THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 660 J.R.]

BETWEEN

A. A.

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Ms. Justice O'Regan delivered on the 26th day of July, 2017.

Issues

1. The applicant secured leave on the 20th October, 2016 to apply for judicial review of the respondent's decision of the 3rd June, 2016 refusing the applicant's application for naturalisation which was made on the 30th September, 2010. The judicial review application was first opened on the 18th August, 2016 and therefore no extension of time is required.

2. The statement of grounds herein is dated the 15th August, 2016 and complains that:-

(1) the standard of good character was set at an unreasonably or unlawfully high level,

(2) the applicant was not afforded an opportunity to comment on matters which were held against her in the respondent's decision,

(3) the respondent had a discretion under s. 16 of the Irish Nationality and Citizenship Act 1956, as amended, but did not exercise this discretion,

(4) the standard of good character was unlawfully opaque,

(5) the decision was irrational or unreasonable,

(6) the respondent failed to weigh or did not give sufficient reasons for rejecting positive factors going in the applicant's favour and

(7) the rationale and reasoning of the respondent was not sufficiently clear.

3. In the statement of opposition of the 24th March, 2017, the respondent denies all aspects of the claim made out on behalf of the applicant and relies upon the absolute discretion afforded to the respondent in granting a certificate of naturalisation as well as the fact that the discretionary element mentioned in the statement of grounds did not arise as the applicant had crossed out that portion of the application as referred to Irish association, notwithstanding that by the date of the application a child was born to her which at its birth was deemed an Irish citizen child.

Brief Background

4. The applicant came to Ireland on the 27th November, 2006 and applied for asylum. The applicant is from Sudan. ORAC refused her application on the 24th of April, 2007 and this order was appealed. It appears that RAT made a decision on appeal however, by consent of the parties an order was made by the High Court on the 24th November, 2008 granting an order quashing the decision of RAT of the 30th April, 2008 and remitting the applicant's appeal to the Refugee Appeals Tribunal for rehearing before a different tribunal member.

5. The applicant married her husband on the 3rd August, 2007 and he was at that time a recognised refugee in Ireland. He was subsequently naturalised in 2010. Based on her husband's refugee status, the applicant was afforded a right of residence to remain in the country on the 29th January, 2009. On the 11th December, 2009, the applicant withdrew her asylum application.

6. On the 30th September, 2010, the applicant applied for naturalisation. There followed correspondence between the parties where the respondent indicated that the United Kingdom Border Agency had supplied information to the effect that the applicant had applied for a UK visa on the 29th September, 2006. The applicant denies that she had made such an application and indicated that she suspected that her identity had been used by a gang of smugglers who assisted her in escaping from Sudan, such suspicion was based upon an incident that happened when she applied for her first and current Sudanese passport. She indicated that it was brought to her attention by the Sudanese immigration authorities that a previous passport had been issued in her name although she had never applied for one before.

7. In response to further queries raised on the 6th November, 2015, the applicant indicated that she had been absent from the State including for two months from the 25th June, 2009 in Egypt, for two months from the 15th November, 2010 in Sudan and for nineteen days from the 29th August, 2013 in Sudan.

8. The applicant has two children born in Ireland on the 1st October, 2008 and the 24th November, 2011 respectively.

Impugned Decision

9. The relevant decision records that the applicant arrived in Ireland and sought refugee status and records her visits to Sudan thereafter. Insofar as the applicant's passport was concerned, the decision records that the applicant's then current passport contains observations to the effect that it replaced a previously lost passport. It also records that the applicant did not conduct any investigation with the Sudanese authorities in respect of the passport issued which she had not applied for. The decision also records a number of other issues which had arisen during the currency of the examination process which appeared to have resolved in the applicant's favour. In the recommendation section it is provided:-

"The applicant arrived to the State as an asylum seeker and that she had since returned to Sudan along with the fact that refugee status was refused indicates a lack of credibility of her asylum claim. She has admitted that her passport C0520141 was issued based on incorrect information. These are matters that go to character. I am not satisfied that the applicant is of good character, I would not recommend the Minister grant a certificate in this case."

Submissions

10. In written submissions, the applicant relies on the case of *S.H. v. Minister for Justice and Equality* [2017] IEHC 41 where it was held that there were two factual inaccuracies within the relevant naturalisation refusal and it was not possible to ring-fence these inaccuracies to enable the decision to stand. One of the inaccuracies was that the applicant had made an asylum application with a different name and a different date of birth which ultimately proved to be incorrect. A further inaccuracy was that the applicant had made a "clearly unfounded application" for asylum *inter alia* in the United Kingdom, in circumstances where all that was known was that he had made an asylum application which was not successful. The applicant argues that the within applicant is in a like position, in particular, as it is clear that the decision maker did not consider the asylum file.

11. The applicant also relies on the judgment of Hogan J. in *Hussain v. Minister for Justice, Equality and Law Reform* [2011] IEHC 171 to the effect that when the Minister is considering an application for naturalisation, the decision must be made in good faith without reference to irrelevant matters and considering all relevant matters with no misinterpretation of the law. The standard in relation to good character should not be an exalted standard or involve the personal morality of the Minister, it rather should be a reasonable standard of civic responsibility as gaged by reference to contemporary values.

12. The applicant relies on the Supreme Court decision in *Mallak v. the Minister for Justice Equality and Law Reform* [2012] 3 I.R. 297 to the effect that reasons must be given to justify a refusal.

13. The final case relied upon by the applicant was the matter of *G.K.N. v. Minister for Justice and Equality* [2014] IEHC 478 where the High Court noted that the decision of the Minister referred to the serious nature of the offence. In the event in that case the decision of the Minister was quashed by reason of the fact that a selection only of the relevant information was furnished to the Minister and therefore the decision was made in the absence of a full and fair description of the facts arising (see para. 22 of that judgment).

14. The respondent relies on the matter of *Tabi v. Minister for Justice* [2010] IEHC 109 where at para. 2 thereof Cooke J. indicated that it was 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 and unless the Minister relies on some factually incorrect matter or has recourse to some clearly absurd or manifestly irrelevant matter it is not the function of the High Court to intervene. The respondent also refers to para. 7 of that judgment where the court rejected the contention that the four road traffic offences for which the applicant was convicted (a non-display of a disc, holding a mobile telephone when driving, failing to produce an insurance certificate and failing to produce a driving license) were only minor offences. However, that proposition was rejected by the court on the basis that it was for the Minister to decide what criteria are relevant.

15. Cooke J. repeated that there was no right to citizenship but rather it was a privilege which the State extends on a discretionary basis. Implicit in the argument made was that the term "good character" denotes someone without bad character. The court made reference to the applicant as being someone who has a responsible attitude to the civic responsibilities of society in which he/she seeks to be a citizen.

16. The respondent states that in Hogan J.'s judgment in *Hussain* aforesaid the court recognised at para. 16 that the grant of naturalisation was "purely gratuitous" and at para. 21 indicated that provided there was a reasonable application of the appropriate principles the decision is probably unimpeachable at law.

17. The respondent further refers to:

(1) the case of *M.A.D. v. Minister for Justice and Equality* [2015] IEHC 446 where, at para. 37, Stewart J. indicated the court's reluctance to intervene where the applicant was seeking precision in the form of guidelines.

(2) the case of *A.B. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 449, Cooke J. at para. 9 indicated that it was for the Minister to determine what criteria to be considered in assessing good character.

(3) *A.A. v. Minister for Justice and Equality* [2016] IEHC 416 where Stewart J. at para. 44 again indicated that there was no requirement to make a point by point guide as to how the applicant might be successful.

(4) *A.M.A. v. Minister for Justice and Equality* [2016] IEHC 466 where Humphreys J. at para. 60 of his judgment conveniently summarised the principles involved as arose in that matter in judicial review of the Minister's decision to refuse naturalisation including the following:-

"(i) Having decided to reject an application on particular grounds, a decision-maker is not then required to go on to consider separately and expressly whether to waive those grounds.

(ii) The Minister has a very wide discretion in naturalisation, as absolute as it is possible to get in a system based on the rule of law. Reasons must be provided but beyond that it would take exceptional circumstances before the Minister could be said to have failed to apply the minimal level of natural justice applicable in the context of a privilege such as naturalisation.

(iii) The onus rests on an applicant for naturalisation to furnish all necessary evidence to establish their claim. The present applicant has failed to discharge that onus.

(…)

(v) It was reasonable for the Minister to make a finding of a lack of veracity where an applicant put information before the Minister that is likely to have been incorrect as a matter of probability, and where in any event the applicant failed to put important information before the decision-maker.

(…)

(ix) The Minister is not obliged in the naturalisation process to give advance notice to an applicant of an adverse consideration of which the applicant is already aware."

18. The respondent also relies on the Supreme Court judgment in *Mallak* aforesaid and in particular, para. 47 of the judgment of Fennelly J. where the absolute nature of the discretion was noted, thereby placing the onus of proof on an applicant to show that the respondent effectively acted in an arbitrary, capricious or autocratic fashion. In para. 78 of that judgment, the court indicated that if reasons had been provided, it might well have been possible for the applicant to make relevant representations when making a new application which might have rendered the decision fair and made it inappropriate to quash it. In para. 79, the court noted that it was not a matter for the court to prescribe whether *inter alia* the Minister will give notice of his concerns to the applicant or disclose information on which they may be based.

Discussion
19. The applicant argued that the refusal of asylum and the travel to Sudan twice thereafter could not go to character, particularly as the asylum file was not before the Minister and it was possible that circumstances in Sudan may have changed. It is argued that the Minister should have developed the point before deciding on it rather than deciding the point in such a summary fashion. Further, the applicant argued that the Minister did not take and balance in a proportionate fashion matters going to the applicant's credit. It was argued that it was jump too far to expect the applicant to explain the change of circumstances in Sudan to enable her to go there following her failed asylum application and in this regard it was submitted that the asylum application was made in 2006 whereas the applicant did not return to Sudan until late 2010.

20. In the round, the applicant asserts that the Minister for looking for an exalted standard which was legally impermissible. With reference to the incorrect information in respect of the securing of the passport the applicant argued that this could be characterised as "a bit of a fib" and in any event the incorrect information was furnished by the applicant's friend rather than the applicant herself, notwithstanding that the friend was securing the passport at the behest of the applicant.

21. The applicant further argues that the sentence:-

> "The applicant arrived to the State as an asylum seeker and that she has since returned to Sudan along with the fact that refugee status was refused indicates a lack of creditability of her asylum claim"

is actually effectively two sentences with the division between such sentences commencing with "along with".

22. The respondent argues that the finding was made on uncontested facts, was reasonable and not arrived at by improper means. In this regard, the applicant argues that the decision was in fact entirely unreasonable given the assumption made in respect of the applicant's credibility because of making an asylum application and later returning to Sudan and because of the minimal nature of the incorrect information furnished to secure the passport.

23. The respondent counters that the securing of the passport did not involve "a bit of a fib" but rather was purposely deceptive with the information given to facilitate the securing of an early passport for the applicant which information was furnished on behalf of the applicant.

24. The applicant also argued that the Minister should have had regard to the fact that the complaints made against the applicant were historical in nature and suggested that as the they do not involve any criminality on the part of the applicant it is unreasonable to base the decision on same. The applicant complained that no advance notice was given by the Minister to the applicant on the fact that the failure in the asylum application would be part of the decision making process. She also argues that the possible waiver of the good character criteria should have been considered whether same was raised or not.

Decision
25. The case of *S.H.* aforesaid does not appear to be as helpful to the applicant as she suggests as that did not involve a return to the country where the applicant had expressed a fear of persecution. Furthermore the suggestion that the asylum application was made four years prior to return to the country belies the fact that the asylum application was in fact pending until withdrawn in December 2009 eleven months prior to return to Sudan. The applicant was well aware of her prior dealings with the Minister vis-à-vis her asylum application and the basis for same and therefore there was no necessity for the Minister to bring her inconsistencies to her attention given the principles identified by Humphreys J. in *A.M.A.* aforesaid including that there was no need for advance notice to an applicant of matters already known to the applicant. The onus is on the applicant to show that the Minister was arbitrary capricious or autocratic and I do not accept that the applicant has made out such a case.

26. The Minister was not obliged as per the judgment of Humphreys J. aforesaid to consider the waiver after finding a lack of good of character. Furthermore, there is no capacity for an applicant to now raise that matter when same was not raised before the Minister (see *N.M. v. Minister for Justice, Equality and Law Reform* [2016] IECA 217, *I.S.O.F. v. Minister for Justice, Equality and Law Reform* [2010] IEHC 457 and Imoh v. Refugee Appeals Tribunal [2005] IEHC 220).

27. As was pointed out by Humphreys J., the Minister is entitled to make a finding of a lack of veracity where an applicant puts information before the Minister that is likely to have been incorrect as a matter of probability. The highlighting by the Minister in the instant case of the conflict between the asylum application and the return to Sudan a mere eleven months following the withdrawal of the asylum application, which by definition must have asserted a claim of persecution if returned to Sudan, is reasonable and rational and the decision is factually correct.

28. It is impossible in my view to read the first sentence within the decision headed "recommendation" in the manner contended for by the applicant and I am satisfied that the words "along with" connects that part of the sentence that went before those words with that part that went after such words.

29. Whether or not old issues or convictions are relevant is a matter for the Minister. In *Hussain*, the relevant incidents occurred in 2003 and 2005 with the decision being made in 2010. In *M.A.D.,* the incident occurred in 2008 and the decision was made in 2013. In neither case was the applicant successful.

30. There is no necessity for a point to point guide to be afforded by the Minister to the applicant to ensure that the applicant's future application would be successful.

31. The applicant's suggestion that by reason of lack of criminality it is unreasonable to arrive at a conclusion of a lack of good character is not consistent with the case law including the case of *Hussein* relied upon by the applicant and indeed the case of *S.H.* also relied upon by the applicant.

32. The applicant asserts that in the circumstances, the Minister's decision is disproportionate however, given the absolute nature of the discretion and the jurisprudence cited herein, in my view, proportionality is quintessentially a matter for the Minister. It is noted that this argument also failed in *A.M.A.* (see para. 59 thereof).

33. Reasons were afforded which, although brief, were factually correct and sustainable.

34. There is no evidence of, nor is there any assertion in the statement of grounds or submissions made on behalf of the applicant that the Minister acted arbitrarily, capriciously or in an autocratic fashion.

35. In the circumstances the applicant's application to quash the Minister's decision on the 3rd June 2016 is refused.