Neutral Citation Number: [2010] IEHC 109

THE HIGH COURT

JUDICIAL REVIEW

2009 802 JR

BETWEEN/

NKAIMA THOMAS TABI

APPLICANT

AND

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENT

JUDGMENT of Mr. Justice Cooke delivered on the 16th day of April, 2010.

1. At the conclusion of the applicant's submissions in this case on Wednesday, 14th April, 2010, the Court indicated that it considered the application to be unfounded and that it was therefore unnecessary to hear submissions in reply on behalf of the respondent. The following is the Court's statement of its reasons for that decision.

2. The essential reason for refusing to interfere with the decision which is contested in this case can be very briefly stated. The applicant obtained leave by order of Peart J. of 27th July, 2009 to seek judicial review of the respondent's decision refusing the applicant a certificate of naturalisation under s. 15 of the Irish Nationality and Citizenship Act 1956 (as amended). Under that section the Minister cannot issue such a certificate unless he is satisfied that the conditions there set out have been fulfilled by the applicant including that of "good character". It is well settled law that it lies with the Minister to decide what factors or criteria are to be taken into account in assessing whether an individual applicant is of "good character". Unless the Minister relies upon some fact which is wrong or has recourse to some criterion or factor which is clearly absurd or manifestly irrelevant to the operation and the legislative objective of the naturalisation provisions of the Act, it is not the function of the High Court to intervene to direct the basis upon which the Minister's appraisal should be made. In this case the refusal decision which was communicated to the applicant by letter of 2nd June, 2009 was based upon one explicit reason namely, that the "good character" condition of s. 15(1) was not met because he had accumulated four convictions in the District Court for offences under the Road Traffic Acts for which he had received fines totalling €475. The fact of those convictions is not contested. That being so, the Minister had a sound basis in uncontested facts for making the assessment that the condition of "good character" was not fulfilled. There is therefore no defect of either fact or law in the Contested Decision which would justify the issue of an order of *certiorari* to quash it.

3. That is the essential reason for the Court's refusal to quash this decision but for the sake of completeness the Court will deal with the specific arguments sought to be advanced in support of the application.

4. First, it was argued that the Minister had wrongfully fettered the discretion he should exercise under s. 15 by adopting an "inflexible policy" to the effect that any applicant who had "come to the adverse attention of the Garda Síochána" was, upon that ground, not of good character. The Minister thereby precluded himself from looking genuinely at the individual circumstances of each case and making an assessment as to whether the applicant was in fact of good character.

5. In this case the letter communicating the decision dated 2nd June, 2009, referred the applicant to an attached form in which the recommendation made to the Minister for his consideration was recorded in these terms:

> "Nkaima Thomas Tabi fulfils such statutory conditions other than: good character.
>
> Comments: Per Garda report received, it is stated that the applicant has come to the adverse attention of the gardaí as follows: …"

There are then set out the details of four particular convictions. The first was in Cork on 3rd October, 2007 in which the offence was "non-display of disc" with an outcome of conviction and a fine of €75. On 7th March, 2008 at Castlerea the applicant was convicted of holding a mobile phone while driving and fined €200. On the same occasion he was also convicted of failing to produce an insurance certificate and failing to produce a driving licence for which fines of €100 each were imposed.

6. It is entirely clear, as already stated above, that it was the convictions for these four offences which constituted the basis of the Minister's reason for considering that the applicant was not of "good character". There is no evidence that the Minister does in fact operate any policy of the kind suggested which has the effect of fettering the discretion. It may well be that as a matter of policy and practice the Minister directs enquiries in respect of each application to see if an applicant has "come to adverse attention of the Gardaí" but the mere existence of such a policy or practice does not raise any presumption that the Minister's discretion is unlawfully fettered as a result. In any event, the enquiries which the Minister is perfectly entitled to make have disclosed in this case the existence of these four convictions so that even if such a policy existed, it could have no bearing upon the validity of the Minister's refusal in this case because the convictions are undisputed.

7. Implied in the submissions made in this regard by counsel for the applicant, is the proposition that these particular convictions were only four "minor offences" and could not therefore constitute a basis by themselves for considering that the applicant was not of good character. It was emphasised that the applicant had not been convicted of the more serious offences of driving an untaxed car or of driving without insurance or a licence but only of the offences of failing to display the disc and produce the documents.

That proposition cannot be accepted. As already indicated, it is a matter for the Minister to decide what criteria are relevant in this regard and criminal convictions of any kind are clearly matters which are directly relevant to the issue which the Minister has to

consider. In effect, when considering each application, the Minister is asking the question whether the applicant is someone who will make a good citizen? As the case law has repeatedly emphasised, there is no right to citizenship as such: it is a privilege which the State extends on a discretionary basis in exercise of a primary facet of its sovereignty. The Minister is, after all, the Minister responsible for the operation of the Road Traffic Acts and for road safety generally. It would be wholly unreasonable to hold that the Minister is not entitled to consider a series of infringements of the Road Traffic Acts as being relevant and important considerations in assessing eligibility for citizenship. Implicit in the submission is the notion that the term "good character" can only be understood as meaning that the applicant is not shown to be someone who would be regarded by people generally as of "bad character" in the sense of having committed serious crimes or failed to pay their debts or taxes or otherwise demonstrated a socially reprehensible character. In the Court's judgment nothing in the Act suggests a legislative intention which would preclude the Minister from considering generally an applicant's record and conduct while in the State with a view to assessing whether the applicant is someone who has a responsible attitude to the civic responsibilities of the society in which he or she seeks to be a citizen.

8. This submission based upon the proposition that the Minister has unlawfully fettered his discretion appears to the Court to be an attempt to benefit from the judgment of Kelly J. in *Mishra v. Minister for Justice & Ors*. [1996] 1 I.R. 189. The attempt is, however, misconceived because the circumstances of that case were entirely different. Kelly J. there held (inter alia,) that there is no reason in law which prevents the Minister exercising the discretion accorded by s. 15 by reference to a policy or set of rules. He pointed out, however, that when this was done care has to be taken to ensure that it does not result in the Minister being unable to exercise the discretion according to the circumstances of individual cases. In that case the policy of the Minister with regard to the failure of a particular class of applicant to obtain full registration with the Medical Council after the expiry of a period of temporary registration, had led the Minister to making an assumption adverse to the individual in that case as to his future intention as regards residence in the State. It was on that basis that the decision in the case was quashed. No equivalent assumption could be said to have been made in the present case because, as pointed out, the existence of the four convictions relied upon is uncontested.

9. Next it was argued that the Minister had failed to adopt a fair procedure by omitting to put the convictions in question to the applicant before making the decision so that the applicant might have an opportunity to comment upon them or make representations. In the judgment of the Court there was no such obligation upon the Minister in the particular circumstances of an application of this nature. The result of the Minister's decision is not to deprive the applicant of a right or to impose some burden or penalty upon him. The Minister is dealing with a purely unilateral application for the exercise of the Minister's discretion to confer a privilege. In that regard the position is quite distinct from that referred to in argument by reference to the decisions of the High Court and Supreme Court *in TV3 Television Co. and Others v. Independent and Radio Television Commission* [1994] 2 I.R. 439. There, the consequence of the decision which was challenged was to remove from the applicant a valuable franchise which it had held. The contested decision was quashed because the applicant had not been alerted to the intention of the Commission to possibly withdraw the franchise if information requested was not furnished within a period that had been stipulated. In the present case the fact relied upon by the Minister for refusing namely the four convictions, is not in dispute. If there had, for example, been a case of mistaken identity such that the convictions did not relate to the applicant but to someone else, the Minister would have made a mistake and the decision would have been open to be quashed upon that ground. But the theoretical existence of such a possibility does not, in the view of the Court, create any obligation to put the matter to an applicant before adopting the decision by reason only of the fact that the convictions have occurred since the application for the certificate was made.

10. Finally, a somewhat convoluted argument was advanced to the effect that the decision was flawed because of the failure of the Minister to take into account "relevant considerations". As the Court understood it, this argument was based upon the proposition that in the form of application for the certificate, an applicant is invited to nominate three referees and provide contact addresses, etc. for them. It was suggested that the Minister was under an obligation to make such contact and to take into consideration the views of the referees on the topic of the applicant's good character notwithstanding the existence of the convictions. Again, the Court is satisfied that there is no such obligation on the part of the Minister. Once the Minister is satisfied that the existence of criminal convictions is of itself a sufficient reason for considering that an applicant does not satisfy the "good character" condition, that is a sufficient basis for his decision. The implication of the argument is that the Minister is effectively obliged to weigh in the balance his own view of the significance of the convictions against whatever views might be expressed as to the applicant's character by the nominated referees. That proposition is, in the view of the Court, untenable.

11. In conclusion, in the course of argument counsel for the applicant cited the well known passage from the judgment of O'Higgins C.J. in *O'Brien v. Bord na Móna* [1983] I.R. 255 where he said:

> "In a great number of instances, persons carrying out acts which are clearly in their essence administrative (and, particularly, in cases where such acts affect property rights) have under our law an obligation to act fairly and, in that sense, judicially in carrying out of those acts and in the making of the decisions involved in them. They can and will be reviewed, restrained and corrected by the courts if they act in a manner which is considered to be arbitrary, capricious, partial or manifestly unfair."

12. In circumstances where the Minister has explicitly based his decision upon the existence of four convictions, even for "minor offences", the existence of which is undisputed, it could not in any sense be said that the Minister has acted in a way which is arbitrary, capricious, partial or manifestly unfair.

13. For all of these reasons the application is dismissed.