the applicant's acquiring the right of abode in the UK by legitimising her relationship with her natural father. The legal adviser agreed that it had. The fact that the adoptive parent was also the applicant's natural parent did not exclude him from the meaning of "parent" for the purposes of s.2(1)(d) of the 1971 Act as in force immediately before 1 January 1983.

NC350. Application to ECHR declared inadmissible: March 1999 **Whether s.2(1)(b) IA 1971 (as amended) is sexually discriminatory**

Section 2(2) of the Immigration Act 1971, as in force before 1 January 1983, conferred the right of abode on certain female Commonwealth citizens whose husbands (or former husbands) had that right. Provided they continue to be Commonwealth citizens, their pre-1983 right of abode is preserved by s.2(1)(b) of the 1971 Act as amended by s.39 of the BNA 1981. But there is not, and never has been, any similar provision for male Commonwealth citizens married to women with the right of abode.

Mr Valmont sought to challenge the failure of the 1981 Act to remove this historic discrimination, alleging that there had, as a result, been unjustified interference with his right to respect for family life under Article 8 of the European Convention on Human Rights. The United Kingdom argued that any discrimination remaining in s.2 of the 1971 Act after amendment had a "reasonable and objective justification" for the purposes of the Convention. To have taken away pre-existing rights of abode from Commonwealth citizen women would have been unfair. Moreover, there was nothing in the Convention that obliged contracting States to go so far as conferring citizenship or the right of abode on any person.

Unfortunately the European Court of Human Rights did not rule directly upon the validity of the United Kingdom's arguments. This was because the Valmont application was found to be manifestly ill-founded on the particular facts of the case: Mr Valmont was hardly in touch with his family at all. (Case citation: Valmont –v- United Kingdom, Application no. 36385/97, ECHR).

NC351. Appeal allowed: October 2006

'Another living wife' does not include a divorcée

In December 2005, applicant applied for a certificate of entitlement to the right of abode as the spouse of a UK citizen. She was the second wife of her husband. Husband's first wife had previously entered the United Kingdom as his dependant but they had since divorced.

Section 2 of the Immigration Act 1988 provides that a woman who acquired the right of abode through marriage before 1983 may not be granted a certificate of entitlement if "another living wife or widow of the same man is or has at any time since her marriage been in the UK otherwise than as a visitor".

It was decided that as her husband's first wife had already entered the United Kingdom "otherwise than as a visitor", she did not qualify for a certificate of entitlement to the right of abode and her application was refused. She appealed to the Immigration Appeal Tribunal against this decision.

At appeal, the adjudicator confirmed that section 2 of the 1988 Act was concerned with limiting or preventing the simultaneous presence of polygamous wives and that 'another living wife' did not include a divorcée, and directed a certificate of entitlement to the right of abode should be issued.

NC352. 6(1) BNA 1948
Court of Appeal found in favour of the Home Office: October 1995

Pre-1981 Act applications determined when certificate issued

The appellant's husband had applied for registration as a CUKC in October 1982. His application was approved after commencement of the BNA 1981 and a certificate was issued in September 1983 confirming his registration as a British citizen under s.6(1) BNA 1948 read with Schedule 8 BNA 1981. In June 1990, his wife and their two children arrived in the UK with freshly issued spouse/dependant visas to joint him, although he had died in September 1989. It was proposed to remove them as illegal entrants, but she contended that her husband's registration bestowed on her the right of abode under s.2(2)(a) of the Immigration Act 1971 as originally enacted, which she had then retained under the amended legislation.

The Court of Appeal disagreed with the arguments that a) the applicant acquired British citizenship on the date of his application, b) Schedule 8 applied not only to an applicant but also the applicant's spouse, and c) she was entitled to be given the right of abode regardless of when citizenship was granted. It held that s.39 BNA 1981 had changed the position so that a wife could only have right of abode under se.2(2) IA 1971 if the husband had right of abode prior to 1.1.83.

47. WITHDRAWAL OF APPLICATION

NC353. 7(1)(a)
Registration treated as null and void: April 1989

Letter of withdrawal received but not linked before issue of certificate

Social worker wrote to withdraw an application made by an illiterate Jamaican applicant who had been subject to a psychiatric hospital order and who was now to be repatriated. The letter was not linked until a certificate had been issued but as it had been received before the determination of the application the registration was treated as null and void.

NC354. 8(1)
Informed application could not be reinstated : September 1989

Change of mind after withdrawal

Applicant withdrew her application for registration and the fee was refunded. She then informed us that she wished to continue with the application. Her application was regarded as no longer subsisting after it was withdrawn. She had therefore lost her entitlement to registration.

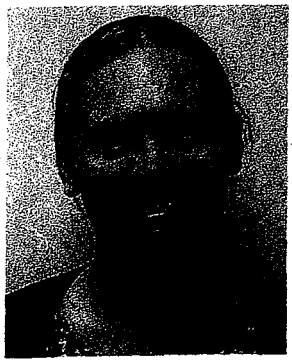
NC355. 6(1)
Withdrawn: September 1990

Letter from Public Trust Office withdrew application

The Public Trust Office acting as receivers for applicant requested that we treat her application as withdrawn and refund the fee paid by the Public Trust Office to the Receivership Division. Following the legal advice discussed in para 6.5.12 SIs that where a citizenship fee is paid by a person other than the applicant, that person is entitled to a refund while the application remains undetermined (less the application fee) - a refund was made. Moreover in view of the clear legal basis of the Public Trust Office we regarded it as her agent and accepted that their letter withdrew her application.

Eddy Montgomery *Regional Director, North West Region*

Eddy joined the Immigration & Nationality Directorate in 1993 working as an asylum caseworker. In 1996, he moved to the Special Cases Directorate within IND where he dealt with immigration cases of national interest. In 1998, Eddy returned to his home city of Liverpool to set up a new casework operation to deal with the backlog of asylum applications that had arisen during the surge in the 1990s. Building on the success of the new asylum function in the North West, Eddy joined the management team of the new Integrated Casework Directorate as head of the Process Team. In 2001 he moved to the Joint Delivery Programme Directorate as head of Process Design where he started work on the streamlining immigration casework processes, a piece of work that developed over a number of years into a major piece of organisational redesign and change. In 2005, he was appointed Assistant Director of the New Asylum Programme leading on the development and operational management of a pilot team in Liverpool. In 2007, he was appointed Deputy Director for the Case Resolution Directorate, tasked with clearing the outstanding 450,000 immigration cases in the system. In January 2009, he was temporarily covering the Regional Director's post for the Wales and South West Region of the new UK Border Agency and was appointed Acting Assistant Director for the NW Region in April 2009. He is responsible for 2000 staff based across the region who deal with all elements of immigration. He is also the Senior Responsible Officer for the new Earned Citizenship programme.

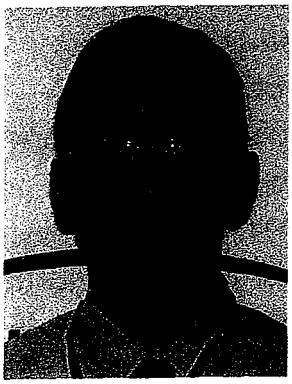


Naomi Hatton *Earned Citizenship Programme*

Naomi Hatton joined the Home Office in 2000 and has worked on various issues including the establishment of Citizenship Ceremonies, supporting the Crick Commission which examined options for introducing tests of Knowledge of Life in the United Kingdom and, more recently, Refugee Integration. Naomi is currently responsible for implementing the Earned Citizenship proposals.

Tony Dalton *Chief Caseworker, Nationality*

Tony joined the nationality team in 1991 as a casework manager. He joined the nationality policy team in 1998 and was responsible, among other things, for the policy that led to the introduction of citizenship ceremonies. In 2002 Tony became the Nationality Chief Caseworker. His responsibilities are mainly concerned with quality and oversight of nationality decisions.



Ian Page *Deputy Chief Caseworker, Nationality*

Ian is one of Nationality Group's Deputy Chief Caseworkers. Lately he has specialised in Deprivation Casework. He joined the Home Office in 1986 - initially with the Passport Office before joining IND in 1997.

Jane Whitehead *Nationality Policy Team*

Jane Whitehead joined Nationality Group in 1991, following which she has been a nationality caseworker, training officer, policy adviser, senior caseworker and spent 6 months working with the Hong Kong Immigration Department on the British Nationality Scheme. From 2003 to 2007 Jane was Deputy Chief Caseworker, firstly with responsibility for nationality casework decisions and then for quality and correspondence. Jane has been Policy Manager in the Nationality Policy Team since 2007 where her responsibilities include policy development, general policy queries and amendment of staff instructions, application forms and guides. During this time she has enjoyed being involved in the passage of the Borders, Citizenship and Immigration Act through Parliament, working with school groups on the Citizenship curriculum, and dealing with unusual nationality status queries!

Anthony Pilgrim *Deputy Chief Caseworker, Nationality*

Anthony joined the Home Office in 1987, initially as an immigration caseworker at Lunar House, Croydon. When the nationality business transferred to Liverpool he took the opportunity to re-locate to the North West and joined the Nationality Policy Team in 1991. He remained there for several years, working on number of high profile cases including the reference to the European Court of Justice in Case C-192/99 Manjit Kaur -which confirmed the efficacy of the United Kingdom's 1982 declaration on the definition of the term 'nationals' for EC purposes- and new legislation including the British Overseas Territories Act 2002, the Nationality, Immigration and Asylum Act 2002 and the Immigration, Asylum and Nationality Act 2006. In 2008 he opted to return to casework and currently provides support to the Chief Caseworker and oversight of the Correspondence and Enquiry Team.

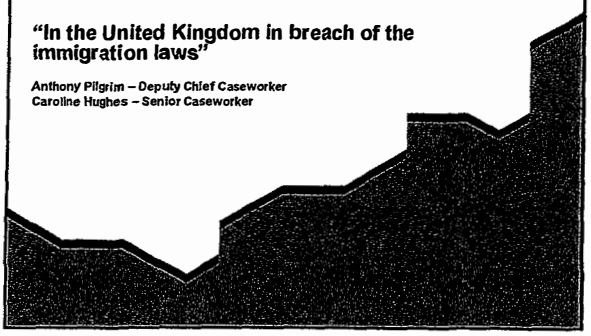
Caroline Hughes, *Senior Caseworker, Nationality*

Caroline joined the Civil Service in 2002, working in the Tax Credits department of the Inland Revenue and a local enforcement team at the DVLA before joining Nationality as a caseworker in January 2006. She is currently the Senior Caseworker responsible for training and developing new caseworkers in the mentoring team, considers requests for reconsideration of refused cases, and considers applications for confirmation of British nationality status.

UK Border Agency

"In the United Kingdom in breach of the immigration laws"

Anthony Pilgrim – Deputy Chief Caseworker
Caroline Hughes – Senior Caseworker



UK Border Agency

Relevance of the concept

Condition of registration under s.4(2) BNA 1981 that applicant was not "in the United Kingdom in breach..." during the q.p.

Condition of naturalisation under s.6 BNA 1981 that applicant was not "in the United Kingdom in breach..." during the q.p.

Part of the BNA 1981 definition of "settled in the United Kingdom" that the person was "ordinarily resident" –ergo (per s.52(5) BNA 1981) *not* "in the United Kingdom... in breach of the immigration laws" - at the relevant time.

2

UK Border Agency

Where and how the concept is defined

Concept currently defined in s.11, NIA Act 2002.

With some minor changes (and a saving in respect of certain pre-commencement cases) the 2002 Act definition will shortly be incorporated (by s.48 BCI Act 2009) into the BNA 1981 as new section 50A of that Act.

Rule of thumb: person is in the UK in breach of the immigration laws if s/he is (a) physically present in the UK, (b) requires leave to be in the UK and (c) does not have the requisite leave.

Breach of conditions attached to limited leave – employment restrictions, prohibition on recourse to public funds etc- not considered, for this purpose, to be a "breach of the immigration laws".

3

New section 50A BNA 1981 considered in detail: scope

Subs (1)-(2) explain that the definition will apply, post-commencement of s.48 BCI Act 2009, for the purpose of establishing

- whether a person born on/after commencement is a BC under s.1(1)(b) BNA 1981
- whether a person applying on/after commencement has an entitlement to registration under s.1(3) BNA 1981
- whether a person applying on/after commencement has an entitlement to registration under s.4(2) BNA 1981
- whether a person applying on/after commencement is eligible for naturalisation under s.6 BNA 1981

Subs (3) preserves the pre-commencement definition of "in the United Kingdom in breach..." –i.e. the definition currently in s.11 NIA Act 2002- for applications made and cases arising before commencement of s.48 of the 2009 Act.

4

New s.50A BNA 1981 considered in detail: substantive provisions

Subs (4) (b)-(g) and subs (6), taken together, identify 7 scenarios whereby a person in the UK is not considered to be here "in breach of the immigration laws":

- the person has right of abode in the UK, per s.2 IA 1971
- the person has leave to enter or remain in the UK, per s.3, 3C or 3D IA 1971
- the person is a citizen of the Republic of Ireland and was entitled to enter without leave under Common Travel Area arrangements, per s.1(3) IA 1971
- the pe on is entitled to reside in the UK under EC free movement rules
- the person is entitled to enter and remain by virtue of s.8(1) IA 1971 (crew of ships and aircraft)
- the person has an exemption from immigration control under s.8(2)-(4) IA 1971 (soldiers, diplomats etc)
- the person remains in the immigration control area at port or has been detained or temporarily admitted whilst liable to detention *under IA 1971 Schedule 2 or NIA Act 2002 ss.62 or 68 powers.*

In all other circumstances the person is to be considered, for the purposes to which s.50A BNA 1981 applies, to be "in breach of the immigration laws".

5

New s.50A BNA 1981 considered in detail: innovations

- S.50A(4)(e) refers generally to an entitlement to reside in the UK "by virtue of any provision made under section 2(2) of the European Communities Act 1972" whereas the equivalent in s.11(2)(d) and (e) of the 2002 Act refers to persons having the status of "a qualified person" or a family member thereof under the Immigration (European Economic Area) Regulations 2000 – a change of form rather than substance

- The current definition in s.11 of the 2002 Act ignores Common Travel Area beneficiaries – an omission which, if a case arose, we would almost certainly address by means of an exercise of discretion

6

A final word about "temporary admission"

- Persons given temporary admission on arrival at port, as an alternative to detention and pending a decision on whether they may be given leave to enter, have not "entered" the UK for immigration purposes – ergo they cannot, whilst the temporary admission persists, be considered to be "in the United Kingdom in breach of the immigration laws" (s.50A(6) BNA 1981, applying s.11(1) IA 1971).

- Persons who, on arrival, by-passed immigration control altogether have "entered" the UK (albeit illegally). They may, on detection, be given a form of temporary admission whilst a decision is made on their future status but they continue to be "in the United Kingdom in breach of the immigration laws" until such time, if any, as leave to remain is granted.

7

Discretion to overlook immigration law breaches: when it may be exercised

- Under s.4(4)(c) BNA 1981, whether the person has applied for registration under s.4(2) but was "in the United Kingdom in breach of the immigration laws" for some or all of the 5-year qualifying period

- Under BNA 1981 Sch 1 paragraphs 2(d) or 4 where the person has applied for naturalisation under s.6 but was "in the United Kingdom in breach of the immigration laws" for some or all of the 3- or 5-year qualifying period

No discretion to treat as "settled in the United Kingdom" someone who, at the relevant time, was here in breach of the immigration laws.

8

Discretion to overlook immigration law breaches: how it is likely to be exercised

Breach likely to be disregarded if:

- Genuinely inadvertent or outside person's control

- Possible regularisation of the person's stay was under consideration during the period of breach – i.e. there was a pending immigration appeal or an undetermined application for leave to enter or remain

- The person entered the UK clandestinely but presented himself or herself to the authorities and applied for leave to remain without delay. *NB - In these cases we can waive the breach that occurred from entry until the person's first application for leave/asylum has been determined, and all appeal rights exhausted.*

9

A note regarding the definition of "pending appeals" and "undetermined applications":

- A person's immigration status is not affected solely as a result of representations from MPs or agents on his/her behalf.

- Representations made against a decision to refuse further leave to remain/ILR in the UK do not amount to an appeal against that decision, and where a person remains in the UK following the expiry of limited leave, he or she is still considered to be in the United Kingdom in breach of the immigration laws.

10

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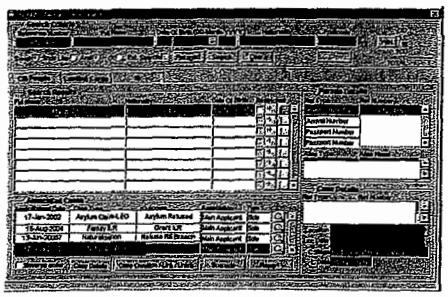
- It is therefore not our usual practice to exercise discretion and disregard a breach on the grounds that an agent or MP made further representations, unless leave to remain in the UK was granted as a direct result of these representations.

11

Example



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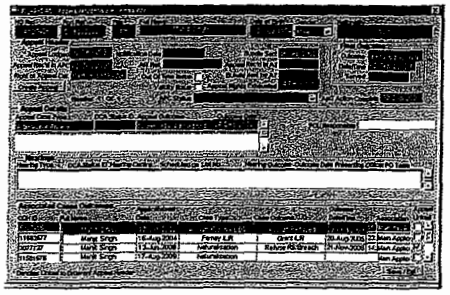
Example



13

Process for applying discretion

- Claimed Asylum LEO (Local Enforcement Office) 17/01/02, refused 20/08/03, appeal rights exhausted 04/12/03
- Applied for family ILR 16/08/04, granted 20/08/05

14

Process for applying discretion

- Claimed Asylum LEO 17/01/02, refused 20/08/03, appeal rights exhausted 04/12/03
- Applied for family ILR 16/08/04, granted 20/08/05
- First naturalisation application received 13/06/08

— QP is 14/06/03 – 13/06/08

— Applicant is in breach throughout their stay until ILR granted 20/08/05

15

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- Applied for family ILR 16/06/04, granted 20/08/05
- First naturalisation application received 13/06/08
  - QP is 14/06/03 – 13/06/08
  - Applicant is in breach throughout their stay until ILR granted 20/08/05
  - Two periods may be disregarded:
    - 17/10/02 – 04/12/03 (asylum claim under consideration until appeal rights exhausted)
    - 16/08/04 – 20/08/05 (family ILR application under consideration)

16

Process for applying discretion

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  - Applicant is in breach throughout their stay until ILR granted 20/08/05
  - Two periods may be disregarded:
    - 17/10/02 – 04/12/03 (asylum claim under consideration until appeal rights exhausted)
    - 16/08/04 – 20/08/05 (family ILR application under consideration)
  - Period between 05/12/03 and 15/08/04 does not meet criteria to apply discretion, therefore application refused.

17

Process for applying discretion

- Claimed Asylum LEO 17/01/02, refused 20/08/03, appeal rights exhausted 04/12/03
- Applied for family ILR 16/08/04, granted 20/08/05
- First naturalisation application received 13/06/08
  - QP is 14/06/03 – 13/06/08
  - Applicant is in breach throughout their stay until ILR granted 20/08/05
  - Two periods may be disregarded:
    - 17/10/02 – 04/12/03 (asylum claim under consideration until appeal rights exhausted)
    - 16/08/04 – 20/08/05 (family ILR application under consideration)
  - Period between 05/12/03 and 15/08/04 does not meet criteria to apply discretion, therefore application refused.
- Second naturalisation application received 17/08/09
  - QP is 18/08/04 – 17/08/09
  - Period of breach between start of QP on 18/08/04 and 20/08/08 may be disregarded (family ILR application under consideration)
  - If all else is in order, application may be granted.

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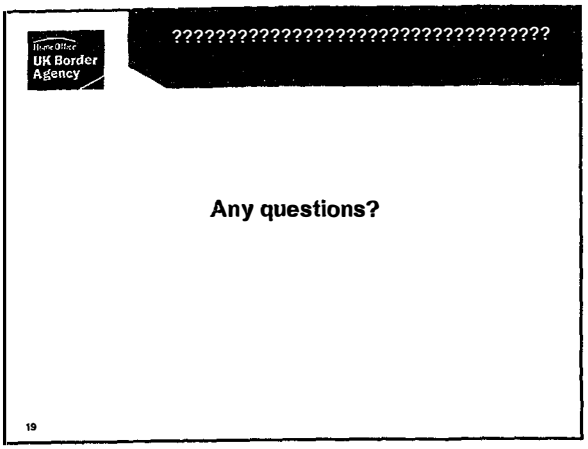

Compelling exceptional reasons will be considered if applicable