

THE HIGH COURT

2018 No. 634 JR

Between:

H.M. ASHIQUE

Applicant

– and –

MINISTER FOR JUSTICE AND EQUALITY

Respondent

JUDGMENT of Mr Justice Max Barrett dated 3rd April, 2019.

1. The court reiterates its observations in *Talla v. MJE* [2019] IEHC 129, para. 1.

2. By letter of 03.05.2018, the Minister refused Mr Ashique's naturalisation application, attaching a departmental assessment of same which reads, *inter alia*: "**Recommendation**: The relevant information related to non-compliance by the applicant with the laws of the State is attached...Given the nature of the offences resulting in court convictions I am not satisfied that the applicant is of good character...". The "relevant information" reads, *inter alia*, as follows:

Court Date	Offence	Result
06/06/2017	Liquor Licensing	Fine: €500
	Trading Without Licence (Shebeen)	Probation Act, s.1(1) applied
	Liquor Licensing	
17.01.2017	No Insurance (User)	Dismiss
	Failure to Produce Insurance Certificate	

3. Two points arise. (1) Under s.1(1) of the Probation of Offenders Act 1907, a probation order can issue "*without proceeding to conviction*". Counsel for Mr Ashique made clear that his client has received one conviction, stating, *e.g.*, as to the application of the Act of 1907, "*It is not a conviction. It is probation*". (2) Dismissal *per se* would not normally be "*relevant information related to non-compliance...with the laws*": in truth, it points to the contrary, especially when coupled with the presumption of innocence. If the Minister was inclined to the view (and this does not appear to arise here) that, despite dismissal, a doubt lingered as to an applicant's character by reference to the facts that yielded the dismissal, fair procedures would require that this be put to that applicant before the application was decided.

4. Three questions arise from the statement of grounds: (1) did the Minister reach his decision on a factually incorrect basis? (2) is his finding as to character unreasonable/irrational on the facts? (3) is his rationale/reasoning sufficiently clear on the face of the decision by reference to relevant circumstances? As to (1), the "*Recommendation*" mentions "*offences [plural]*" and "*convictions [plural]*"; yet Mr Ashique has suffered but one conviction. Also, the offence for which the €500 fine was imposed, being, it seems, an offence under the Spirits Act 1880, s.146, attracts a maximum €125 fine. So the Minister proceeded on the mistaken understanding that Mr Ashique had more than one conviction and was convicted of an offence that could attract a €500 fine. Mr Ashique is entitled to, and did not get, a decision grounded on the facts actually presenting and a proper understanding of same. Neither (2) nor (3) requires to be addressed, given the findings as to (1).

5. The court will grant an order of *certiorari* in respect of the refusal and remit the matter for fresh consideration.