

Between:

I

Applicant

– and –

THE MINISTER FOR JUSTICE AND EQUALITY

Respondent

JUDGMENT of Mr Justice Max Barrett delivered on 11th July, 2019.

1. Ms I is a Nigerian national. She arrived in Ireland in 2000 and was granted residency in 2001 by virtue of her having become the mother of an Irish-born citizen child. She now has two Irish-born citizen children. She claims to have suffered domestic violence at the hands of her children's father, and has the sympathy of the court if this is so. Her younger child was born with a serious intellectual disability. In 2008, she lost the care and custody of her children at a time when she was going through serious problems with the children's father. She is presently able to maintain herself through employment, she does not receive any social welfare payments, and she is in the process of pursuing a third-level qualification as a psychiatric nurse. She has weekly access to her youngest son and has resumed contact with her eldest son (who is now an adult). In November 2015, Ms I applied for a certificate of naturalisation. Section 15 of the Irish Nationality and Citizenship Act 1956, as amended, provides, *inter alia*, as follows: "(1) 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... (b) is of good character". In his decision of November 2018 (the 'Impugned Decision') the Minister states, *inter alia*, as follows:

"Information has come to light in the course of the processing of this application which the applicant did not disclose and could reasonably have foreseen could be taken into consideration in the decision-making process....The attached Garda report details the applicant as a witness in respect of incidents of child neglect and cruelty on 25/12/2007 and attention and complaints on 18/06/2007...."

Recommendation: The relevant information related to this applicant is attached to this submission. The applicant did not disclose that she came to the attention of An Garda Síochána on 18/06/2007 and 25/12/2007 and this [non-disclosure] is a matter that goes to character. Having considered the entirety of the case and that the applicant did not disclose these incidents, I am not satisfied that the applicant is of good character and I would not recommend this applicant for a certificate of naturalisation."

2. Four points might be made before proceeding further:

(1) the Garda report also mentions a third matter on which no reliance is placed by the Minister and which the court does not therefore address.

(2) the Minister acknowledges that the Garda report indicates Ms I to have been a "witness" only – immediately raising the question of how being a witness to something could possibly be relevant to an application form question which asked "Are you, or have you been, the subject of an investigation in Ireland by An Garda Síochána (Irish Police), including where you were not charged with any offence?" (Witnesses are not at risk of prosecution simply by virtue of being a witness).

(3) the Minister appears not to be concerned with the substance of what the Garda report reveals but rather with the fact that – as the Minister perceives matters – Ms I gave a misleading answer ('No') when asked if she was or had been "the subject of an investigation in Ireland by An Garda Síochána (Irish Police), including where you were not charged with any offence".

(4) the court does not fully know what it means that someone "came to the attention of An Garda Síochána" but it would seem to embrace a radically wider set of circumstances than the question "Are you, or have you been, the subject of an investigation in Ireland by An Garda Síochána (Irish Police), including where you were not charged with any offence?" One can easily imagine multiple instances where one would come to the attention of the Gardaí and not be in any sense a person of less than good character, e.g., a man who is the subject of domestic violence and who calls the Gardaí to his house could be said to have 'come to the attention of the Gardaí', but no right-thinking person would suggest that that man's unhappy experience in any way reflected on, let alone diminished, his character. To criticise Ms I on the basis that she "came to the attention of An Garda Síochána" when she was asked "Are you, or have you been, the subject of an investigation in Ireland by An Garda Síochána (Irish Police), including where you were not charged with any offence?" is to flaw her for not answering a question that was not in fact asked (and to which question as is asked, the Garda records indicate that the correct answer is in any event 'no'). Perhaps what the Minister meant in this regard is 'adverse attention'; however that is not what is stated in the Impugned Decision.

3. The Garda report does not need to be quoted in detail. It contains five headings, "Date", "Location", "Incident Type", "Role [of Ms I]" and "Details [of event/s that yielded entry]". Under the heading "Role", Ms I is listed in each relevant instance as a "Witness". At the hearing, counsel for the Minister noted that Ms I did not know when she completed the application form that she had been designated by the Gardaí in their records as a "Witness" to one or more offences. However, it seems to the court that this supports the approach adopted by Ms I when completing the application form. She was asked when she completed the application form "Are you, or have you been, the subject of an investigation in Ireland by An Garda Síochána (Irish Police), including where you were not charged with any offence?" She answered 'no', which tallies with her having been designated as but a "Witness" by the Gardaí. Additionally, when one delves a little deeper into the two instances in issue, it is quite clear that Ms I was entirely correct, when it came to those instances, to consider that she had not been "the subject of an investigation in Ireland by An Garda Síochána (Irish Police), including where [she was]...not charged with any offence":

– in the first instance, the Gardaí went to Ms I's house following a report being made to them that children were not being well treated by a woman there. Obviously when the Gardaí first follow up on such a report, they do not know if the report is, e.g., genuine, malevolent, mischievous, mistaken or false. Nor does it seem to the court that when the Gardaí dutifully

called to Ms I's house after receiving the report that they were investigating Ms I. Rather, they were investigating the veracity or otherwise of a report about an alleged crime, they happened to discover that Ms I was a witness (and but a witness) to some possible crime, and they recorded her as such when they wrote up their report.

– in the second instance, Ms I appears to have called the Gardaí to her house because she thought that she and her son/family were being subjected to racist attacks. Again, the Gardaí called around and it seems that they must have thought there was some substance to Ms I's complaint of racially motivated misbehaviour against her and her son/family because in their later report the Gardaí listed Ms I as a "Witness". It does not appear to be controverted that this account of events (which is how Ms I recalls matters) is what in fact occurred. Clearly there is no way in which this second instance could be described as an investigation in Ireland by An Garda Síochána of Ms I.

4. If one moves forwards in time to the naturalisation application, in the course of assessing same the Minister separately sourced a Garda report, which report confirmed that insofar as Ms I has had any interaction with the Gardaí in the past – which, it will be recalled, was not the question posed on the application form – she was considered by the Gardaí to have been but a witness to one or more suspected crimes. The Minister having read this report and seen that Ms I had been designated but a "Witness", then proceeded to count it *against* Ms I that, having been so designated by the Gardaí, she did not answer 'yes' to the question "*Are you, or have you been, the subject of an investigation in Ireland by An Garda Síochána (Irish Police), including where you were not charged with any offence?*" In other words, despite the fact that Ms I lived through the experiences of dealing with the Gardaí, the Minister expected Ms I to arrive at a different understanding as to what transpired from that which appears to have been arrived at by the Gardaí (who listed her as but a "Witness", nothing more) and to transmute those experiences from what they were into what they were not, i.e. into investigations of her. The court has outlined at the two indented points above why it does not consider that either of the events disclosed in the Garda report could be described as an investigation in Ireland by An Garda Síochána of Ms I. And again it surely rebounds to Ms I's credit that her understanding of events which she did not have to disclose but of which the Minister separately learned and about which he then asked questions (to which he received the most fulsome of answers) tallies with that of the Gardaí.

5. For the various reasons stated, the court sees no basis for the finding that Ms I failed to disclose relevant information or that such answers as she gave when completing the application form afford a basis on which the Minister could as a matter of right reason conclude that Ms I is not a person of good character. The court will grant the order of *certiorari* sought and remit the within matter to the Minister for fresh consideration.