

**THE HIGH COURT
JUDICIAL REVIEW**

[2013 No. 347 J.R.]

BETWEEN

A. P.

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY (No.2)

RESPONDENT

JUDGMENT of Mr. Justice McDermott delivered the 2nd day of May, 2014

1. This case concerns a challenge to a decision by the respondent refusing a certificate of naturalisation to the applicant. Leave to apply for judicial review was granted on the 13th May, 2013, by this court for a declaration that the failure by the respondent to disclose the reason for his decision was unlawful; an order of mandamus requiring the respondent to provide the reason for his decision and an order of certiorari quashing the decision dated the 20th April, 2013, refusing to grant a certificate of naturalisation on the following grounds:

"1. The refusal of the respondent to disclose his reason for refusing the applicant's application for naturalisation was unlawful. It is inter alia in breach of the applicant's rights to fair procedures, to constitutional justice and to seek an effective judicial remedy. It prohibits the applicant from examining whether the refusal to grant him a certification of naturalisation is lawful, and impairs him bringing an effective application in the future.

2. The respondent's reliance on the Freedom of Information Act 1997, as amended, as a basis for not disclosing any reason for the refusal of the applicant's application for naturalisation is unlawful. In the case of *Mallak v. Minister for Justice Equality and Law Reform*, Mr. Mallak had requested the reason for the refusal of his application for naturalisation pursuant to the Freedom of Information Act, and this was refused by the respondent under the Act, but, nevertheless, the Supreme Court held that there remained an obligation on the respondent, as a matter of fairness, to disclose his reason for refusing naturalisation.

3. The applicant is a declared refugee. Article 34 of the Convention relating to the Status of Refugees ("the Geneva Convention") which Ireland has ratified, is headed "Naturalisation" and states: "The contracting States shall as far as possible facilitate the assimilation and naturalisation of refugees. They shall in particular make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings". Whilst Article 34 has not been incorporated directly into domestic law, the status of a refugee is now one covered by European union Law, and Article 18 of the Charter of Fundamental Rights provides: "The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of the 28th July, 1951, and the protocol of the 31st January, 1967, relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty of the Functioning of the European Union". Thus, the respondent is obliged to comply with the rules of the Geneva Convention, including Article 34, as a matter of European Union law and should "as far as possible facilitate" the naturalisation of the applicant and/or the applicant has a legitimate expectation that the respondent will comply with Article 34. In light of the number of applications made by the applicant for naturalisation, it is incumbent on the respondent to state why he has refused the applicant's most recent application.

4. The acquisition of Irish citizenship also constitutes the acquisition of European Union citizenship such that it is a matter covered by European Union law. The failure to provide the reason for the refusal of naturalisation is in breach of the Charter of Fundamental Rights including Article 41 thereof and the principles of European Union law."

2. The relevant elements of the statement of opposition delivered by the respondent are as follows:

"1. It is denied that the refusal of the respondent to disclose his reason for refusing the applicant's application for naturalisation is unlawful. The respondent has refused to disclose the reasons for refusing the said application on the grounds that disclosure of the reasons would be inimical to the interests of the state.

2. It is denied that this has breached the applicant's rights to fair procedures and/or to constitutional justice and/or to seek an effective judicial remedy. It is denied that it prohibits the applicant from examining whether the refusal to grant the applicant a certificate of naturalisation is lawful or that it impairs him from bringing an effective application in the future. Without prejudice to the foregoing, the respondent's bona fide interest in the protection of the State's legitimate interest justifies the withholding of the reasons for the decision, notwithstanding any alleged prejudice to the applicant.

3. It is denied that the respondent acted unlawfully in relying on the Freedom of Information Act 1997, as amended. The reference to the various sections to the Freedom of Information Act 1997, enclosed with the letter of refusal dated the 30th January, 2013, advised the applicant that there was a valid justification for refusing to give reasons. That justification was valid, lawful and rational. The respondent, of course, relies on other grounds including the contention that the reliance upon the Charter for Fundamental Rights by the applicant is misconceived."

3. By a letter dated the 30th April, 2013, the applicant was informed as follows by the respondent:-

"The Minister has considered your application under the provisions of the Irish Nationality and Citizenship Acts 1956, as

amended and has decided not to grant a certificate of naturalisation.

The Minister has also decided not to disclose the reason for his decision to you, having considered his obligations under the Freedom of Information Act 1997, as amended, with particular reference to ss. 18, 24, 25 and 26 of that Act.

Please note that there is no provision under the Irish Nationality and Citizenship Act 1956, as amended, for appeal of a decision in respect of an application for a certificate of naturalisation.

Please see attached extract from the sections of the Freedom of Information Act 1997, as amended, that are relevant to the Minister's decision in your case."

4. Attached to the letter was a copy of the relevant extracts cited. No particular aspect of these provisions is highlighted or relied upon specifically in the letter. The relevance of or connection between the refusal in the quoted extract is somewhat opaque to the court. No application was made for information pursuant to the provisions of the Freedom of Information Act in this case by the applicant. The applicant contends that he is entitled to be informed of the reasons for the refusal of the grant of the certificate on the basis of the decision of the Supreme Court in *Mallak v. The Minister for Justice Equality and Law Reform* [2012] IESC 59.

5. Additional evidence relevant to this issue was furnished in the affidavit of Mr. John Kelly, Assistant Principal Officer in the Citizenship Section of the Department of Justice and Equality sworn on the 11th October, 2013, wherein he stated:

"3. The application made by the applicant for a certificate of naturalisation was duly considered and a recommendation prepared for the consideration of the Minister. Attached to that recommendation, was a confidential note referring to certain information concerning the applicant which had been provided to the Minister in the strictest confidence. These are documents over which the Minister claims privilege in these proceedings.

4. A recommendation that was made to the Minister comprised two principal elements. Firstly, it was recommended that the application be refused. Secondly, it was recommended that the Minister not disclose the reason for his decision having regard to his obligations under the provisions of ss. 18, 24, 25 and 26 of the Freedom of Information Act 1997, as amended. The Minister agreed with the recommendation on the 1st July, 2013, and the decision was duly communicated to the applicant by means of the letter dated the 20th April, 2013. . . .

5. Accordingly, it was and remains the view of the Minister, that to disclose the reason to the applicant, or indeed the specific nature of the reason, for the refusal of the certificate of naturalisation would be inimical to the interests of the State. With due regard to this consideration and constrained, thereby, I shall set out the underlying reasons for this position."

6. Mr. Kelly states that rigorous checks are carried out in applications for certificates of naturalisation, which include obtaining information from external agencies, including security agencies. It is claimed that the benefit of carrying out these checks lies in the status afforded internationally to Irish passport holders as a result, insofar as they are allowed to travel without visas to countries such as Australia, Canada and in particular the United States of America which applies rigorous entry controls to citizens of many foreign countries. In that context, the consideration of an application for citizenship, it is said, must take account of this wider public policy and its implications for Irish passport holders.

7. It is also claimed that in carrying out these investigations, the Minister receives information on a strictly confidential basis from external sources which he would not otherwise be able to obtain. The respondent claims to be dependent upon the goodwill of the external agencies currently providing such information. In order to ensure the continuity of such information, the Minister has determined that confidentiality must be respected and that such information would not be disclosed to the applicant, notwithstanding the fact that his application might be refused as a result. In addition, information obtained in the course of the examination of an application might relate to issues of national importance including national security, which would render it inimical to the State's own interest to disclose it to a disappointed applicant. If this information were not available in the future from confidential external sources, it is claimed that the State would be left with a choice of either rejecting large numbers of applicants as a matter of policy whose character could not be vouched, but currently can be, and are granted certificates of naturalisation or to grant certificates of naturalisation to persons who would include amongst their numbers some "who would harm the interests of the State or of friendly States" with the risk that this would entail to the reputation of an Irish passport holder.

8. In that context, it was also claimed that disclosure of even the nature of the reason for the refusal of a certificate might give rise to a wider risk beyond the specific application in question. It was claimed that to give a general reason for refusal based on national security might in any given case be to confirm to a person who is such a threat, that the State's or a friendly State's intelligence service are aware of his or her activities. In cases where the confidential grounds for refusing the certificate may not be related to national security or an external source, it is claimed that the disclosure of either the nature or source of information would in time allow applicants who are not given such information to deduce correctly that they are the subject of intelligence information relating to national or international security.

9. Mr. Kelly acknowledged that in the wake of the *Mallak* decision the respondent accepted that he was now required to give a reason or to provide a justification for not giving the reason(s) for the refusal of the application. It was claimed that the respondent, in line with the new policy, informed the applicant that the Minister had decided not to disclose the reason for the decision having considered his obligations under the provisions contained in the extract of the Freedom of Information Act 1997, attached to the letter. It was claimed that to give any more specific justification would, in the view of the Minister, be in conflict with the interests of the State.

10. The information set out in Mr. Kelly's affidavit was the first notification given to the applicant that the respondent had relied upon confidential information, on the basis of which he formulated a reason or reasons to refuse a certificate of naturalisation. It also gave notice of the existence of documents containing that information and over which the Minister claimed privilege.

11. The applicant challenged the claim of privilege and sought a ruling as to whether it was properly asserted and an order directing the inspection of the documents referred to in Mr. Kelly's affidavit. In the course of that application, the respondent furnished three documents to the court A, B, and C, all of which the court considered relevant to the determination of whether the refusal to furnish reasons for the refusal of a grant of certificate of naturalisation to the applicant was unlawful and whether the decision to refuse the certificate itself was unlawful. The court concluded that each of the documents contained information which might directly or indirectly enable the applicant to advance his case or damage that of the respondent. The court directed that document A and a redacted version of document B be disclosed (*A.P. v. Minister for Justice and Equality (No.1)* [2014] IEHC 17). Document A was the

document referred to by Mr. Kelly as a note concerning the application for a certificate of naturalisation and contained the recommendation prepared for the consideration of the respondent. It states:

"I would not recommend this applicant for a certificate of naturalisation as I am not satisfied that the applicant meets the condition of good character in s. 15 of the Act, as above.

I would not recommend that the Minister, in his absolute discretion, waives the condition for naturalisation under s. 16 of the Act, as above, and grant the application for a certificate of (naturalisation).

I would not recommend that the Minister disclose to this applicant the reason for his decision not to grant a certificate of naturalisation, having considered his obligations under the Freedom of Information Act 1997, as amended, with particular reference to ss. 18, 24, 25, and 26 of that Act."

12. The redacted version of document B stated:

"The gardaí state that they have some concerns in relation to the application from A.P. (redacted).

I am of the view that this individual is of concern to the gardaí, we should not naturalise her(sic) on the basis that the Minister cannot be satisfied that she(sic) meets the good "character" requirement of the Irish Nationality and Citizenship Act 1956, as amended.

If the individual concerned applies again for naturalisation, similar checks will be carried out and a recommendation made on the basis of the information available at that time.

The Minister will be aware that, as a result of a decision by the Information Commissioner in May 2003, the Department is obliged to give reasons for a decision on an application for naturalisation, if these are sought under s. 18 of the Freedom of Information Act 1997. The Minister will also be aware that notwithstanding the Information Commissioners decision, we are releasing reasons for such decisions at the time we inform the applicant of the decision.

In this particular case, it is intended not to release the reason for the decision. If such reasons are sought under the Freedom of Information Act 1997, we will consider the request under s. 24(3) of that Act and will not disclose the existence of this page, and the garda report on which it is based, on the basis that to do so will adversely affect the "security of the State".

13. Of course, the applicant was completely unaware of the existence of these documents until his solicitors received the affidavit sworn by Mr. Kelly and was not aware of their contents until document A in its complete form and document B in its redacted form were furnished pursuant to the order of the court.

Irish Nationality and Citizenship Act 1956 (as amended)

14. The relevant sections of the Irish Nationality and Citizenship Act 1956, as amended, are

"14. Irish citizenship may be conferred on a non national by means of a certificate of naturalisation granted by the Minister.

Conditions for issue of certificate

15. Upon receipt of an application for a certificate of naturalisation, the Minister may, in his absolute discretion, grant the application, if satisfied that the applicant -

(a) is of full age;

(b) is of good character;

(c) has had a period of one year's continuous residence in the State immediately before the date of his application and, during the eight years immediately preceding that period, has had a total residence in the State amounting to four years;

(d) he intends in good faith to continue to reside in the State after naturalisation; . . .

(2) The conditions specified in paras. (a) to (e) of subs. (1) are referred to in this Act as conditions for naturalisation. . .

Power to dispense with condition of naturalisation in certain cases

16. The Minister may, if he thinks fit, grant an application for a certificate of naturalisation in the following cases, although the conditions for naturalisation (or any of them) are not complied with:

(a) where the applicant is of Irish descent or Irish associations;

(b) where the applicant is a parent or guardian acting on behalf of a minor of Irish descent or Irish associations;

(c) where the applicant is a naturalised Irish citizen acting on behalf of his minor child; . . .

(f) where the applicant is or has been resident abroad in the public service.

(g) where the applicant is a person who is a refugee within the meaning of the United Nations Convention relating to the Status of Refugees on the 28th April, 1951 and the protocol relating to the status of refugees of the 31st January, 1967 or is a stateless person within the meaning of the meaning of the United Convention relating to the Status of Stateless Persons of the 28th September, 1954. . . ."

Mallak v. Minister for Justice, Equality and Law Reform [2012] 3 I.R. 297

15. In *Mallak* the applicant applied for a certificate of naturalisation with a view to obtaining citizenship, but was refused by the Minister who did not provide any reasons for the decision, maintaining that he was not obliged to explain the decision. The Supreme Court quashed the decision holding that it was incorrect to state that the "absolute discretion" conferred on the respondent under the statute implied that he was not obliged to furnish reasons for the decision. The applicant was a Syrian national who had been granted a declaration of refugee status. He made one application for naturalisation prior to that at issue in the proceedings which was refused on the grounds of an insufficient period of residency in the State. Following a number of requests under the Freedom of Information Act 1997 the applicant was provided with a schedule of records which included a "garda report" and a "garda request form". The applicant contended that these documents had never previously been disclosed to him and that he had no opportunity to meet any adverse findings contained in them.

16. Fennelly J. considered the extent to which the applicant was entitled to know the reasons on which the refusal was based and stated:-

"[69] Several converging legal sources strongly suggest an emerging commonly held view that persons affected by administrative decisions have a right to know the reasons on which they are based, in short to understand them.

[70] It has to be regarded as significant that s. 18(1) of the Freedom of Information Act, 1997, though principally concerned with the provision of information to the public, envisages that public bodies will give reasons for their decisions at the request of an affected person. . . .

[76] . . . The developing jurisprudence of our own courts provides compelling evidence that, at this point, it must be unusual for a decision maker to be permitted to refuse to give reasons. The reason is obvious. In the absence of any reasons, it is simply not possible for the applicant to make a judgment as to whether he has a ground for applying for a judicial review of the substance of the decision and, for the same reason, for the court to exercise its power. At the very least, the decision maker must be able to justify the refusal. No attempt has been made to do so in the present case and I believe it would be wrong to speculate about cases in which the courts might be persuaded to accept such justification.

[77] The Minister has submitted that there are issues of public policy that lean against the giving of reasons. He claims that this is apparent both from the nature of the Minister's decision and the determination of the Information Commissioner under Section 18(2) of the Freedom of Information Act 1997. No reasons related to the public interest have been disclosed even in the most general terms. Section 17(1)(b) of the Irish Nationality and Citizenship Act 1956, as amended, entitles the Minister to decline a certificate if he is not satisfied that an applicant complies with the requirement that he be of "good character." The Minister has not sought to rely on non-compliance with that condition. Since the Minister has provided no reasons in this case, it is not clear whether he takes the position that he is not obliged to disclose reasons relating to character. I would not go so far as Barron J did in *The State (Daly) v. Minister for Agriculture* [1987] I.R. 165, and infer that the Minister had no reasons. It is notable that the Minister has in the past disclosed reasons relating to the character of the applicant (see *Hussain v. Minister for Justice* [2011] IEHC 171, and *LGH v. Minister for Justice* [2009] IEHC 78,). The Minister would have had power, pursuant to s. 17(2) of the Refugee Act, 1996 to restrict the rights otherwise enjoyed by the applicant, if, 'in the interest of national security or public policy ("ordre public") it is necessary to do so...' The Minister has not purported to exercise any of his powers in that respect. It can only be concluded that none of the grounds mentioned in those provisions existed in the applicant's case.

[78] The result is that the Minister has not suggested that there are any reasons relating to the applicant's character which could justify refusing him naturalisation and that his rights under the Refugee Act are not restricted in the interest of national security or public policy. Furthermore, the Minister granted a certificate of naturalisation to the applicant's wife with whom he has the right to live (in company with their children). One can understand the applicant being mystified. In my view, the Minister was under a duty to provide the applicant with the reasons for his decision to refuse his application for naturalisation. His failure to do so deprived the applicant of any meaningful opportunity either to make a new application for naturalisation or to challenge the decision on substantive grounds. If reasons had been provided, it might well have been possible for the applicant to make relevant representations when making a new application. That might have rendered the decision fair and made it inappropriate to quash it. In the absence of any reasons, it seems to me that the appropriate order is one of *certiorari* quashing the decision."

17. The respondent placed particular reliance on the next paragraph in the judgment to justify the withholding of reasons for the refusal of the certificate to the applicant. Fennelly J. stated :-

"[79] Following the making of the order, it will be a matter for the Minister to consider the application afresh. It will be a matter for him to decide what procedures to adopt in order to comply with the requirements of fairness. It is not a matter for the Court to prescribe whether he will give notice of his concerns to the appellant or disclose information on which they may be based or whether he will continue to refuse to disclose his reasons but to provide justification for doing so. Any question of the adequacy of reasons he may actually decide to provide or any justification provided for declining to disclose them can be considered only when they have been given. At this stage, I would propose that the court make only the limited decision to quash the Minister's decision."

18. It should be noted that the Minister in the *Mallak* case had successfully contended to the Information Commissioner that he was not required to give reasons for the decision under s. 18(2)(b) of the Freedom of Information Act 1997, as amended. Notwithstanding that fact, the Supreme Court concluded that the Minister had a duty to provide Mr. Mallak with the reasons for the refusal.

19. It was open to the Minister to state clearly that there were reasons related to the public interest which justified the withholding of reasons in this case. It is submitted by the respondent that the letter of 30th April, 2013 clearly stated that he had decided not to disclose the reasons for his decision to the applicant having considered his obligations under the Freedom of Information Act, with particular reference to ss. 18, 24, 25 and 26. In this case no request under the Freedom of Information Act 1997 was made to the respondent by the applicant.

20. It is not stated which of the several obligations outlined in the sections were considered to be relevant to the decision. In that regard, it should be noted that s. 18 allows the head of a public body on application to him by a person who is affected by an act (in this case the decision) and has material interest in the matter affected by it or to which it relates, after the receipt of an application (under s. 7 of the Act) to cause a statement in writing or such other form as may be determined, to be given to the applicant of the reasons for the act or of any findings on any material issues of fact made for the purposes of the act. Section 18(2) provides that nothing in the section shall be construed as requiring the giving to a person of information "contained in an exempt record" or the

disclosure of the existence or non-existence of a record if the non-disclosure of its existence or non-existence is required by the Act. Section 24(1) confers a discretion on the head of a public body to refuse to grant a request under s. 7 in relation to a record if of the opinion that access to it could reasonably be expected to affect adversely:-

- (a) the security of the State;
- (b) the defence of the State;
- (c) international relations of the State; or
- (d) matters relating to Northern Ireland.

21. Section 24(3) provides that where the request under s. 7 relates to a record to which subsection (1) applies or would, if the record existed apply, and the person concerned is satisfied disclosure of the existence or non-existence of the record would prejudice a matter referred to in subsections (a) to (d), he shall refuse to grant the request and shall not disclose whether or not the record exists. Section 25(1) provides that a Minister may be satisfied that a record is of sufficient sensitivity or seriousness to warrant a declaration that it is an exempt record by reason of ss. 23 or 24. Section 26 deals with other circumstances in which a record may be withheld under a s. 7 request if:-

"(a) the record concerned contains information given to a public body in confidence and on the understanding that it would be treated by it as confidential (including such information as aforesaid that a person was required by law, or could have been required by the body pursuant to law, to give to the body) and, in the opinion of the head, its disclosure would be likely to prejudice the giving to the body of further similar information from the same person or other persons and it is of importance to the body that such further similar information as aforesaid should continue to be given to the body, or

(b) disclosure of the information concerned would constitute a breach of a duty of confidence provided for by a provision of an agreement or enactment (other than a provision specified in column (3) of the Third Schedule of an enactment specified in that Schedule) or otherwise by law...

3. Subject to section 29, subsection (1) (a) shall not apply in relation to a case in which, in the opinion of the head concerned, the public interest would, on balance, be better served by granting than by refusing to grant the request under section 7 concerned.

4. Where:-

(a) a request under section 7 relates to a record to which subsection (1) applies, but to which subsections (2) and (3) do not apply or would not, if the record, existed, apply, and

(b) in the opinion of the head concerned, the disclosure of the existence or non-existence of the record would have an effect specified in subsection (1)

he or she shall refuse to grant the request and to not disclose to the requestor whether or not the record exists."

22. The invocation of the sections in the letter and their enclosure with it does not assist in any way an understanding of the decision-making process or the reasons for the decision. The reader is invited to deduce whether or which reasons were withheld and upon what basis: it may or may not be the security of the State, the defence of the State, international relations of the State, matters relating to Northern Ireland, records containing information conveyed to the Minister in confidence on the basis that it would be treated by the Minister as confidential, information the disclosure of which would be likely to prejudice the giving to the Minister of further similar information from the same person and/or that the disclosure of the information concerned would constitute a breach of a duty of confidence provided for by an agreement of some kind. In any event, these matters are relevant to the refusal by the Minister acting under a request pursuant to s. 7 of the Act.

23. It was stated in Mr. Kelly's affidavit that documents existed which included a recommendation prepared for the consideration of the Minister attached to which there was a confidential note referring to certain information concerning the applicant which had been provided to the Minister in the strictest confidence. These were documents A, B and C, the subject of the application for disclosure and inspection. Document A and the redacted document B indicated something that was unknown up to that point namely, that a recommendation had been made to the Minister that the applicant should not be granted a certificate of naturalisation because the author of the report could not be satisfied that he met the "good character" requirement of s. 15(1)(b) of the Irish Nationality and Citizenship Act 1956, as amended. The Minister's discretion under the section was exercisable in favour of the applicant if satisfied that, *inter alia*, the condition of good character was fulfilled.

24. In *A.B. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 449 (a pre-*Mallak* decision), Cooke J. noting that the Minister in that case had not relied on his absolute discretion to refuse a certificate but had determined that the applicant failed to fulfil the condition as to "good character" stated:-

"...Where the Minister is not relying upon his absolute discretion to refuse an application under s. 15 but is rejecting it upon the basis of non-compliance with one or more of the naturalisation conditions, his refusal is clearly amenable to judicial review and it would, in the court's view, be one of the circumstances in which fair procedures would require the reason for refusal to be stated as, indeed, the Minister has clearly done in the present case."

25. It is noteworthy that Cooke J. as the High Court judge in *Mallak* determined that when the exercise of the absolute discretion under s. 15(1) resulted in a refusal of a certificate, it was not necessary to give reasons, a decision which was reversed on appeal. However, in *A.B.*, Cooke J. placed a decision under s. 15(1)(b) squarely within the line of authority which requires reasons to be furnished. Plainly, in this case, a decision was reached that the condition of "good character" had not been fulfilled by the applicant and even pre-*Mallak*, the respondent was obliged to furnish the failure to fulfil that condition as a reason for refusal of a certificate, if that were the case.

26. However, the distinction drawn by Cooke J. in *A.B.*, was considered by Fennelly J. in *Mallak* as follows:-

"[52] It does not appear from these cases [including *A.B.*] that the courts generally regard the mere fact that a person is

applying for an important privilege, Irish citizenship, which he has no legal right to compel the State to grant him, means that he enjoys inferior legal protection when pursuing his application. Nor do I think that a distinction can be drawn for this purpose between compliance with the naturalisation conditions in s. 15(1)(a) to (e) and the broader and more general discretion which the Minister enjoys under the section. On the assumption that the applicant was, in fact, made aware of the Minister's reason for refusal, there is no good reason why he should be prevented from seeking review of its lawfulness to the same extent as he would be entitled in relation to any alleged failure to comply with any of the statutory conditions."

27. I am satisfied that the essential starting point for the consideration of judicial review is an understanding of the reason for the decision. The respondent failed to give one. Having regard to the existence of the reason as disclosed in document A and the understanding of which is assisted albeit to a limited degree by document B, the respondent was clearly in a position to furnish a reason for the refusal of the certificate namely the failure on the part of the applicant to fulfil the "good character" condition.

28. It is clear from Mr. Kelly's affidavit that the respondent had no difficulty in highlighting the applicant's character as the matter which was under consideration when describing the rigorous checks as to character and conduct carried out by the respondent. Information from both domestic and foreign agencies including security agencies, is often sought and received from sources on a strictly confidential basis. It is clearly implied in the affidavit that the rigorous checks as to character and conduct resulted in the secret recommendation formulated for the Minister and ultimately disclosed in document A. Therefore, the court is satisfied that there was nothing to inhibit the Minister from giving notice of his reason or his concern about the "good character" of the applicant. The difficulty, in this case for the respondent, was that he did not wish to disclose the information upon which that recommendation or conclusion was based. In those circumstances, he was obliged having regard to para. 79 of the *Mallak* decision to provide a justification for not doing so. Any challenge to the conclusion reached in respect of "good character" or any justification proffered for refusing to give reasons for that justification may then be the subject of challenge, if that is considered appropriate.

29. This is without prejudice to the entitlement of the respondent when justifying the withholding of reasons as to why the conclusion as to good character was reached, to rely upon any appropriate privilege of the type asserted in this case. However, the court is satisfied that the utmost transparency is required in such cases and that the respondent should have firstly, informed the applicant that the reason for the refusal of the certificate was that he had failed to fulfil the condition of "good character" under s. 15(1)(b) of the Act. Secondly, if it was considered appropriate to refuse to give any further reasons, a justification should have been furnished in that regard based on the fact that the recommendation was made on the basis of information which was properly the subject of privilege: a cryptic general reference to provisions of the Freedom of Information Act 1997 was, in this case, insufficient. In that way, the applicant would be furnished with some understanding at the earliest possible opportunity and to the extent practicable, of the reason for the refusal and/or the justification, if any, for the withholding of the basis for that reason. It is important in this respect that each case is considered on its own merits and that all relevant matters are considered by the respondent at the time the decision is made. The court does not consider it to be appropriate that the reason for refusal of the certificate and/or the reasons for refusing to disclose the underlying basis for that decision were revealed for the first time after the initiation of judicial review proceedings. The limited but important information ultimately disclosed in Mr. Kelly's affidavit ought properly to have been furnished in the letter of 30th April together with the material which was the subject of the disclosure order.

30. In the circumstances, I am satisfied that the court should make an order of *certiorari* quashing the decision of the respondent dated 30th April, 2012, refusing to grant a certificate of naturalisation to the applicant.

31. It is important that this matter be reconsidered in accordance with these legal principles. The refusal of a certificate of naturalisation on the basis of "good character" is a matter of considerable importance to the applicant in any future application. It is essential that he be given to understand as fully as possible the precise basis and context of that refusal. It is common case between the parties that the applicant has no prior convictions. He is the father of two Irish citizen children born in 1994 and 1997. He has resided for 23 years in the State and has made five applications for naturalisation, all of which have been refused in 1997, 2004, 2008, 2010 and 2013. He is now 48 years old. It is important in any future application that he be given the opportunity to address as far as possible the reasons for the refusal if he is to make a meaningful application. I do not consider that the respondent adequately complied with the obligation to furnish the reason for the refusal in this case notwithstanding the exigencies under which the respondent must operate. The respondent is, of course, entitled to withhold material on the basis of public policy as recognised in *Mallak* and this court's decision on the disclosure application, but should make the earliest possible disclosure of reasons underlying the decision consistent with that duty. It may well be that a letter setting out the factors of which the court is now aware following the initiation of these proceedings would be sufficient to meet the case but it is essential to the fairness of the process that the withholding or furnishing of reasons is determined carefully with due regard to the facts and requirements of each case.

32. In the circumstances the court does not find it necessary to consider the submissions made that the refusal to provide reasons was contrary to Article 41 of the Charter of Fundamental Rights of the European Union or the principles of European Union law.