Neutral Citation: [2016] IEHC 360

THE HIGH COURT

JUDICIAL REVIEW

[2013 No. 653 JR]

BETWEEN

FLORITA RODIS

APPLICANT

AND

MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

AND

[2013 No. 654 JR]

BETWEEN

JENALYN TOLENTINO

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 24th day of June, 2016

Facts in relation to Ms. Rodis

1. Ms. Rodis is a citizen of the Philippines who arrived in the State on a visitor's visa in April, 2006. She was given permission to remain until 30th June, 2006. She began work for the Argentinian mission in September, 2006.

2. She was engaged by the Embassy of Argentina as a member of the domestic staff of the mission, carrying out work as a cook and cleaner at the Ambassador's residence on Simmonscourt Road and at the Embassy on Ailesbury Road. The Minister for Foreign Affairs was notified of the appointment on 25th October, 2016.

3. On 20th November, 2006, she was given an endorsement of her passport confirming her entitlement to stay in Ireland while in the employment of the Argentinian embassy, which was renewed from time to time.

4. On 10th April, 2013, she wrote to the Minister for Justice and Equality essentially inquiring as to whether she would qualify for naturalisation.

5. On 27th May, 2013, the Minister replied indicating that the period during which the applicant was working for a diplomatic mission would be treated as absence from the State because she was exempt from immigration control.

6. On 27th August, 2013, the applicant commenced the present judicial review proceedings. Leave was granted by Herbert J.

7. The matter was listed for hearing on 25th March, 2015 before Mac Eochaidh J., who expressed concern that no formal application for naturalisation has been made. The matter was adjourned to enable that to be done.

8. On 11th September, 2014, the applicant lodged an application for a certification of naturalisation.

9. A submission was made to the Minister recommending refusal on 10th June, 2015, and a decision was made to refuse the application on 16th July, 2015. This was embodied in a letter dated 28th July, 2015. The hearing then resumed before me on the basis of an amended statement of grounds challenging this latter decision also.

Facts in Relation to Ms. Tolentino

10. Ms. Tolentino arrived in the State on a visitor's visa in December, 2007. She began work in the Finnish Embassy in January, 2008, within the duration of her visitor's visa. Thus she was never unlawfully in the State. On 26th January, 2008, the Embassy of Finland notified the Department of Foreign Affairs of her engagement as a member of the domestic staff of the Embassy.

11. On 1st March, 2008, she received an endorsement on her passport confirming she had permission to stay in Ireland while a member of diplomatic staff, which was renewed from time to time.

12. On 19th April, 2013, she sought confirmation from the Minister that she could apply for naturalisation. This was declined by letter dated the 27th May, 2013 and on 27th August, 2013, she applied for leave to seek judicial review. McGovern J. directed that the leave application be made on notice, and that application came before Mac Eochaidh J. on the basis of a telescoped hearing on 25th March, 2014. The matter was then further adjourned to enable a formal application for naturalisation to be made.

13. The application was made on 11th September, 2014. A submission to the Minister recommending refusal was made on 10th June, 2015. The application was refused on foot of that submission on 16th July, 2015. This was embodied in a letter dated 31st July, 2015. As with Ms. Rodis, the hearing then resumed before me on the basis of an amended application challenging this latter decision also.

14. Given that the case was being heard with that of Ms. Rodis, it seemed desirable that both should be dealt with procedurally on a similar basis, and therefore on 27th April, 2016 I granted leave to Ms. Tolentino to seek judicial review in accordance with her amended stated of grounds, so that both actions could then proceed on the same procedural footing, namely as a substantive hearing. There are now before me, therefore, substantive notices of motion in both cases.

Was the application refused on the basis of absolute discretion or failure to meet pre-conditions?
15. While the decisions refer to both absolute discretion and a failure to meet the pre-conditions, there is little doubt but that in substance they were a threshold rejection of each application for failure to meet the residence condition. In the course of his very learned and helpful submissions, Mr. Eoghan Fitzsimons S.C. (with Ms. Sinéad McGrath B.L.) for the respondent accepted that this is the case.

16. The situation is similar to that in *A.B. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 449 (Unreported, High Court, Cooke J., 18th June, 2009) where at para. 15 it was noted that in that case, a decision while phrased in terms of absolute discretion was not really based on such discretion, but rather on a failure to comply with conditions. That case also noted that the reasons for non-compliance with conditions needed to be stated in a refusal decision, which was required even before a wider requirement for reasons was introduced in *Mallak v. Minister for Justice and Equality* [2012] 3 I.R. 297 (Fennelly J.).

Are the refusals invalid because the Minister has introduced a new condition thereby fettering her discretion?
17. Mr. Colm O'Dwyer S.C., (with Ms. Patricia Brazil B.L.) for the applicants submits that the Minister has introduced a new condition into the process for application for naturalisation and thereby unlawfully fettered her discretion.

18. This submission is misconceived because the Minister has not done that. She has simply construed the existing statutory condition in a particular way. The issue is whether that construction is correct as a matter of law, or not.

Are the refusals invalid by reason of discrimination as against other applications granted in similar circumstances?
19. Mr. O'Dwyer submits that at least two other members of staff of different Embassies in Ireland have been naturalised, a state of affairs which is inconsistent with the Minister's current position. Mr. Fitzsimons replies that the State are strangers to this situation, and no details have been provided, but that if this happened it *"would clearly be in error and would require investigation".*

20. To my mind, that is a reasonable explanation for any possible inconsistent decision. The applicants have certainly failed to demonstrate that they have been improperly discriminated against, even if it be the case that a limited number of other persons have (accidentally) been given citizenship in similar situations.

21. The State's position is that if any other persons so benefitted, this was a mistake (in the sense of being unintentional, rather than of being contrary to law, which issue I will turn to later). Certainly, the making of one mistake does not create a legal entitlement for others to benefit from that mistake. There is no "principle of continuity" that amounts to an entitlement to keep getting away with what you or others have been getting away with to date. That is of course, separate from the question of whether the Minister was correct in the interpretation of the legislation, which I will address later.

Is the decision invalid because the Minister referred to the applicants as having "diplomatic cover"?
22. The interim letters of guidance of 27th May, 2013 referred to somewhat infelicitously to "diplomatic cover". The applicants are not of course diplomats. Even if this statement was an error, rather than simply loose phrasing, it is clearly not at the core of the decision. In any event, the interim letter has been superseded in this respect by the formal decision. Relief should not be granted on this ground alone.

Is the decision invalid by reason of failure to consider rights under art. 8 of the ECHR?
23. Mr. O'Dwyer submits that art. 8 rights can be a factor to which regard must be had in naturalisation decisions, relying on *Genovese v. Malta* (Application No. 53124/09, European Court of Human Rights, 11th October, 2011) at para. 30. However, that case was primarily decided on the basis of discrimination contrary to art. 14. It is hard not to have some sympathy for the views of Judge Valenzia (dissenting) who quoted at para. 13 the views of Rosalind English (in a case report on the One Crown Office Row website) that *"the jaws of Article 8 have already been opened wide enough".*

24. However, in the present case, it has not been shown that the applicants' art. 8 rights have, in fact, been interfered with. There is only limited evidence, if any, to support that they have. It is true that both applicants have husbands in the Philippines, but no applications have been made to allow them to come to Ireland under the Immigration Act 2004.

25. In any event, the applicants' complaints would seem to be more of an objection to the legislation rather than to the specific decision, because the decision in this case was that the statutory preconditions had not been met. Either that decision is correct or it is not. If it is correct, it is hard to see how art. 8 is relevant, other than in some separate form of proceedings challenging the compatibility of the Irish Nationality and Citizenship Act 1956 with the ECHR.

Does the term "residence" in s. 15 of the 1956 Act, exclude residence as a member of diplomatic staff?
26. Section 15 of the 1956 Act sets out five pre-conditions for an application for naturalisation. If an applicant meets the pre-conditions, the Minister still has an "*absolute*" discretion to grant or refuse naturalisation, although in the light of the Supreme Court decision in *Mallak*, it is clear that this is not an entirely unfettered discretion, in so far as reasons must be given.

27. In the present case the relevant condition arose under s. 15(1)(c), namely that the applicant was required to have "*one year's continuous residence"* in Ireland prior to the application and a "*total residence in the State amounting to four years"* during the previous eight years.

28. The Minister is of the view that the applicants did not meet this criterion. The decision letter says expressly that in each case, "*[b]y reason of the fact that her entitlement to be in the State derives from the Vienna Convention, her stay in the State on this basis does not constitute 'residence' within the meaning of section 15(1)(c)".*

29. Section 16A of the Act expressly provides that a certain number of types of presence in the State do not constitute "residence" for the purposes of the Act. Specifically these are:-

(i) presence in the State in contravention of s. 5(1) of the Immigration Act 2004;

(ii) presence in the State in accordance with the permission under s.4 of the 2004 Act for the purposes of education or study; or

(iii) presence in the State while awaiting a decision on refugee status.

30. It is clear that these applicants were not present in the State in contravention of the 2004 Act because that Act does not apply to them (see s. 2(1) of the 2004 Act). Neither were they present in the State for the purposes of education or study or while awaiting a refugee decision. Thus it is entirely clear that they fell outside of the terms of s. 16A, which is the express statement by the Oireachtas of the types of presence in the State which do not constitute "*residence*" for the purposes of s. 15. The principle of *expressio unius* clearly has a significant relevance here.

31. The decision letter states that "*staff of diplomatic missions do not require a permission from the Minister for Justice and Equality to reside in the State".* As against that, the stamps in the applicants' passports purport to be a form of permission. However it is clear to me that these stamps are for clarification and assistance purposes only and are not in fact a permission, for the simple reason that diplomatic staff do not require permission to be in the State. Article 7 of the Vienna Convention on diplomatic relations of 18th of April, 1961, (as given the force of law by the Diplomatic Relations and Immunities Act 1967 s. 5(1)) states that the sending state "*may freely appoint the members of the staff of the mission*" (subject to a right of the receiving state to declare a staff member to be persona non grata (art. 9)). Eileen Denza in Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations 4th ed. (Oxford, 2015) at p. 50 says that this has the effect that staff of the mission are "*exempt from immigration restrictions".*

32. The conclusion that staff of the mission are exempt from immigration control is also reinforced by the decision in *R. v. Secretary of State for the Home Department* Ex parte *Bagga* [1991] 1 Q.B. 485. Employment by a mission is not consistent with claiming a "settled" status, at least as far as the U.K. is concerned (*R. v. Immigration Appeals Tribunal* Ex parte *Coomasaru* [1983] 1 W.L.R. 14).

33. The net position is that these applicants are present in the State as of right, the right being that of the foreign governments who employ them and not by virtue of any permission granted by or on behalf of this State.

34. Mr. Fitzsimons submits that the applicants are not "resident" in the State for a number of reasons, the main ones being as follows:-

(a) they are immune from immigration control;

(b) they can be required to be discharged from their employment at will (art. 9) (it was submitted that they can be required to leave the State at will, but this is not correct; art. 9 only requires that the employment in which the employee is engaged can be required to be terminated);

(c) the Government has to be notified of the departure of staff under art. 10 of the Convention, which requirement is said to be inconsistent with ordinary residence;

(d) Article 26 of the Convention guarantees region of movement and travel for staff of a mission; Mr. Fitzsimons says that a person who is ordinarily resident does not need that right;

(e) The applicants are exempt from social security under art. 33 (which does not apply to nationals and those who are permanently resident). They are also exempt from taxation under art. 37 (3) (with the same exception);

(f) The applicants are immune from prosecution for acts committed in their official capacity: *Minstère Public and Republic of Mali v. Keita* 1977 Journal des Tribunaux 678; 77 I.L.R. 410 (Brussels Court of Appeal); *Public Prosecutor v. A. di S. F*. 1976 N.Y.I.L. 338 (Netherlands Supreme Court); and

(g) There is at least an issue, according to Mr. Fitzsimons, as to whether labour law applies in full to these applicants.

35. I do not find these characteristics of the applicants' situation in the State to be particularly impressive as factors militating against a finding that they are "resident". Clearly the character of their residence is in some limited respects different to that of other persons present in the State, but in the whole range of other human activities their presence in the State is similar to that of other persons generally.

36. Mr. Fitzsimons relied particularly on the fourth preambular paragraph to the Vienna Convention, which states that the purpose of the Convention is "*not to benefit individuals".* That is undoubtedly true, but in and of itself it does not address the question of whether the effect of contracting parties' legislation may be in certain circumstances to confer such benefits. That is clearly a matter for the contracting parties themselves.

37. The Vienna Convention as adopted does not itself express any position on this issue. The original intention was, as it is put in Denza's textbook at p. 414, that "*[t]he International Law Commission and the Vienna Conference attempted to formulate a provision on the acquisition of nationality by members of diplomatic missions as an Article of the Vienna Convention. Their failure to do this was due to two reasons – lack of appreciation by the Commission of the difficulty of drafting an acceptable text which might affect the nationality laws of a very large number of States and the broadening of the scope of the customary rule for reasons of principle but without sufficient regard to whether the extensions were really important or to all their consequences".*

38. The result of this failure was the adoption of a separate optional protocol concerning acquisition of nationality. Article 2 of the optional protocol says expressly that "members of the mission not being nationals of the receiving State, and members of their families forming part of their household, shall not, solely by the operation of the law of the receiving state, acquire the nationality of that State".

39. Had it been the intention of the State to apply such a rule, nothing could have been easier than to simply ratify the optional protocol and make it part of the law of the State in the 1967 Act. Neither step was taken. Indeed the State has not even signed the optional protocol, let alone ratified it. To use the language of Irvine J. in *C.M. v. Minster for Health and Children* [2011] IEHC 132 (Unreported, High Court, Irvine J., 18th February, 2011) at para 45, it "*would have been a straightforward matter*" for the Oireachtas to make the provision which is now said to have been intended.

40. By contrast, Ireland signed the Convention itself on 18th April, 1961, and ratified it on 10th May, 1967. As of 20th August, 2015, there were 190 parties to the Convention, which makes it virtually universal in geographical application, given that the number of nation States is only marginal more than that figure.

41. As of the same date, the optional protocol, according to Denza, had only 51 State parties, not including major countries such as France, the U.K., and the U.S. Indeed based on the list of contracting parties in Denza's work, only eight of the 28 EU Member States were parties to the optional protocol.

42. The picture that emerges is that it is clear that there is no general international acceptance of the proposition that residence by a member of a diplomatic staff is to be disregarded for the purposes of the law of nationality of the receiving state.

43. Denza notes that due to the "*domestic and social policies of each State ... harmonisation of even a very narrow aspect is difficult to achieve"* (p. 414).

44. It is also clear that the notion of excluding diplomatic staff and their families, as well as technical administrative and service workers and their families, from the application of nationality law is a subject of enormous complexity, whether one is considering acquisition of nationality by birth, marriage, residence or otherwise. It is clear that the rules to be adopted in each case are essentially a matter for each State, and no general practice or general intention could be inferred. Indeed Denza comments, at p. 415, that by the 20th century "*most States formulated their nationality laws with considerably precision. Specific exceptions for children born to diplomatic fathers in the receiving State became necessary".* She notes that France introduced specific exemption to that effect in a law of 10th August, 1927, and similar exemption was included in U.K. Law by the British Nationality Act 1948 s. 4. The U.S. also conferred citizenship by birth only where the birth was to a person "*subject to the jurisdiction of the United States"* (p. 415). The requirement of specificity, and the practice of a specific exemption expressly stated in positive law where rights were been withdrawn from members of a mission, strongly militates against the submission put forward by the State in this case that the 1956 Act somehow must be read as impliedly excluding persons such as the applicants.

45. In all of these circumstances the approach taken in the ministerial analysis that "it was never contemplated that a person whose presence in the State is under the Vienna Convention could be a beneficiary of the provisions of the Citizenship Act" falls flat. Indeed the Convention and its protocol clearly contemplate that the law of receiving states could potentially confer such benefits, and express provision was made to deal with that situation by means of the protocol.

46. In terms of the ordinary meaning of "residence" the applicants easily meet that definition. They have been resident in the State for very substantial periods at this stage.

47. Mr. Fitzsimons relies on the decisions in *Simion v. Minister for Justice, Equality and Law Reform* [2005] IEHC 298 (Unreported, High Court, MacMenamin J.), *Muresan v. Minister for Justice, Equality and Law Reform* [2004] 2 I.L.R.M. 364 (Finlay Geoghegan J.) and *Sofroni v. Minister for Justice, Equality and Law Reform* (Unreported, High Court, Peart J., 9th July, 2004) to the effect that asylum seekers are not resident in the State during the temporary period for which they have been admitted for the purposes of claiming asylum. Those decisions are of limited relevance because of the fact that the legislature has seen fit to specifically enact s. 16A of the 1956 Act as inserted by s. 6 of the Irish Nationality and Citizenship Act 2001 and as amended by the substitution of sub-s. (1) by s. 11 of the Irish Nationality and Citizenship Act 2004.

48. By expressly setting out the types of persons in the State to which the concept of "residence" does not apply the Oireachtas has essentially superseded the jurisprudence on what does and does not count as such residence.

49. But in any event, the situation of an asylum seeker is completed different to that of the applicants. The asylum-seeker simply presents himself or herself at the frontier of the State and makes an application for admission. The whole process of asylum is essentially a long-drawn-out examination of whether the asylum-seeker should be admitted to the State. In figurative terms, the asylum-seeker does not legally advance past the frontier of the State unless and until his or her claim for refugee status is accepted.

50. A person who is granted permission to come to the State, has some other legal entitlement to be here without permission or even who comes unlawfully but lives openly for a significantly period, is in a different situation. The line of authority on which the State relies in this case is not pertinent to the situation of the applicants.

51. Mr. Fitzsimons also relies on the decision in *The State (Goertz) v. Minister for Justice* [1948] I.R. 45 which considers the question of whether a German operative who parachuted unlawfully into Co. Meath in 1940, lived clandestinely, was then interned and was subsequently released and then subjected to a proposal for deportation, had been resident in the State for over five years.

52. A number of immediately distinguishing features are notable. The prosecutor in *Goertz* entered unlawfully. He did not live openly. A considerable period of his presence in the State was involuntary in the form of detention. All of these features are absent from the case of these applicants.

53. In the High Court, Maguire J. referred to the ordinary meaning of "*to reside*" as meaning to "*dwell permanently or for a considerable length of time in or at a particular place"* (at p. 50). Obviously permanent residence is not to be collapsed with a separate concept of residence or even ordinary residence. The fact that these applicants are not dwelling "permanently" in Ireland does not mean that they are not "resident".

54. Maguire J. went on to ask whether the residence was "*settled and usual*", "*casual and uncertain*", or in the "*ordinary course of life"* (p. 50). To some extent any person whose presence in the State is on a limited basis can be said to be here on an "*uncertain*" foundation. But such limited element of uncertainty is not incompatible with a status as a resident. In my view, the applicants, having been here for some time clearly have a settled and usual abode and an ordinary course of life which makes them resident in Ireland. Their presence in the State is not so casual and uncertain as to exclude that level of residence.

55. In the Supreme Court, Maguire C.J. put some emphasis on the fact that Mr. Goertz had come to the country illegally (p. 56) and noted that the purpose of the notice provision being considered in that case was to afford a "*breathing space*" to persons who were "*taking part in the normal life of the community"* having come legally to the State. In my view, these applicants are clearly taking part in the normal life of the community in the sense in which that term is used by Maguire C.J. They are not persons who are essentially "*on the run*" like Mr. Goertz or being detained for the purposes of ultimate deportation.

56. Murnaghan J. at p. 57 placed emphasis on Mr. Goertz having been in hiding, which did not constitute ordinary residence. It was in that context, and primarily in that context, that he commented that the "*character*" and duration of the residence was relevant.

57. Black J. at p. 57 commented that the answer to the question of whether Mr. Goertz was or was not resident was not self-evident. Ultimately, he based his view on the fact that much of the residence was involuntary, which he considered to be inconsistent with the continuity required for the five years' continuous residence which triggered an entitlement to due notice before removal from the State (p. 59).

58. Having regard to the foregoing, there are a host of independent but mutually reinforcing reasons as to why these applicants are resident in the State within the meaning of the 1956 Act, and, indeed, have been so resident at all material times, which I will attempt to summarise as follows:-

(i) They are resident within the ordinary meaning of the term.

(ii) Section 16A of the 1956 Act, expressly sets out particular categories of persons who are deemed not to be resident despite their presence in the State. Persons in the applicants' situation are excluded from those exemptions. The principle of *expressio unius* applies.

(iii) When enacting the current s. 16A(1) as inserted by the 2004 Act, the Oireachtas was clearly aware of the terms of the Immigration Act 2004, which had been enacted shortly beforehand. Section 2 of the Immigration Act 2004 specifically excludes staff of diplomatic missions from a requirement for permission. The Oireachtas nonetheless went on to enact s. 16A(1), which clearly does not apply to the applicants because they are not present in the State in contravention of the Immigration Act 2004, without also going on to exclude persons to whom s. 2 of the Immigration Act 2004, applies. The fact that the Immigration Act 2004, is referenced in s. 16A(1), but not by providing that the presence in the State of persons who do not require permission by reason of s. 2 of that Act, significantly enhances the expressio unius point in this regard.

(iv) The State has not signed the optional protocol on the acquisition of nationality.

(v) The State has not ratified the optional protocol on the acquisition of nationality.

(vi) The State has not made the optional protocol on the acquisition of nationality, a part of domestic law.

(vii) The terms of the optional protocol are not generally representative of customary law or settled practice among States, representing the position of little more than a quarter of the contracting parties to the Convention. Denza specifically comments that States have "*complex and varying nationality laws*" in this regard.

(viii) She also indicates that specific exemption from nationality laws "*became necessary*" during the twentieth century and that such laws were formulated "*with considerable precision*". It is clear that the practice of States has been to provide specific exemptions if excluding members of missions and their families from nationality law, as was done in France as far back as 1927 and in the U.K. in 1948.

(ix) Irish law has, at certain times, in fact, conferred benefits from the dependents of members of diplomatic missions. Between the commencement of the Irish Nationality and Citizenship Act 1999 and the 2004 Act, children born to members of foreign missions automatically acquired Irish citizenship. This practice is clearly inconsistent with a general intention of the Oireachtas that it is inconceivable that presence in the State by virtue of involvement in a diplomatic mission is inconsistent with the acquisition of rights.

(x) Furthermore, insofar as birth is concerned, the exclusion of rights for members of missions is now an express provision of the 1956 Act, as amended in 2004, by virtue of section 6A(2)(e). There is no such express restriction as regards rights arising from, for example, marriage to an Irish national, or indeed for present purposes, residence. Again, the principle of *expressio unius* is relevant.

(xi) The exclusion of members of the staff of a mission or their families from any possible benefit under nationality law could clearly have very wide ramifications. Marriage to an Irish national is only one example. The court could not possibly assume that all of these ramifications have been expressly considered and excluded by implication. Indeed, the complexity of the area is one of the reasons why the optional protocol has been relatively unsuccessful compared to the 1961 Vienna Convention itself.

59. For all of the foregoing reasons, it is clear to me that it is simply not possible for the court to conclude that it was not intended by the Oireachtas that staff of a diplomatic mission would be deemed not to be resident in the State for the purposes of s. 15 of the 1956 Act. In terms of the ordinary meaning of language, these applicants are so resident. There is no basis to depart from that whether under s. 5 of the Interpretation Act 2005, or otherwise. To apply nationality law to these applicants is not an absurdity within the meaning of s. 5, particularly as some aspects of Irish nationality law have relatively recently been expressly applied to children of staff of foreign missions. Nor can it be said that to regard these applicants as resident would fail to reflect the plain intention of the Oireachtas. On the contrary, insofar as it is possible to ascertain that intention, I would be of the view that the Oireachtas did not intend to exclude such persons, particularly given how straightforward it would have been to make that provision. In addition I must have regard to the existence of an express provision in relation to birth and particular forms of residence, and the corresponding omission of a provision that would disqualify these applicants, as well as to the complex issues that would arise if such a policy decision had been intended across the whole range of nationality law. The optional protocol provided the ideal vehicle for the State to adopt a position on the subject, but not only was that opportunity not taken, but in addition the State did not consider it appropriate to enact any legislation implementing the provisions of the optional protocol as far as residence is concerned.

Order

60. For the foregoing reasons, the refusals to consider the naturalisation applications are simply based on an erroneous view of the law, and cannot stand.

61. The applicants have sought orders of certiorari quashing the interim guidance letters issued in 2013. While on one view it might be thought that that relief is unnecessary given the fact that those letters have been superseded by formal decisions, I think it would in the circumstances create undesirable legal uncertainty if those letters were let stand. At a very minimum the guidance letters are poorly phrased and included the entirely incorrect contention that the applicants are deemed to be absent from the State. Mr. Fitzsimmons did not seek to defend that theory at the hearing and, in any event, it is clear wrong in law. While I would not have quashed the letters based only on the infelicitous reference to "diplomatic cover", an order of *certiorari* addressed to these letters as well as the formal decisions appears appropriate in all of the circumstances.

62. The applicants have also sought declarations that the Vienna Convention does not bar persons from eligibility for consideration for naturalisation in accordance with the 1956 Act. However, it is clear that the Vienna Convention contains no such bar and leaves the matter of nationality law to the legislation of individual States. A formal declaration would not add anything to my findings in that regard as set out in this judgment. Therefore it is not necessary to grant such a declaration as a specific relief.

63. The order in Ms. Rodis' case will provide:-

> (i) that an order of *certiorari* do issue removing, for the purposes of being quashed, the interim guidance letter of 27th May, 2013, and the decision of the respondent dated 28th July, 2015 refusing the application for naturalisation made by the applicant; and
>
> (ii) that an order of mandamus do issue requiring the respondent to reconsider the applicant's application for naturalisation in accordance with the judgment of the court.

64. The order in Ms. Tolentino's case will provide:-

> (i) that an order of certiorari do issue removing, for the purposes of being quashed, the interim guidance letter of 27th May, 2013, and the decision of the respondent dated 31st July, 2015 refusing the application for naturalisation made by the applicant; and
>
> (ii) that an order of *mandamus* do issue requiring the respondent to reconsider the applicant's application for naturalisation in accordance with the judgment of the court.