THE HIGH COURT

JUDICIAL REVIEW- ASYLUM LIST

[2015 No. 56 J.R.]

BETWEEN

N.A. (SOMALIA)

W.H. (IRELAND)

(A minor suing by his mother and Next Friend N.A.)

APPLICANTS

AND

MINISTER FOR JUSTICE AND EQUALITY,

IRELAND,

ATTORNEY GENERAL,

RESPONDENTS

[2015 No. 184 J.R.]

BETWEEN

U.M. (AFGHANISTAN)

(A minor suing by his father and Next Friend M.M.)

APPLICANT

AND

MINISTER FOR FOREIGN AFFAIRS AND TRADE and

PASSPORT APPEALS OFFICER DAVID BARRY

RESPONDENTS

JUDGMENT of the Hon. Ms. Justice Stewart delivered on the 10th day of November, 2017.

1. The above-named cases were listed for hearing on the same date and were heard together by agreement of the parties. The applicants seek an order recognising and/or declaring that the applicant minors have held Irish citizenship from birth. While a variety of reliefs were sought by both applicants, the arguments essentially centred around the question of whether or not the grant of citizenship and the subsequent issuance of a passport in respect of each of the applicant minors on foot of their natural fathers acquiring a declaration of refugee status conferred and/or had the effect of conferring citizenship by birth upon the applicants. Both of the applicants' fathers had their declarations of refugee status subsequently revoked on grounds of having been unlawfully obtained, as they had made representations to the respective authorities which subsequently turned out to be inaccurate, false and misleading in a material way. The applicants contend that the prior grant of citizenship to the applicant minors is unaffected by this revocation of their fathers' refugee status. The State respondents contend that on foot of their revocation, both of the fathers' refugee status were *void ab initio*, thereby rendering the grant of citizenship *void ab initio* as well.

Background

2. In the first case, the first-named applicant, a Somali national, arrived in the State in 2004. She married another Somali national and was granted residence permission based on his refugee status, which he acquired in June, 2008. His refugee status was revoked in October, 2011 under s.21(1)h of the Refugee Act 1996, on grounds that the information provided by him to the decision-maker in his case had been materially false or misleading. Following a notable delay, the first-named applicant's residence permission was also revoked, as her husband was no longer a recognised refugee. The second-named applicant was born nine months after his father was recognised as a refugee. The father had resided in Ireland for an aggregate three of the previous four years. This enabled the second-named applicant to qualify for Irish citizenship from birth within the meaning of s.6(6)(a)(iii) of the Irish Citizenship and Nationality Act 1956. This same opportunity was not open to the second-named applicant's elder sibling because they were born before the restriction was removed. An Irish passport was issued to the second-named applicant in 2010.

3. Questions as to the first-named applicant's status were resolved following the grant of subsidiary protection on 16th March, 2015. The dispute that gives rise to these proceedings relates to the status of the second-named applicant. In the process of resolving a *Ruiz Zambrano* application by the first-named applicant, the first-named respondent issued a decision on 15th June, 2015, in which she made the finding that the second-named applicant was not an Irish citizen. The basis on which citizenship rights had been vested (his father's refugee status) was now void. The first-named respondent found that this operates *ab initio* and that the second-named applicant had no entitlement to citizenship rights as a result.

4. The facts in the second case are broadly similar to those in the first case. The applicant's father, an Afghan national, was granted refugee status on 14th July, 2006. A family reunification application was granted on 26th June, 2012, allowing the applicant's mother to travel to this State. The applicant was born on 1st June, 2013. The father's refugee status was revoked on 10th June, 2013. This revocation was notified to take effect from the 31st August, 2013. This step was taken on similar grounds to those in the first case. In adition, the father had also temporarily returned to Afghanistan eight months earlier. On 24th February, 2015, the mother and the applicant were granted refugee status. The father was granted permission to remain on foot of a family reunification application. On 17th November, 2014, the first-named respondent refused an application made on behalf the applicant for an Irish passport. On 21st

January, 2015, this refusal was affirmed on appeal. This refusal is justified on similar grounds to those in the first case.

Submissions
- N.A. and W.H.

5. In reviewing the conduct that lead to the revocation of the father's refugee status, it is suggested that:

> - It was not a severe breach and it could have been defended,
>
> - The falsity at issue may not have been relevant to the decision's validity, as many Somali cases are decided on ethnicity and generalised risk alone,
>
> - Cases involving the exact same circumstances went in the applicant's favour (the applicants refer to Case No. 69/878/05 in that regard); and,
>
> - The offending behaviour did not amount to fraud, nor does any fraud exist on the applicants' part.

6. Mr Lynn, S.C., with Mr. Buckley B.L., for the applicants, directs the Court's attention to Art. 9 of Bunreacht na hEireann and ss. 19 and 28 of the 1956 Act. They submit that no construction of these provisions grants the State the power to strip citizenship that has been acquired *at birth* until the Oireachtas legislates for it, which it has not. They suggest that this legislative gap has been maintained for policy reasons, namely that the normal motivators for the stripping of citizenship (fraud or misrepresentation by the candidate) cannot be performed by an infant. The applicants put all of the above facts within the context of the American case of *In Re Findan* 7 INTL.L.R. 274 (25th July 1933). But they also underline the fact that their case is much stronger than the one in *Findan*, as the US has a procedure in place for stripping derivative citizenship acquired at birth and Ireland does not.

7. In the impugned decision, as well as in their submissions, the first-named respondent relies on the cases of *Robertson v. Governor of the Dochas Centre* [2011] IEHC 24 and an English authority *Kaziu & Ors. v. Secretary of State for the Home Dept.* [2014] EWHC 832 (Admin). The applicant alleges that these cases, and any cases like it, are not an appropriate tool to be used in assessing the applicants' circumstances. Both of these cases involved fraud, of identity specifically. The consequences of those cases impacted the applicants themselves and not any children that they did or did not have. The legal procedures involved were also quite different, with *Robertson* addressing "ordinary residence" and *Kaziu* dealing with naturalisation, as opposed to citizenship at birth.

8. The applicants rely on a number of provisions in s.6 of the 1956 Act to affirm the second-named applicant's Irish citizenship. They also allege that a joint construction of s.6(2)(a)(ii) of the 1956 Act and s.7 of the Passports Act 2008 puts the applicant's status as an Irish citizen beyond question.

9. While they maintain that the issue is irrelevant due to the above considerations, the applicants go on to address the matter of revocation acting *ab initio*. The applicants submit that s.21 of the 1996 Act does not provide for revocation to operate *ab initio*. They also allege that Clark J.'s comments in *Adegbuyi v. Minister for Justice & Law Reform* [2012] IEHC 484 as to revocation acting retrospectively are obiter and based in flawed legal reasoning. They argue that her finding was based on statements of the UNHCR but that this matter should be properly addressed with deference to EU law. The Qualification Directive (Council Directive 2004/83/E.C. of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, O.J. 304/12 30.9.2004) post-dates the Irish law. The applicants submit that neither legislative source actually defines the meaning of the word "revoke" but that a common sense construction of the provisions of the 1996 Act rules out any intent for revocation to act retrospectively. The applicants also allege that the power to revoke orders and decisions in this field has, as a whole, never operated *ab initio* and several powers under the legislation would be unusable if it did.

10. If the *ab initio* option exists, the applicants allege that the sensitive nature of this area of law would require said option to be outlined in statute. Such provisions would also allegedly have to provide for the proportionality assessments required by EU law in cases of *ab initio* revocation (See *Rottmann v. Freistaat Bayern* Case C-135/08 [2010] E.C.R. I-1449).

11. The applicants also offer submissions about citizenship stemming from a Subsidiary Protection Grant. Based on the Qualification Directive, European Union (Subsidiary Protection) Regulations (S.I. No. 426 of 2013) and ECJ case law (*Secretary of State for Work and Pensions v. Dias* (Case C325/09) [2011] E.C.R. I-06387), the applicants contend that subsidiary protection provides a right of residence that is declaratory in nature on its own terms. This, they allege, makes it retrospective in nature. The applicants rely on *Pryce v. Southwark London Borough Council* [2012] EWCA Civ 1572 in stating that the right to a *Ruiz-Zambrono* type of permission can be recognised retrospectively by meeting the criteria outlined in Article 20 TFEU. This approach was allegedly followed in *The Queen on the Application of Olubunmi Yekini v. The London Borough of Southwark* [2014] EWHC 2096 (Admin). The applicants submit that such retrospective recognition brings the first-named applicant within the meaning of s.6(6)(a)(iii) and 6A(2)(d)(i) of the 1956 Act, thus vesting the second-named applicant with citizenship in the exact same fashion that he had derived it from his father. The applicants further submit that any attempt to rebut this definition is invalid, as subsidiary protection is a creature of EU law that is defined by EU law, which is superior to all national law.

12. Mr. Conlan-Smyth, S.C., with Ms. O'Sullivan, B.L. for the respondents, submit that the grant of these reliefs would seriously undermine asylum and immigration processes within the State. They also refer to a number of cases in which the courts have condemned applicants who have attempted to abuse the immigration process and have denied them relief on that basis. One such case is *G.O. & Ors v. Minister for Justice, Equality and Law Reform* [2008] IEHC 190, in which Birmingham J. refused to allow the applicants to succeed in organising their family affairs with the intention of frustrating the immigration system. The respondents submit that similar circumstances arise here, in that the applicants are attempting to profit from the dishonesty of a family member. In relying, *inter alia*, on *Robertson*, the respondents highlight the general principle of law that a person cannot be allowed to profit by their own wrong and that residence acquired through subterfuge, fraud or criminal acts cannot be classified as "ordinary". The word "ordinary" must be ascribed meaning and the respondents allege that the courts have interpreted it to refer to a residency that is lawful, regular and *bona fide*. The respondents also underline the following passage from Hogan J.'s judgment at para. 21:

> *"…If Ms. Robertson's contention were to be accepted, it would mean that this court would have to avert its eyes to this acknowledged deception and deceit and that she would thereby be allowed to claim the benefit of a statutory entitlement to which she is not justly entitled."*

This definition allegedly builds on a number of other cases, including *The State (Goertz) v. Minister for Justice* [1948] I.R. 45, *Sofroni & Ors v. MJELR* (Unreported, High Court, Peart J., 9th July, 2004), *Simion (S.G.) v. MJELR* [2005] IEHC 298 and *Muresan v. MJELR*

[2004] IEHC 348. The respondents submit that all of these cases conclude that the residence must be within the context outlined in the legislation and be ordinary if it is to go toward the accrual of rights.

13. The respondents point out that the father in this case did not defend, nor did they challenge, the decision to revoke his refugee status and no effort was made to appeal it.

14. The respondents build on already-cited authorities and refer the Court to the case of *Khera v. Secretary of State for the Home Department* [1984] 1 AC 74. In that case, the definition of an "illegal entrant" also included individuals who obtain leave to enter the State by committing fraud against an immigration officer. Thus, they suggest, the father in this case was never a lawful resident within the State for the purposes of s. 6A of the 1956 Act. The respondents rely on O'Donnell J.'s judgment in *Sulaimon v. Minister for Justice* [2012] IESC 63 in support of this definition of residency.

15. The respondents submit a number of cases to demonstrate that their line of reasoning (that residence obtained through false, irregular or *mala fides* means does not accrue rights) is in harmony with that of the European Court of Human Rights (*Antwi v. Norway* (26940/10) E.C.H.R. 2012-I, p. 259) and the European Courts of Justice (*Onuekwere v. Secretary of State for the Home Dept*. C-378/12). The respondents admit that the above judgments are given in different contexts but submit that they all coalesce into a single general approach on this issue that would be absurd to deviate from.

16. The respondents submit that it is inappropriate for the applicants to invite speculation on the Court's part into the father's status, as that matter was not put before it. They submit that the applicants have entirely misconstrued the operation of s. 6 of the 1956 Act and s. 18 of the 2008 Act. They also take issue with the manner in which the Findan case was put before the Court, in that the case refers to naturalisation and did not involve fraud. The Court in Findan also noted that actual fraud on the father's part may well have nullified his status and culled any derivative rights flowing from it.

17. In addressing the issue of void *ab initio*, the respondents refer to UNHCR documentation that allegedly provides for revocation operating on that basis. They also refers to *V.Z. v. Minister for Justice, Equality and Law Reform* [2002] 2. I.R. 135, in which the Supreme Court approved the use of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status when interpreting the Convention. The respondent relies on the cases of *A.N. & Ors v. MJELR* [2007] IESC 44 and *K.D. (Nigeria) v. RAT* [2013] IEHC 481 to underline this point.

18. The respondents rely on Clark J.'s comments in Adegbuyi as the applicable law and allege on that basis that s.21(1)(h) of the 1996 Act has no equivalent in the 1951 Geneva Convention. Thus, it allegedly operates differently to the other provisions. They also rely on Feeney J.'s judgment in *B.K. v. Minister for Justice* [2011] IEHC 526, wherein he states that recognition of refugee status does not make one a refugee. This, the respondents suggest, is logically consistent with the cessation of such recognition rendering the status void *ab initio*.

19. The respondents submit that the applicants' reliance on *Rottmann* and *Dias* is misplaced. The former dealt with a case of naturalisation and the latter involved an appreciation for the character of the residency. Citizens of the EU and their families must comply with the Qualification Directive when exercising freedom of movement. Reliance on s. 6(6)(a)(iii) is also allegedly misplaced, as that provision deals with the children of diplomats. Questions of EU citizenship are allegedly immaterial because none of the applicants are nationals of a Member State.

20. In regard to the argument of deriving citizenship from the first-named applicant's subsidiary protection status, the respondents submit that The European Communities (Eligibility for Protection) Regulations 2006 (S.I. No 518 of 2006), the 2013 Regulations and the Qualification Directive outline a grant of permission with attendant rights that only activates after the grant has occurred, i.e. there is no retrospective operation. The respondents also refer to the *B.K.* case, in which Feeney J. states that the benefits of refugee status are not back-dated. Thus, they allege, neither are the benefits of subsidiary protection.

- U.M.

21. Mr Lynn, S.C., with Mr. Hanrahan, B.L., for the applicants analyses the four-year period prior to the applicant's birth for the purposes of s. 6A of the 1956 Act, as amended. Through that analysis, he concludes that none of the definitions of non-reckonable residence outlined in s. 6B(4) apply to the applicant's father during the four years in question. He submits that the only relevant definition relates to time spent in the State in contravention of s. 5(1) of the Immigration Act 2004. This subsection relates to time spent in the State in contravention or in the absence of permission on behalf of the Minister. The applicant submits that this does not apply to the applicant's father because he remained within the terms of his permission during that time. The wording of s. 5(3)(b) also excludes him from coming with the definition of s.5(1).

22. In the Statement of Opposition, the respondents argue that "residence" within the meaning of s. 6A of the 1956 must be lawful, in that it must be regular, *bona fide* and uncompromised by fraudulent activity. The applicant argues that such an assertion has no basis in the actual wording of s. 6A. The operation of this section is defined by s. 6B, which makes no mention of a requirement of lawfulness. The applicant submits that the wording of these sections is clear, unambiguous and requires no deeper examination than that. He also alleges that, even if such examination were required, the Interpretation Act 2005 would provide little assistance to the respondents in that regard. The applicant relies on the Supreme Court's judgment in *Kadri v. Governor of Wheatfield Prison* [2012] IESC 27 to make the argument that, even where the Oireachtas had accidentally failed to address a certain scenario or issue, s. 5 of the 2005 Act does not empower the courts to intercede and perform that job for them.

23. The applicant alleges that, even if legislative intent were to be considered, the presumption of constitutionality should discourage the Court from finding an intent similar to that alleged by the respondents. Article 40.1 of Bunreacht na hEireann states that all citizens are equal before the law. The power to strip citizens of that citizenship in the manner contemplated by the respondents would breach that provision. The applicant alleges that this is so because citizens of refugee parentage would live in constant fear of their citizenship being revoked on foot of their parents' actions, whereas citizens of Irish parentage would not.

24. Much like the applicants in the first case, the applicant in this case argues that Clark J.'s comments in *Adegbuyi* are *obiter* and irrelevant to the facts at hand. He also argues that a construction of the cases of *Adegbuyi* and *Abramov v. MJELR* [2010] IEHC 458 highlights significant flaws in s. 21 of the 1996 Act, in that it only provides for revocation and not expulsion of the refugee or cancellation of refugee status. According to the UNHCR Note on the Cancellation of Refugee Status, rendering refugee status void *ab initio* is an act of cancellation and not revocation. The applicant submits that it is impossible for one word to have several meanings within the same piece of legislation and that reference to revocation cannot serve as a basis for cancellation as well. The applicant submits that, even if reference to "revocation" could serve as a basis for cancellation, the first-named respondent clearly intended to revoke the father's refugee status and not to cancel it. This submission is based on two grounds:

- The lack of basis for said status to be void *ab initio* (The breach that gave rise to revocation was a short return to the country of origin); and,

- The letter of revocation referred to revocation taking effect from a specific future date and not from the outset.

The above submissions appears to totally ignore the false and misleading information provided by the applicant's father at the time of the declaration of refugee status and which formed a crucial part of the decision to revoke the grant of refugee status. I cannot agree that it was merely a return visit to the country of origin that gives rise to the decision to revoke as is contended for by the applicants.

25. The applicant submits that, notwithstanding the argument that the revocation in question acted prospectively, any finding of retroactivity on the Court's part is not absolute, as it is a violation of the statutory language. He argues that such a finding would have absurd results, such as exposing the father and his former employers to prosecution under s.2(1) of the Employment Permits Act 2003 for work considered completely legal at the time. He points out that the courts have always rejected arguments that legal instruments subsequently found to be incongruous with the legal system are retroactively void in their entirely. He relies on *A v. Governor of Arbour Hill* [2006] 4 I.R. 88 by way of analogy, stating that absolute retroactivity is just as unworkable in both scenarios.

26. Should the respondents argue that the father's residence is not reckonable for the purposes of the 1956 Act for policy reasons, the applicant asks what policy reasons could justify punishing a child for the actions of another. The applicant relies on Hogan J.'s judgment in *Chigaru v. MJE* [2015] IECA 167, in which the Court of Appeal granted an interlocutory injunction to prevent the deportation of children on foot of their parents' deception.

27. Should the Court find in favour of the respondents in regard to retroactive effect, the applicant argues that the declaration should be viewed as voidable, rather than void. This is a construct of contract law that the applicant argues can be applied elsewhere, per McCracken J.'s judgment in *SC v. PD* (Unreported, High Court, 14th March 1996).

28. Even if the refugee status is found to be void *ab initio* with absolute retroactive effect, the applicant submits that the father still accrued the required residency under the permission granted to him under s. 4 of the Immigration Act 2004. He points to a letter from the GNIB, in which his permission was referred to as having subsisted independently of his now void refugee status. The applicant relies on the *Sulaimon* case as evidence of the distinction between a declaration and a permission. He submits that the timeline of events would also suggest that a difference exists, given that the permission was granted four days after, and not concurrently to, the declaration of refugee status.

29. The applicant makes similar arguments to those of the applicant in the previous case in regard to the lack of a legal provision to strip citizenship acquired at birth. They also allege that, per the *Rottmann* case, a proportionality assessment is required before EU citizenship is stripped from an individual. Such an assessment allegedly did not occur in this case, nor in the case of the father.

30. The respondent submits that reference to the decision of revocation taking effect on 31st August, 2013, was incorrect and wrong as a matter of law and that the declaration of refugee status was void *ab initio*. They also point out that this decision was not challenged or appealed by the father.

31. Like the respondents in the first case, the respondents in this case rely on *A.G.A.O. v. Minister for Justice* [2007] 2 I.R. 492 in submitting that failure to engage honestly and *bona fide* with the State can dis-entitle you to a number of reliefs that are open to the Court. They also rely on *C(R) & M(GG) [Zimbabwe] v. The Refugee Applications Commission & Or* [2010] IEHC 490 in underlining that abuse of court and immigration processes cannot be tolerated nor profited from.

32. The respondents in this case make similar submissions in regards to the Roberston, Khera and Suliamon judgments as the respondents in the previous case. They refer explicitly to considerations of the character of an ostensibly valid residency, as outlined in Robertson. They conclude from these cases, as well as Toidze (Arabuji) v. Governor of Cloverhill Prison [2011] IEHC 395, that residence must be without fraud or misrepresentation if it is to qualify for the purposes of the 1956 Act.

33. The respondents in this case similarly submit that the State's interests and the reliability of the immigration system would be compromised if relief were granted in this case. They also allege that there would be knock-on consequences for EU citizenship and the solidarity between nations in that regard.

34. The respondents make the same submissions in regard to the ECHR and ECJ case law as those outlined above.

35. The respondents submit that, when the 1996 Act refers to revocation, it is in effect referring to cancellation and that is simply a matter of different terminology, as opposed to different processes. They allege that derivative statuses, such as family re-unification, are invalid following the revocation of the refugee status and one cannot be allowed to benefit from a status that one should never have received in the first place. The respondents also rely on Clark J.'s judgment in *Adegbuyi* and Feeney J.'s judgment in *B.K.* as a demonstration of the law applicable in these circumstances.

36. In regard to the claim for a passport, the respondents submit that the issuance of a passport in these circumstances would undermine s. 7 of the 2008 Act, as he is not an Irish citizen. The respondents also allege that it is entirely contradictory for the applicant to apply for refugee status under his Afghan citizenship (which was granted on 24th February, 2015) and, at the same time, claim that he is in the country of his citizenship.

37. With regard to seeking a declaration of Irish citizenship, on top of the reasoning already laid out, the respondents submit that such relief cannot be granted, as the determination of entitlement to a passport is a power vested by the Oireachtas solely in the first-named respondent.

Decision

38. With regard to the suggestion that the letter of revocation referred to the letter taking affect from a specific future date, this was dealt with comprehensively in the replying affidavit of Chris Carroll, sworn on behalf of the respondent on the 19th day of 2016. It seems to me that the question as to whether or not the revocation has the effect of being void *ab initio* or being void from a particular date (either the date of revocation and/or some future nominated date) is a matter of law. Although a projected effect date was nominated by the official in question in notifying the applicant's father of the decision, it seems to me that the maxim *nemo dat quod non habet* (one cannot give what one does not have) is applicable in this instance. If the declaration of void *ab initio* is made, a mistake made by an official in indicating that the revocation would come into effect on a future nominated date cannot change the legal position arising from the facts at hand.

39. The starting point for consideration of this matter must be the provisions of Bunreacht Na hÉireann. Article 2 thereof provides:-

> *"It is the entitlement and birthright of every person born in the island of Ireland, which includes its islands and seas, to be part of the Irish Nation. That is also the entitlement of all persons otherwise qualified in accordance with law to be citizens of Ireland. Furthermore, the Irish nation cherishes its special affinity with people of Irish ancestry living abroad who share its cultural identity and heritage".*

The statutory provisions governing Irish citizenship is contained in the Passports Act 2008. Section 2 thereof provides and defines an Irish citizen as:-

> *"a person who -*
> *(a) is an Irish citizen under the Irish Nationality and Citizenship Acts 1956 to 2004, or*
>
> *(b) acquires Irish citizenship under those Acts or any other enactment."*

40. Section 6(1) of the Passport Act provides:-

> *"A person who is an Irish citizen and is, subject to this Act, thereby entitled to be issued with a passport, may apply in that behalf to the Minister in accordance with this section."*

Section 7(1) (a) provides:-

> *"Before issuing a passport to a person, the Minister shall be satisfied -*
>
> *(a) that the person is an Irish citizen, and*
>
> *(b) as to the identity of the person.*

Section 12(1) provides:-

> *"The Minister shall refuse to issue a passport to a person if –*
>
> *(a) the Minister is not satisfied that the person is an Irish citizen."*

41. The Irish Nationality and Citizenship Act of 1956, as amended by s. 4 of the Irish Nationality and Citizenship Act 2004 to insert s. 6A(1), provides:-

> *"6A (1) A person born in the island of Ireland shall not be entitled to be an Irish citizen unless a parent of that person has, during the period of 4 years immediately preceding the person's birth, been resident in the island of Ireland for a period of not less than 3 years or periods the aggregate of which is not less*
>
> *than 3 years."*

6A(2) (i) provides this section does not apply to:-

> *"(a) a person born in the island of Ireland -*
>
> *(i) to parents at least one of whom was at the time of the person's birth a person entitled to reside in the State without any restriction on his or her period of residence (including in accordance with permission granted under s. 4 of the Act of 2004)."*

42. I accept the respondent's submission that many of the applicants' submissions are incorrectly predicated on the assumption that the applicants are entitled to Irish citizenship upon birth. This is not correct in accordance with the provisions which I have just outlined. The applicant was never entitled to Irish citizenship by birth on the facts or by law. There is a duty placed upon non-nationals who are seeking to travel to or obtain any form of permission to remain or reside in this State to act with good faith and honesty in their dealings with the immigration and protection authorities. A failure to engage honestly may have the consequence of the permission being revoked or indeed the person disentitling themselves from seeking reliefs before the courts. This was stated clearly by MacMenamin J. in the case of A*.G.A.O. v. Minister for Justice, Equality and Law Reform* [2007] 2 I.R. 492 in relation to an applicant who came to the Court asking it to exercise its discretion in judicial review proceedings in circumstances where they had been deported and previously maintained two separate aliases within the State. At para. 54, MacMenamin J. states as follows:-

> *"At no time in the year 2002 is there evidence that the respondents were made aware that the applicant as A.A. was one and the same person as G.O. whose documents were in the possession of the State authorities, thereby placing the State on notice that the applicant could not as a matter of law leave the State voluntarily. Had the respondents known of the applicant's various aliases they could have questioned the validity of the letter of the 3rd December, 2002 and its claim that the applicant was leaving the country as in fact his passports were in the possession of the Garda National Immigration Bureau since his re-entry on the 15th October of that year."*

43. MacMenamin J. continued at para. 56

> *"Were it necessary to so find this court would conclude that the applicant had by his conduct disentitled himself to the reliefs which were sought. … In the premises the court must conclude that the applicant has acted not only in bad faith but that also his interactions with the various organs of the State were designed to mislead and deceive the State in such a way as to endeavour rights and benefits to which he was not lawfully entitled. It is unavoidable that the court should conclude that these actions were deliberate and cannot be condoned."*

44. In *G.O. & Ors. v. the Minister for Justice, Equality and Law Reform* [2008] IEHC 190, Birmingham J. stated at para. 53:-

> *"…I cannot accept that it is open to individuals to arrive in the State on what is essentially a false basis, as indicated by the rejection of their claim to asylum status, and then proceed to so organise their family affairs as to frustrate the operation of the immigration system."*

45. In *Robertson*, Hogan J. considered the position of a South African applicant who had lived and resided in the State since August 2004 under her own name pursuant to permission granted by the Minister under the Immigration Act 2004. The applicant had not disclosed that she had previously arrived in the State and applied unsuccessfully under a different name for asylum. Having considered the notice provisions of s. 3(9)B of the Immigration Act 1999 and the question of whether she was ordinarily resident in the State, Hogan J. stated at para. 19 :

> *"She then entered the State in her own name in August 2004 without disclosing the critical fact that she was the subject of a deportation order, albeit in the name of an alias which she had deceitfully provided.*
>
> *20. Her failure to make such a disclosure is tantamount to entering the State through deception and disguise. As Murngahan J. pointed out in* [Goertz v. the Minister for Justice, Equality and Law Reform [1948] I.R. 45*], the concept of "ordinary residence" also involves an assessment of the character of that residence. Moreover, as Black J. noted in that case, the presumption against surplusage means that the word "ordinarily" was "intended to have, and must be given, some effective meaning." To my mind, in this statutory context, the phrase "ordinary residence" connotes a residency which is lawful, regular and bona fide. As Goertz itself illustrates, mere physical residence in the State is not in itself enough, since a residence which is irregular, covert or unlawful is not an "ordinary residence" in this sense.*
>
> *21. It should also be recalled that legislation must be understood and interpreted by reference to certain well-understood general principles of law, one of which is that a person cannot be allowed to profit by their own wrong. If Ms. Roberston's contention were to be accepted, it could mean that this court would have to avert its eyes to this acknowledged deception and deceit and that she would thereby be allowed to claim the benefit of a statutory entitlement to which she is not justly entitled. It follows that I am coerced to find that Ms. Robertson was not ordinarily resident for the purposes of s.3(9)(b) of the 1999 Act in the sense that I have just indicated - indeed, it could be said that her residence was anything but ordinary, since, as we have just seen, it was grounded on a fundamental deceit."*

46. In order to be entitled to acquire Irish citizenship under the Irish Nationality and Citizenship Act 1956 (as amended), the residence upon which such an application is based must, in my view, be lawful in the sense of being both *bona fide* and regular residence before it can give rise to such derivative citizenship rights. Thus, it seems clear to me that residence that has been obtained or was based upon fraud, misrepresentation or deceit cannot amount to residence within the meaning of Part 2 of Irish Nationality and Citizenship Act 1956 (as amended). Part 2 of the 1956 Act governs the entitlement to citizenship for persons born in the State to certain non-nationals. Irish citizens are entitled to rights and privileges. Citizenship is a privilege, which is bestowed upon non-nationals that are not entitled to citizenship by birth on behalf of the people. The acquirement of that citizenship must be lawful and *bona fide*. I cannot accept the proposition that the acquisition of citizenship that has been acquired effectively through the deceit of the applicant minors' fathers can have the effect of conferring citizenship by birth upon the applicants. This flies in the face of both of the constitutional provisions, the statutory provisions and the established authorities cited in the submissions outlined earlier and referred to by the Court.

47. The applicants at the heart of these two sets of proceedings are of course entirely without blame. Neither of them are responsible in any way for the actions of their fathers and the manner in which their fathers dealt with the asylum and immigration authorities at an earlier juncture. But despite any sympathy which the Court, and indeed any individual, might feel towards the minor applicants, the Court must decide this application based on the legal principles that apply. The situation is that the mere fact of being born on the island of Ireland, its islands or seas no longer carries with it a right to citizenship by birth. Instead, in certain circumstances, a person born to parents who are not nationals of this jurisdiction have an entitlement pursuant to statute to acquire Irish citizenship once certain legal criteria have been fulfilled. Citizenship must be acquired in accordance with law and through lawful means. This means that the acquisition of such rights and any associated derivative third party rights must also occur through lawful means. Although the minor applicants concerned in these proceedings are themselves not the perpetrators of any wrongdoing, nevertheless the unfortunate consequence of the unlawful actions of their respective fathers is that each of them is not entitled to Irish citizenship and/or an Irish passport on foot of their fathers unlawfully-obtained declaration of refugee status.

48. However, it seems to me that the relevant authorities have recognised the unfortunate position of these minors by the manner in which they have subsequently treated them. In this case, there is the question that, prior to the commencement of the hearing, the Court was informed that both applicants had been granted protective status on foot of applications brought by their mothers on their behalf. It was pointed out on behalf of the respondents that, in respect of the second applicant (U.M.), this gave rise to his mother, who was also incidentally successful in her application for refugee status, declaring that the applicant minor was a citizen of another State. Given that both the applicant and his mother have been granted refugee status, they would of course be entitled in due course to apply on foot of that grant of refugee status for a grant of Irish citizenship, once the appropriate residences requirements have been completed. In the case of the second-named applicant (N.A.), both he and his mother have been granted subsidiary protection and, in due course, may also be entitled to apply for citizenship on foot of that grant. However, it is clear in my view that the effect of the revocation of the grant of refugee status to both of the applicants' fathers had the effect of rendering that grant void *ab initio*. It also had the legally unavoidable effect of rendering the grant of citizenship null and void. Therefore, it seems to me that the respondent in the first set of proceedings was correct in holding that they were not entitled to issue a grant of citizenship to the applicant because of their determination that the revocation of the father's refugee status had an effect of rendering it void *ab initio*. Similarly, in relation to the second applicant, the officials in the Department of Foreign Affairs were correct in refusing to renew or issue a further passport for the applicant on the basis that his father's refugee status had been revoked, was void *ab initio* and had the effect of negativing the grant of citizenship that had been unlawfully and erroneously granted and assigned to the applicant on foot of that unlawfully obtained declaration of refugee status.

49. For the reasons set out above, I would refuse all of the reliefs sought.