THE HIGH COURT

2018 No. 260 JR

Between:

MEHDI KHODDAM VISHTEH

Applicant

– and –

MINISTER FOR JUSTICE AND EQUALITY

Respondent

JUDGMENT of Mr Justice Max Barrett delivered on 4th March, 2019.

1. The court notes the Minister's wide discretion in the area of naturalisation, as acknowledged, *inter alia*, in *Nsungani v. MJE* [2018] IEHC 758 and the cases referred to therein.

2. Following on *Rodis v. MJE* [2016] IEHC 360, and pursuant to s.15 of the Irish Nationality and Citizenship Act 1956, as amended (the 'Act'), Mr Vishteh, an embassy employee, has applied for naturalisation. (References to statutory provisions hereafter are to provisions of the Act). By decision of the Minister of 20.02.2018 (the 'Decision'), Mr Vishteh's application "*has been deemed ineligible*". In the Decision (addressed to Mr Vishteh's solicitors), the Minister states: "*For…residence to be…reckonable…your client would be required to submit a letter from the embassy stating dates of employment at the embassy, the letter must…be signed and dated by the embassy. As your client is unable to provide this letter, your client does not have the required reckonable residence.*"

3. The last-quoted sentence is, unfortunately, irrational. It does not follow in logic that because Mr Vishteh cannot provide what might be styled the 'dates of employment' letter, he does not have the required reckonable residence. However wide the discretion of the Minister in the naturalisation context, he cannot take decisions that are, on their face, irrational. If he could, that would allow him to proceed arbitrarily/capriciously/autocratically, i.e. contrary to how case-law contemplates.

4. Section 17 provides that "*An application for a certificate of naturalisation shall be…(b) accompanied by…(ii) such evidence…to vouch the application as the Minister may require*". Consistent with same, the Minister sought the 'dates of employment' letter referenced in the Decision. In pre-Decision correspondence between the parties, it was made apparent to the Minister that, for whatever reason, the embassy where Mr Vishteh works is unwilling to provide a 'dates of employment' letter. It is not contended that Mr Vishteh is at fault in this regard. A literal interpretation of s.17(b)(ii) suggests that the Minister could continue to seek what, through no apparent fault of Mr Vishteh, is impossible for him to provide. But at least three difficulties present for the Minister in this regard:

> (1) for the Minister to insist on the provision of something that, through no apparent fault of an applicant, proves impossible for him to provide, is to descend into the arbitrary/autocratic, effectively requiring Mr Vishteh to do the impossible if he wishes his application to be in with a chance of success.
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> (2) a literal interpretation of s.17(b)(ii) yields an absurdity insofar as it can be read as allowing the Minister to seek the impossible. A purposive interpretation must therefore be adopted. The purpose of s.17 is to empower the Minister to require such evidence as he deems appropriate to vouch a naturalisation application; it is not a purpose of s.17 (or the Act) to allow the Minister to seek that which is, or proves to be, through no apparent fault of an applicant, impossible to provide.
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> (3) if, in circumstances where a document required under s.17(b)(ii) is or proves to be, through no apparent fault of an applicant, impossible to provide, the Minister must, if he is not to act arbitrarily/autocratically, proceed to consider an application by reference to such other evidence as the applicant has placed before him. (On the face of the Decision it does not appear that such other evidence as Mr Vishteh has provided has been weighed/assessed by the Minister).

5. Two further points arise. (A) In requesting the 'dates of employment' letter, the Minister was not fettering his discretion. He was but doing what s.17(b)(ii) allows. However, once the said letter proved, through no apparent fault of Mr Vishteh, to be impossible for him to provide, the factors identified above came into play. (B) No breach by the Minister of the duty of candour presents. There is nothing in the evidence to suggest that he has not disclosed to the court all materials in his possession relevant to the Decision.

Conclusion

6. Mr Vishteh seeks, *inter alia*, (1) an order of *certiorari* quashing the Decision, and (2) a declaration that it is not a condition to an application made pursuant to s.15 that a person lawfully resident in Ireland by virtue of employment at a diplomatic mission may only demonstrate reckonable evidence in the form of a bespoke letter from the relevant embassy. The court is satisfied to grant relief (1). It will also grant a declaration that where, as here, (a) in an application made under s.15 by a person lawfully resident in Ireland by virtue of his employment at a diplomatic mission, (b) it is or proves to be impossible for such person, through no apparent fault of his own, to provide certain evidence sought by the Minister pursuant to s.17(b)(ii), (c) the Minister is bound, before making a decision pursuant to s.15, to consider the totality of the available evidence placed before him by/for such person.