THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 28 J.R.]

BETWEEN

JACOB LAWERH OKORNOE

APPLICANT

AND

MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 15th day of February, 2016

1. In this application for leave to seek judicial review, the applicant challenges a decision of the Minister dated 23rd October, 2015 refusing his application for naturalisation.

2. The applicant is a national of Ghana residing in the State. He was convicted of driving without insurance on 2nd February, 2006, and fined €200. An allegation of sexual assault against a female person was made against him in connection with an incident that occurred in 2010. The applicant, who bears the burden of proof and indeed also a duty of full disclosure in an *ex parte* application, has not thought it necessary to inform me in the grounding papers as to when he was questioned or investigated in relation to this alleged sexual assault. However, in the ordinary nature of things, I would infer that in the absence of material to the contrary, such investigation was more likely than not to have been in 2010. The fact that the applicant has not provided evidence that the investigation post-dated his application for naturalisation would only reinforce that inference.

3. On 19th August, 2011, he completed an application form for naturalisation. In response to the question as to whether he is or had ever been the subject of an investigation in Ireland by the Garda Síochána, he answered "*no*".

4. On 1st February, 2013, he was acquitted of sexual assault in the Circuit Court. No application to redact his identity in the context of the present proceedings was made to me. I am not aware that any such application was made in the context of his trial.

5. By decision dated 23rd October, 2015, his application for naturalisation was refused. It is a statutory condition of such applications that the applicant be of good character (s. 15(1)(b) of the Irish Nationality and Citizenship Act 1956, as substituted by s. 4 of the Irish Nationality and Citizenship Act 1986).

6. The Minister's analysis of the naturalisation application concluded "*given the nature of the offences and that the applicant failed to disclose the offences on his application form, I am not satisfied that the applicant is of good character".*

7. Mr. James Buckley, B.L., on behalf of the applicant submits that there is an error in the reasoning on the grounds that the use of the term "offences" meant that the Minister assumed that the applicant was guilty of those offences. However, the decision taken as a whole clearly states that he was found not guilty, as stated on the following page to the passage quoted. That fact alone distinguishes the case from the decision in *G.K.N. v. Minister for Justice and Equality* [2014] IEHC 478, where a refusal was quashed due to the Minister's failure to take an accurate view of the offence in question.

8. It is clear that on any view, there was a failure to disclose the 2006 conviction. On the papers as presented to me, there was also a likelihood of a failure to disclose the investigation arising out of the 2010 incident where sexual assault was alleged. In those circumstances, and on the basis of those papers, it is not arguable to contend that the Minister acted unreasonably or irrationally.

9. While it is true that in *Mallak v. Minister for Justice, Equality and Law Reform* [2012] 3 I.R. 297, a case in which no reasons whatever were given for refusal of naturalisation, it was made clear that the Minister was under an obligation, even in the context of the absolute discretion applying in the naturalisation context, to give reasons for her decisions. In this case, the reasons for the refusal appear to a reasonable degree of clarity on the face of the decision. Certain details in respect of the decision are quibbled with, on behalf of the applicant, such as his precise current marital status. He denies separation although his spouse is resident in the U.K. and has been for some time. However, none of these matters in respect of which issues is taken appear be particularly material to the actual decision reached.

10. It is also submitted in the statement of grounds that the Minister failed to consider whether to exercise her discretion to dispense with the conditions of naturalisation. This submission involves the contention that a decision is arguably invalid because the Minister could have decided not to make it on the ground on which it was made. This would reduce a naturalisation decision to a box-ticking exercise whereby, as well as furnishing a ground for refusal, the Minister must also say something along the lines of "*I have considered whether to waive this ground for refusal and have decided not to do so"*, possibly complete with reasons for not having waived the original reason. The administrative decision-making process is not an echo chamber whereby any reasons for a decision must also be accompanied by a further statement as to why those reasons were not waived, and so on. The reason for the decision was that the Minister was not satisfied that the applicant was of good character. That is sufficient.

11. Noonan J. recently considered and rejected a similar argument in the context of whether, in the sentencing process, there was a need to give reasons for not giving a lesser penalty to the one being imposed, in *Maher v. Minister for Defence* [2016] IEHC 53 (3rd February, 2016) at paras. 53-54.

12. This is apart from the point that an allegation of failure to have regard to a matter where the decision-maker has purported to consider relevant matters requires evidence to support it (see *G.K. v. Minister for Justice, Equality and Law Reform* [2002] 2 I.R. 418,

per Hardiman J.). It is also interesting to note that the discretion to waive conditions for naturalisation insofar as an application by the spouse of a citizen is concerned does not apply to the "*good character*" required (see s. 15A(2) of the 1956 Act, as inserted by the Civil Law (Miscellaneous Provisions) Act 2011, s. 33(c)); although the Minister could presumably have waived the requirement under s. 16.

13. Having regard to the foregoing, I do not consider that arguable grounds have been made out warranting the grant of leave.

14. Even if they had, the applicant has failed to disclose to the court details of when he was investigated for the alleged 2010 sexual assault, contrary to what I conceive to be his duty of disclosure in an *ex parte* application. That is something to be laid at the door of the applicant himself in terms of the instructions provided and not a matter for which his lawyers are responsible. In the circumstances, I would, in any event, refuse the application on that ground alone.

15. Finally, I note that the present application falls outside the remit of s. 5 of the Illegal Immigrants (Trafficking) Act 2000, as do a surprisingly large number of judicial review applications in the asylum and immigration area. If there is a policy rationale for the exclusion of many of those matters from s. 5, it is not immediately apparent to me. Perhaps it is too much to hope for that at some stage, a more thorough and comprehensive review of that section might be carried out to bring greater consistency and indeed clarity to the procedures applying to judicial review applications on these topics, and perhaps to spare the court from the unexpectedly frequent task of investigating and considering on which side of the curiously drawn lines contained in that section a given application falls.

16. I will therefore order:

(i) that the application for leave be refused; and

(ii) that the applicant's solicitors serve the CSSO with a copy of this judgment within 7 days from the date of its delivery.