THE HIGH COURT
JUDICIAL REVIEW

[2017 No. 483 JR]

BETWEEN

SIDNEI DE OLIVEIRA MARTINS

APPLICANT

AND
THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr Justice David Keane delivered on 2 May 2018

Introduction
1. The applicant ('Mr Martins') seeks, principally, an order of certiorari quashing the decision of the respondent ('the Minister'), dated 13 March 2017, refusing to grant him a certificate of naturalisation under s. 15 of the Irish Nationality and Citizenship Act 1956, as amended ('the Act of 1956') because the Minister was not satisfied that Mr Martins was a person of good character as he had been in continuous breach of the immigration law of the State for several years prior to his application and remained so for some months afterwards. In addition to an order of certiorari, Mr Martins seeks a declaration that the said decision was made in breach of fair procedures and natural and constitutional justice.

2. Mr Martins did not apply for leave to seek judicial review of the Minister's decision until 9 June 2017, almost three months later. As it was then the Whit Vacation, the application was made to the duty judge and not in the Asylum List in the ordinary way. By Order made on that date, O'Connor J granted the applicant leave to seek the reliefs already described on the grounds set forth in his statement of grounds.

Background
3. Mr Martins was born on 28 February 1991 and is a national of Brazil. His father and mother, who are also both Brazilian nationals, arrived in Ireland from Brazil in 2005. His father obtained a work permit and his mother received permission to remain as his father's dependent.

4. It seems that Mr Martins arrived in the State from Brazil in 2008. He received the first of a succession of 'stamp 3' residence permissions on 5 May 2008. The Irish Naturalisation and Immigration Service ('INIS') section of the Department of Justice website includes a web page on 'permissions, stamps and conditions.' It provides, as an example of a situation in which a 'stamp 3' permission will be given, where an applicant has permission to join a non-EEA/EU/Swiss family member who has a work permit. In this instance, it would appear that Mr Martins was granted permission, as a minor, to join his father, who had a work permit, and his mother. In the summary of conditions attached to a 'stamp 3' residence permission, the relevant web page states: 'You cannot work or engage in any business, trade or profession.'

5. Mr Martins applied for naturalisation under cover of a letter from his solicitors, dated 22 December 2015. That letter was not exhibited to the affidavit he swore on 8 June 2017 to ground his application for leave to seek judicial review, although it was subsequently exhibited on behalf of the Minister.

6. In the completed application form enclosed with that letter, Mr Martins had filled out the section on 'means of support' by stating that he was employed. In response to the requirement to provide the name and address of his employer, he had handwritten the single word 'WERS', before confirming in response to the next question that he had been employed there as a mechanic from 16 August 2012 to date.

7. In addition to the required application form, appropriate identification documentation and necessary payment, Mr Martins' solicitors also enclosed with that letter as 'supporting documents': a letter from his employer Wheeley Environmental Refuse Services Limited (or 'WERS'); copies of his payslips between August and December 2015; a copy of his most recent P60; copies of his bank statements for the preceding six months; a copy of each of the residence permissions stamped on his passport since his arrival in the State; and a printout of a screenshot from the Irish Naturalisation and Immigration Service ('INIS') web page containing its '*naturalisation residency calculator'* into which details of Mr Martins' eight consecutive residency permission stamps had been entered.

8. That was a remarkable combination of documents to submit in support of Mr Martins' application for naturalisation.

9. Each of the eight consecutive residence permissions stamped on Mr Martins' passport recites, in material part, that it is a permission 'to remain in Ireland on condition that the holder does not enter employment'. The printed screenshot of Mr Martins' entries on the naturalisation residency calculator confirms that each of the eight permissions he obtained was a 'stamp type 3'.

10. And yet, Mr Martins' application was also accompanied by a letter, dated 9 December 2015, from the financial controller of a waste services company, confirming that Mr Martins had been in its employment since 16 August 2012 and was anticipated to remain so for the foreseeable future. For good measure, a print out of the payslips that Mr Martins had received from that company each week between 28 August and 4 December 2015 was also included; as was Mr Martins' P60 certificate of pay, tax, pay-related social insurance, universal social charge and local property tax for the year ended 31 December 2014; and copies of his bank account statements for the period between 12 December 2014 and 13 October 2015, evidencing his receipt of wages from the company during that period.

11. Section 11 of the '*Form 8 – application by a person of full age for naturalisation as an Irish citizen*', prescribed in the schedule to the Irish Nationality and Citizenship Regulations 2011 (S.I. No. 569/2011), is headed 'Background' and is largely directed towards the criminal antecedents, if any, of the applicant concerned whether in Ireland or any other country. However, quite apart from accomplished criminal convictions, it commences with the question at section 11.11: 'Have you ever committed any offences against the laws of Ireland or any other country?', beside which the applicant ticked the box marked 'No.' Similarly, the final question (11.1) in that section is: 'Have you engaged in any other activities that might indicate that you may not be considered a person of good character?' beside which the applicant, once again, ticked the box marked 'No.'

12. The cover letter from Mr Martins' solicitors went on to state:

> 'We affirm that we have previously acted in an application for naturalisation for the applicant's mother, Wania Aparacida

> De Oliveira Martins and we now enclose herewith a certified copy of the relevant naturalisation certificate. As indicated in Section 12.1 our client's application is based on his own residency and not his Irish associations and [we] write simply to put you on notice that his mother has been long term resident here and is now a naturalised Irish citizen.'

13. Section 12 of the application form is headed 'Application based on Irish associations', and contains the following requirement, at section 12.1: 'If your application is based on your Irish descent or Irish associations, please give details below.' On his application form, the applicant left the box provided for that purpose entirely blank.

14. In summary, as part of Mr Martins' application for naturalisation (which he expressly chose to base on the duration of his residence in the State and, by necessary implication, his good character, under s. 15 of the Act of 1956, and not on his Irish associations, under s. 16 of that Act), without comment or explanation, his solicitors provided the INIS with extensive evidence that for several years past he had been working in direct breach of his residence permission and was at that time continuing to do so.

15. It is just as remarkable, if not more so, that the unit or team within the INIS that dealt with Mr Martins' naturalisation application did not register that fact. Instead, in subsequent correspondence, it merely raised technical issues concerning the execution of the necessary statutory declaration and the form of signature on Mr Martins' Brazilian passport, which issues Mr Martins duly addressed.

16. On 6 September 2016, the INIS wrote to Mr Martins informing him that the Minister proposed to grant his application for naturalisation, subject to his successful completion of certain administrative formalities, including paying the appropriate fee and also making the necessary declaration of fidelity to the nation and loyalty to the State at a citizenship ceremony.

17. Then, on 27 September 2016, the penny finally dropped for the INIS when a Garda immigration officer carried out a joint inspection with an authorised officer or inspector of the Workplace Relations Commission ('WRC'), formerly the National Employment Rights Authority ('NERA'), at the premises of Mr Martins' employer. Although Mr Martins was not rostered to work that day, his employment ceased immediately afterwards. On the very same day, the INIS wrote again to Mr Martins, informing him that his application for naturalisation was again under review and directing him not to forward payment of the fee or any of the outstanding documents referred to in its previous letter.

The decision under challenge

18. The INIS wrote to Mr Martins on 13 March 2017, informing him of the Minister's decision, in the exercise of her absolute discretion, to refuse his application for a certificate of naturalisation because she was not satisfied that he was of good character. A copy of the submission prepared for the Minister, with the Minister's decision annotated upon it was enclosed. That submission recites:

> 'Comments: [Mr] Martins' application for a certificate of naturalisation was approved by the Minister on the 05/07/2016. An approval letter issued to the applicant on the 06/09/2016. However additional information was received advising that the applicant had been in breach of the immigration laws of the State since 2012. He has been working in the State since 2012 while resident here on a Stamp 3 basis. His permission to remain [under] stamp 3 [conditions] prohibits him from working in the State.
>
> Recommendation: Given the applicant's disregard for the conditions attached to his permission to obtain employment (sic) in the State, and the State's legitimate interests in ensuring that the integrity of its immigration system and laws are not undermined, I am not satisfied that the applicant is of good character and therefore I recommend the Minister withdraw her intention to grant a certificate of naturalisation and should refuse citizenship in this case.'

Background to the decision

19. After some initial confusion concerning when the INIS (and, by extension, the Minister) first became, or ought to have become, aware that Mr Martins was, and had been for some years, in breach of the employment prohibition condition of his permission to reside in the State, Raymond Murray, an assistant principal officer in the Citizenship Division of the Department of Justice and Equality, swore an affidavit on 7 December 2017, verifying the facts set out in the Minister's amended statement of opposition.

20. In it, Mr Murray avers that, on 27 September 2016, a civil servant in the Citizenship Section of the Department received a telephone call from a Garda immigration officer informing the Department of what had been discovered that day in the course of an inspection at the premises of Mr Martins' employer. The Department requested the provision of the relevant information in writing and received an e-mail the following day setting it out. Mr Murray exhibits a copy of both the note of that telephone call taken by the civil servant concerned and the subsequent e-mail. The information in each is consistent with the details of his employment that Mr Martins had already provided with his naturalisation application, save that the Garda immigration officer's e-mail also records that Mr Martins was in breach of an obligation – presumably, that imposed under s. 9 of the Immigration Act 2004 - to inform the appropriate immigration registration officer that he had changed address.

21. Mr Murray avers that the Minister formed the opinion that Mr Martins was not of good character as he had been working in the State for a period of in excess of four years, whilst on a 'stamp 3' permission, which prohibited him from working in the State, and that she did so 'having considered all documents on file, including the documents submitted by [Mr Martins] and the email from [the garda immigration officer].'

The law

22. Section 15(1) of the Act of 1956 sets out what s. 15(2) describes as the 'conditions for naturalisation' in the following terms:

> '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-
>
> (a) (i) is of full age, or
>
> (ii) is a minor born in the State;
>
> (b) is of good character;
>
> (c) has had a period of one year's continuous residence in the State immediately before the date of the application and, during the eight years immediately preceding that period, has had a total residence in the State amounting to four years;

(d) intends in good faith to continue to reside in the State after naturalisation; and

(e) has, before a judge of the District Court in open court, in a citizenship ceremony or in such manner as the Minister, for special reasons, allows_

(i) made a declaration in the prescribed manner, of fidelity to the nation and loyalty to the State, and

(ii) undertaken to faithfully observe the laws of the State and to respect its democratic values.'

23. Section 16 of the Act of 1956 is relevant to one of the arguments raised by Mr Martins. It states in relevant part:

'The Minister may, in his absolute discretion, grant an application for a certificate of naturalisation in the following cases, although the conditions for naturalisation (or any of them) are not complied with:

(a) where the applicant is of Irish descent or Irish associations;

…

(2) For the purposes of this section a person is of Irish associations if-

(a) he or she is related by blood, affinity or adoption to, or is the civil partner of, a person who is an Irish citizen….'

The grounds of challenge

24. While Mr Martins enumerated eight separate grounds of challenge to the Minister's refusal to grant him a certificate of naturalisation in the statement grounding his application for judicial review, those grounds have been prudently condensed into two broad arguments in the written submissions filed on his behalf. The first is that the Minister failed to consider relevant matters when determining Mr Martins' application for a certificate of naturalisation, which failure was both unreasonable and a breach of Mr Martins' entitlement to natural and constitutional justice and fair procedures. The second is that the Minister reached her decision on Mr Martins' application in partial reliance on information that he was not given an opportunity to comment upon or address, and thus did so in breach of his entitlement to natural and constitutional justice and fair procedures.

25. The relevant matters that Mr Martins contends the Minister failed to consider in determining his application for naturalisation are essentially threefold. The first is that, at the time when he first submitted his application for naturalisation, he had disclosed through his solicitors, if not the fact of his long-standing, continuing and prospective breach of an employment prohibition condition attached to his residence permission, at least 'the information' from which that could be readily inferred. The second is that his employment had ceased immediately after the joint inspection of his workplace by An Garda Síochána and the WRC on 27 September 2016. The third is that his mother had recently become a naturalised Irish citizen and that he was, thus, entitled to claim Irish associations and to apply accordingly under s. 16 of the Act of 1956 for a waiver of any of the usual naturalisation conditions under s. 15 of that Act.

26. The information that Mr Martins contends he should have been given an opportunity to comment upon or address is that which was contained in the e-mail of 28 September 2016, already described, from the Garda immigration officer to the Department.

27. Before dealing directly with each of those arguments, it is necessary to make some general observations concerning: first, the nature and extent of Mr Martins' breaches of the immigration law of the State; second, the meaning of 'good character' for the purposes of s. 15 of the Act of 1956; third, the scope of the Minister's discretion to grant or withhold a certificate of naturalisation under the Act of 1956; and fourth, as the obverse of the preceding issue, the level of fair procedures that applies to an application for the grant of such a certificate.

Analysis

i. Mr Martins' breaches of immigration law

28. In the affidavit that he swore on 8 June 2017 to ground the present application, Mr Martins accepts that on 5 May 2008 he was issued with permission to remain in the State on 'stamp 3' conditions, which permission was extended periodically over the course of the following eight years. Indeed, he exhibits a photocopy of two different Brazilian passports upon which appear eight separate permission to remain stamps, covering various parts – though not all – of the period between 5 May 2008 and 19 August 2016. On each of those eight stamps, permission to remain is expressly stated to be 'on conditions that the holder does not enter employment.'

29. In the same affidavit, Mr Martins acknowledges that he has 'at times' engaged in employment since his arrival in the State, before going on to confirm that he was in full time employment as a mechanic with a waste disposal company between August 2012 and September 2016, thereby implying that he engaged in employment even prior to August 2012.

30. Mr Martins avers that he did not appreciate the seriousness of engaging in employment without obtaining the appropriate form of permission and adds that he was anxious to earn a living and enjoyed the sense of fulfilment that his work gave him.

31. What are the legal implications of a breach of an employment prohibition condition of a permission to remain in the State?

32. From the perspective of the criminal law, the potential implications are as follows. Under s. 2(1) of the Employment Permits Act 2003 ('the 2003 Act'), as amended, it is an offence for a foreign national to enter the service of an employer in the State, or be in employment in the State, except under an employment permit granted by the Minister for Enterprise, Trade and Employment that is in force. The penalty on summary conviction of an offence under that sub-section is a fine of up to €3,000 or a term of imprisonment of up to 12 months, or both. Further, and while this could not be the concern of someone in Mr Martins' position, it is an offence under s. 2(2) of the 2003 Act, as amended, for a person to employ a foreign national in the State except in accordance with an employment permit granted under s. 8 of the 2006 Act that is in force.

33. The immigration law implications are also significant. Under s. 5(1) of the Immigration Act 2004 ('the 2004 Act'), no non-national may be in the State other than in accordance with the terms of any permission given to him or her by or on behalf of the Minister. Under s. 5(2) of that Act, a non-national who is in the State in contravention of *subsection* (1) is for all purposes unlawfully in the State. Section 16A(1) of the Act of 1956 provides, in material part, that a period of residence in the State in breach of s. 5(1) of the 2004 Act shall not be reckoned when calculating a period of residence for the purposes of granting a certificate of naturalisation.

ii. the meaning of 'good character' for the purposes of the s. 15 of the Act of 1956.

34. In *Hussain v. Minister for Justice* [2013] 3 I.R. 257, Hogan J explained (at 263):

> '[14] There is no settled or fixed interpretation of the words "good character". Applying the standard principle of *noscitur a sociis*, these words accordingly take their meaning according to the relevant statutory context and general objects of the legislation: see, e.g., the comments of Henchy J. in *Dillon v. Minister for Posts and Telegraphs* (Unreported, Supreme Court, 3rd June, 1981). It is implicit from the general tenor of s. 15 that the section is designed to empower the Minister to grant naturalisation to persons who have resided here for an appreciable period of time and who intend to do so in the future. Furthermore, the fact that s. 15(e) requires the applicant to make a declaration - generally in open court before a judge of the District Court - of "fidelity to the nation and loyalty to the State" suggests that such a person must be prepared to make a public commitment that they will discharge ordinary civic duties and responsibilities, given that the these words are themselves borrowed directly from Article 9.2 of the Constitution of Ireland 1937.
>
> [15] It is against this background that the words "good character" must be understood and measured. Viewed in this statutory context, it means that the applicant's character and conduct must measure up to reasonable standards of civic responsibility as gauged by reference to contemporary values. The Minister cannot, for example, demand that applicants meet some exalted standard of behaviour which would not realistically be expected of their Irish counterparts. Nor can the Minister impose his or her own private standard of morality which is isolated from contemporary values.'

35. In this case, to that dictum must be added the observation that, in addition to the necessary public commitment to discharge ordinary civic duties and responsibilities, evidenced by the requirement under s. 15(e) of the 1956 Act to pledge "fidelity to the nation and loyalty to the State", there is a further requirement under that sub-section to undertake 'to faithfully observe the laws of the State', strongly suggesting that a failure to do so, or certainly a persistent failure to do so over several years, is fundamentally inconsistent with the concept of 'good character' properly construed.

36. As Lang J observed in *Hiri v Secretary of State for the Home Department* [2014] EWHC 254 (Admin) (at para. 35), in a passage approved by Mac Eochaidh J in *GKN v The Minister for Justice and Equality* [2014] IEHC 478 (Unreported, High Court, 22nd October, 2014) (at para. 16):

> 'The statutory test [of "good character" for the purposes of the British Nationality Act 1981] is not whether applicants have previous criminal convictions – it is much wider in scope than that. In principle, an applicant may be assessed as a person "of good character", for the purposes of the 1981 Act, even if he has a criminal conviction. Equally, he may not be assessed as a person "of good character" even if he does not have a criminal conviction.'

iii. the scope of the Minister's discretion under s. 15 of the Act of 1956 and the level of the requirements of natural and constitutional justice that the exercise of that discretion attracts

37. In the written and oral legal submissions made on his behalf, Mr Martins was anxious to emphasise the by now well-settled principle that the exercise of the Minister's 'absolute discretion' is subject to the requirements of natural and constitutional justice; *Mallak v Minister for Justice* [2012] 3 IR 297 at 313). The Minister accepts that the exercise of that discretion cannot be arbitrary, capricious or autocratic; *Mallak*, just cited, and *Hussain v The Minister for Justice* [2013] 3 I.R. 257 at 264. Yet it is difficult not be struck by the complete failure in Mr Martins' submissions to recognise or acknowledge the limited scope of the said requirements as they apply to the exercise of the absolute discretion to grant or withhold the privilege of naturalisation, as an executive function.

38. In *A.M.A. v Minister for Justice and Equality* [2016] IEHC 466, Humphreys J explained the scope of the Minister's discretion in the following terms:

> '23. The 1956 Act describes the Minister's discretion as "*absolute*" (s. 15(1)), which means not literally unconstrained but as absolute as it is possible to be in a system based on the rule of law. In practice this is a very wide discretion: see *A.B. v. Minister for Justice, Equality and law Reform* [2009] IEHC 449 *per* Cooke J. at para. 19; *Tabi v. Minister for Justice, Equality and Law Reform* [2010] IEHC 109 (Unreported, High Court, Cooke J., 16th April, 2010); *M.A.D. v. Minister for Justice and Equality* [2015] IEHC 446 (Unreported, High Court, Stewart J., 14th July, 2015).
>
> 24. It is clear that in public law decisions, the extent of natural justice varies according to context (see my decision in *Z.K. v. Reception and Integration Agency* [2016] IEHC 20 (Unreported, High Court, 15th January, 2016), and that of Noonan J. in Hosford v. Minister for Social Protection [2015] IEHC 59 (Unreported, High Court, 6th February, 2015)). It is not a "one size fits all" doctrine. While some decisions, such as a conviction in the criminal process, or interference in the relationship between a parent and child, require the dial to be turned up to the maximum in terms of natural justice and fair procedures, other decisions involve a lower standard and indeed some decisions, such as the adoption of legislative measures, "political questions" or the exercise of managerial authority, do not attract fair procedures in any meaningful sense at all.
>
> 25. Naturalisation is a privilege and not a right. For many centuries, such decisions were reserved to the legislature. Obviously, fair procedures do not apply to a sovereign decision to decline to enact a particular piece of legislation. Schedule 2 to the Statute Law Revision Act 2009 and Sch. 2 to the Statute Law Revision Act 2012 list several hundred such naturalisation Acts enacted between 1558 and 1896. Thereafter, the grant of naturalisation has been an executive function, with only minimal regulation by the legislature.
>
> 26. While of course reasons for an adverse executive decision on naturalisation must be provided (*Mallak v. Minister for Justice, Equality and Law Reform* [2012] IESC 59 (Unreported, Supreme Court, 6th December, 2012) *per* Fennelly J. (Denham C.J., Murray, O'Donnell and McKechnie JJ. concurring); see also *O.T.A. v. Minister for Justice and Equality* [2016] IEHC 173 (Unreported, High Court, Faherty J, 15th April, 2016)), that was done in this case.
>
> 27. Insofar as additional stipulations of natural justice above and beyond reasons are required in the naturalisation context, any such additional requirements must be minimal and very much at the lower end of the scale of contextual fair procedures to which I have referred: see *Pok Sun Shum v. Ireland* [1986] I.L.R.M. 593 *per* Costello J. at p. 599, *Hussain v The Minister for Justice* [2011] 3 I.R. 257 *per* Hogan J. at p. 265, para. 21, *M.A.D. per* Stewart J. at paras. 35 to 39. Mr. O'Dwyer stresses that the naturalisation decision is important to the applicant, which I am sure it is. But given the nature of the executive power in issue, it would be inappropriate and indeed unhistorical to apply an exacting standard of review to ministerial decisions in this regard.
>
> 28. In short, 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 (such as a misrepresentation of the case against the application: *G.K.N. v. Minister for Justice and Equality* [2014] IEHC 478 (Unreported, High Court, Mac Eochaidh J., 22nd October, 2014)) 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.'

39. I regret to say that, in the written and oral submissions relied on by Mr Martins, no reference is made to the principles set out in the passage just quoted or to any of the relevant authorities insofar as they confirm the limited scope of the requirements of fair procedures that apply to naturalisation decisions. Those submissions refer instead to a range of authorities and to certain commentary on the scope of the requirements of fair procedures that apply to quite different situations involving the determination of rights and interests rather than the grant or refusal of a privilege such as that of naturalisation.

40. A gravely troubling aspect of the written legal submissions made on behalf of Mr Martins is the significant reliance they place on the *ex tempore* decision of the High Court in the case of *Ezeani v. Minister for Justice* [2005] IEHC 478 (Unreported, High Court (Hanna J), 11th October, 2005). That case involved the procedure under s. 8 of the Act of 1956 – now repealed - whereby, in prescribed circumstances, the spouse of an Irish citizen (otherwise than by naturalisation) could obtain Irish citizenship by way of a post-nuptial declaration accepting it. The applicants were a non-national husband and his Irish citizen wife. The husband had made the necessary post-nuptial declaration of acceptance of Irish citizenship but his application for citizenship on that basis had been refused as the Minister was not satisfied that he met the prescribed condition that he and his spouse were then living together as husband and wife, despite their adamant insistence that they were.

41. In his *ex tempore* judgment in that case, Hanna J found that the relevant process under s. 8 of the Act of 1956, while not equivalent to litigation *inter partes* or the conduct of a tribunal of inquiry, was nonetheless an inquisitorial one. Hanna J acknowledged that the Minister must have a certain degree of latitude in his conduct of the necessary inquiry, before continuing:

> 'Therefore, there is necessarily and understandably a large degree of inquisitive work done behind closed doors that, as a matter of ordinary course, a person whose application for citizenship is being considered will never get to see and may have no legal or constitutional entitlement to see such documents or statement or other material relied on in a decision which may be adverse to their rights. Where, however, the inquisitorial body becomes possessed with material of whatever nature, which is significantly damaging to an applicant to the extent that it weighs heavily against the applicant and the outcome he wished to achieve, then the pendulum must swing in favour of that applicant and the procedural response formalised accordingly.'

42. Hanna J went on to conclude that the pendulum had swung so far in favour of the applicant husband in that case that a facility should have been afforded to him to cross-examine persons who had provided information adverse to his claim that his marriage was a valid and subsisting one.

43. Mr Martins attempts to use this judgment as a springboard for the argument that he too was entitled to a broad panoply of procedural rights of the type considered in *Re Haughey* [1971] IR 217, comparable to those rights which must be accorded to persons potentially facing adverse findings by a tribunal of inquiry, as found by Hardiman J in *Murphy & Ors v Flood* [2010] 3 IR 136; or to a person whose appeal against the refusal of refugee status is before a statutory tribunal, as found by Clarke J in *Idiakheua v Minister for Justice & Anor* [2005] IEHC 150 (Unreported, High Court, 10th May, 2005).

44. That submission is gravely troubling because it ignores the subsequent decision of the Supreme Court in the same case - *Ezeani v Minister for Justice* [2011] IESC 23, (Unreported, 12th July, 2011) - reversing the decision of the High Court. Giving judgment on that appeal, Fennelly J (Denham and Hardiman JJ concurring), stated (at para. 40):

> '40. The Minister, when performing his function under section 8, is not performing a judicial function. He does not act as a tribunal of inquiry. The procedures mandated in the judgment of Ó Dálaigh CJ in In *Re Haughey*, cited above, related to the procedures of a tribunal of inquiry being conducted in public, where the appellant had been the subject of charges made against him in public, which reflected on his character and good name. They have no application to administrative procedures of the kind at issue here.'

45. And later, (at para. 45):

> '45. The rules of natural justice require the decision maker to give reasonable notice to the affected person of the substance of any matters being raised which are adverse to his interest. It is not necessary that the entire of every detail of the case against him be notified. The test is whether he has a fair opportunity to prepare himself and to respond.'

46. Paragraph 14 of Practice Direction HC-73 of 7 December 2017 on the *Asylum, immigration and citizenship list* expressly draws attention to the terms of paragraph 5.19 of the Code of Conduct of the Bar of Ireland, which states:

> 'In a civil case barristers must, at the appropriate time in the proceedings, inform the court of any relevant decision on a point of law and, in particular, of any binding authority or any applicable legislation of which they are aware and which the barrister believes to be on point whether it be for or against their contention.'

This is a matter to which it may be necessary to return in the context of the consideration of the appropriate ancillary orders consequent upon the present judgment.

iv. breach of the requirement to consider all relevant information as an aspect of constitutional justice?

47. Mr Martins submits that the Minister failed to consider the following matters relevant to his application for naturalisation:

> (i) that Mr Martins disclosed 'the information' regarding his breach of the employment prohibition condition of his residence permission when his application was submitted;
>
> (ii) that Mr Martins ceased working after the WRC/Garda immigration officer joint inspection of his workplace; and
>
> (iii) that Mr Martins is the son of an Irish citizen.

48. Mr Martins then argues that the failure to place those matters before the Minister amounted to a denial of his entitlement to constitutional justice, which vitiates the Minister's decision in this case, just as Mac Eochaidh J found that the failure to place certain

matters before the Minister vitiated a similar decision in *GKN v The Minister for Justice and Equality* [2014] IEHC 478 (Unreported, High Court, 22nd October, 2014).

49. But there are several difficulties with that argument.

50. To put those difficulties in context, it is necessary first to consider the facts of, and decision in, *GKN*. That was another case concerning a challenge to a decision by the Minister to refuse to grant a certificate of naturalisation on the ground that the applicant had failed to establish good character, because he had been convicted in the District Court almost four years prior to his application of an offence of failing to stop at the scene of an accident, contrary to s. 106 of the Road Traffic Act 1961, as amended, for which he was fined €300, disqualified from driving for 2 months and directed to pay compensation of €700.

51. Unlike Mr Martins, the applicant had expressly acknowledged his prior criminal conduct in his application for naturalisation, which prompted the Department to write to his legal representatives seeking further information about the circumstances of his offence, in response to which those solicitors wrote back providing details of a number of mitigating circumstances – primarily, that the accident involved a glancing collision with a parked vehicle, causing only minor damage and no injury to any person.

52. However, the recommendation later prepared for the Minister merely referred to the bare details of conviction and penalty set out in an accompanying Garda report before concluding: 'Given the serious nature of the offence, I would not recommend this application for a certificate of naturalisation.'

53. A key finding made by Mac Eochaidh J was that, although it was submitted on behalf of the Minister that regard was had to all of the relevant material, including the correspondence from the applicant's solicitors setting out the mitigating circumstances of the offence, there were no averments in the affidavits before the court to that effect, leading to the conclusion that, on the balance of probabilities, the Minister's decision was based solely upon two documents comprising the submission made to him by his official and the accompanying Garda report, omitting reference to those mitigating circumstances On that basis, Mac Eochaidh J held it was a denial of the applicant's entitlement to constitutional justice not to place all of the relevant information before the Minister.

54. The principal – indeed, insuperable – difficulty that Mr Martins faces in attempting to bring his claim within the ratio decidendi of the decision in *GKN* is that, in this case, there is an express averment – in the affidavit sworn on behalf of the Minister by Mr Murray – that the Minister made her decision on Mr Martins' application 'having considered all documents on file, including the documents submitted by [Mr Martins] and the email from [the garda immigration officer].' Thus, the Minister would have been aware of what was, and what was not, disclosed by Mr Martins in making his naturalisation application about his character, his employment, the conditions of his residence permission and his mother's recent naturalisation as an Irish citizen. The Minister would also have been aware of the pertinent findings of the WRC/Garda Síochána joint inspection of Mr Martins' workplace on 27 September 2016.

55. In *GK v. Minister for Justice* [2002] 2 IR 418 (at 426-7), the Supreme Court (per Hardiman J, Denham and Geoghegan JJ concurring) pointed out that a person claiming that a decision-making authority ignored representations made to it, contrary to its express statement that it did not, must produce some evidence, direct or inferential, of that proposition before he can be said to have even an arguable case. Here, Mr Martins has identified no such evidence.

56. A further difficulty with Mr Martins' argument on this point is that the close analogy he seeks to draw between the information that was not placed before the Minister in *GKN* and that which he claims - wrongly, as I have found - was not placed before the Minister in this case is entirely unconvincing.

57. In *GKN*, the information concerned was obviously and directly relevant to the issue that formed the basis of the Minister's decision; it was that of the applicant's character as revealed by the specific conduct that led to his conviction, fine and disqualification for failure to stop at the scene of an accident, contrary to s. 106 of the Road Traffic Act 1961, as amended.

58. In this case, rather unsatisfactorily, Mr Martins does not identify the relevance of each of the three separate pieces of information that he contends the Minister wrongly failed to consider, leaving the court to infer what that relevance might be.

59. In a very careful piece of draftsmanship, Mr Martins' legal representatives identify the first piece of relevant information that they contend the Minister wrongly failed to consider as Mr Martins' disclosure in his application of 'the information' establishing that he was in breach of the conditions of his residence permission.

60. While Mr Martins' submissions on this point are opaque, it seems to me the court is being invited to infer two things about that information. The first is that, in including it in his application for naturalisation, Mr Martins was candidly and forthrightly owning up to, rather than inadvertently disclosing, his longstanding and continuing breach of the employment prohibition condition of his permission to remain in the State. And following on from that, the second is that the Minister failed in her obligation to consider that disclosure as a frank admission by Mr Martins of his unlawful conduct, and thus a factor mitigating its seriousness, as part of her overall assessment of Mr Martins' character.

61. Unfortunately, it is simply not possible to view matters in that way (if that is what I am being asked to do) for several reasons. First, as already noted above, the evidence before me is that the Minister did consider the documents on file, including the documents submitted by Mr Martins.

62. Second, while Mr Martins did provide information capable of establishing his unlawful conduct, he did not acknowledge or admit it in his application form, answering 'no' to the questions whether he had ever committed any offence against the laws of Ireland or whether he had ever engaged in any other activities that might indicate he may not be considered a person of good character, before making a statutory declaration that those particulars were true and that he conscientiously believed them to be true.

63. Third, the cover letter that accompanied Mr Martins' naturalisation application (but which he did not disclose in mounting these proceedings) states expressly that Mr Martins was basing it on his period of residence within the State and was not seeking an 'Irish associations' waiver in that regard through his mother's recent naturalisation as an Irish citizen. Yet, under s. 16A of the Act of 1956, a period of residence in the State cannot be reckoned for the purpose of a naturalisation application if it is in contravention of s. 5(1) of the Immigration Act 2004, whereby no non-national can be in the State other than in accordance with the terms of any permission given to him, and, under s. 5(2) of the 2004 Act, a non-national who is in the State in contravention of s. 5(1) is for all purposes unlawfully present in the State.

64. Thus, to accept Mr Martins' application as including an informed admission of unlawful conduct would be to render the said statement a contradiction in terms, whereby in applying for a certificate of naturalisation based on his asserted good character and

prior lawful residence in the State, Mr Martins was admitting that he was, and for several years had been, in criminal breach of the State's immigration law and, hence, unlawfully resident here.

65. Fourth, as a mitigating factor, little or no weight could attach to an admission concerning not merely past unlawful conduct but also present - and anticipated future - unlawful conduct. Yet that is what Mr Martins' application and the documentation accompanying it disclosed about his past, present and anticipated future employment in breach of the express terms of his residence permission. And Mr Martins now admits that, even after the submission of his application, he did indeed continue to work in breach of that permission until, almost nine months later, An Garda Síochána and the WRC conducted a joint inspection at his workplace, effectively bringing his employment there to an end.

66. Fifth, the careful language used by Mr Martins in his grounding affidavit stops short of any positive averment that the information provided in, and with, his naturalisation application was intended to be an admission of unlawful conduct.

67. For those reasons, on the preponderance of the evidence before me I am quite satisfied that Mr Martins and his legal representatives provided the information establishing that he was in breach of the conditions of his residence permission entirely unwittingly. Details of his various residence permissions were provided as evidence of his period of residence in the State and details of his employment record were provided to evidence his good character. Neither Mr Martins, his solicitor, nor the Minister appear to have grasped the significance of that combination of information for some time afterwards. It follows that, while the Minister's initial failure to do so reflects no credit upon the naturalisation unit within the Department of Justice, Mr Martins' unwitting disclosure of it does not entitle him to any credit either.

68. And that conclusion entirely undermines the other limb of Mr Martins argument on this point. In his statement of grounds, he points to the statement in the submission on his application prepared for the Minister on 3 October 2016 that 'additional information was received advising that [Mr Martins] has been in breach of the immigration laws of the State since 2012.' Mr Martins submits that, in view of the information that had already been disclosed in his naturalisation application, the information that he had been in breach of the immigration law of the State since 2012 was not 'additional' information in the sense of being 'new' information, so that the description and consideration of it as such amounted to a breach of his entitlement to constitutional justice.

69. The fact that there had been a joint inspection of Mr Martins' workplace by An Garda Síochána and the WRC on 27 September 2016, which had separately established that Mr Martins had been working in breach of the conditions of his residence permission was certainly new information. Even if the 'information' concerned is more narrowly construed as being simply that Mr Martins was working in breach of his residence permission, the question of whether the term 'additional information' can be properly interpreted to mean 'other information to the same effect' or must be limited to mean 'new or different information' may be of interest to linguists but it is of no relevance here.

70. In bringing these proceedings, Mr Martins expressly admits that he was, and had been for some years, in breach of the employment prohibition condition of his residence permission when his application for naturalisation was submitted on 22 December 2015 and that he was still in breach of that condition more than nine months later on 27 September 2016 when an inspection was carried out at his workplace. The failure of the naturalisation unit in the Minister's department in December 2015 to grasp what was obvious to a garda immigration officer reporting through that unit to the Minister in September 2017 did not exempt Mr Martins from the immigration law of the State. It did not confer an immunity upon him in respect of any breach of that law. It did not give rise to any estoppel against the refusal of his naturalisation application and it did not confer any right, entitlement or legitimate expectation upon him to the grant of that application.

71. The second piece of relevant information that Mr Martins contends the Minister should have considered, but didn't, is that Mr Martins ceased working after the inspection of his workplace on 27 September 2016. In advancing that claim, Mr Martins again relies on a close grammatical analysis of the statement in the submission originally prepared for the Minister on 3 October 2016 that 'additional information was received advising that the applicant has been in breach of the immigration law of the State since 2012.' Mr Martins submits, in effect, that the use of the *present perfect continuous* verb tense, as opposed to the *present perfect tense*, operated to convey to the Minister that Mr Martins was still then in breach of the State's immigration law when that submission was prepared on 3 October 2016, whereas his employment had ceased on the date of the inspection six days earlier.

72. The implication of that argument appears to be that the failure to consider giving Mr Martins, who by then had been in full time employment for over four years in continuous breach of the conditions of several successive residence permissions, appropriate credit for having ceased employment six days earlier amounted to a breach of his entitlement to constitutional justice.

73. I cannot accept that argument for several reasons. The first is that the uncontroverted evidence before the court establishes that the Minister made her decision having considered all of the documents on file, including the email from the Garda immigration officer who participated in the joint inspection of Mr Martins' workplace. No sensible person who read that e-mail could have assumed that Mr Martins would have continued in his unlawful employment after that inspection occurred; or that his employer could or would have continued to unlawfully employ him; or that the WRC or An Garda Síochána would have permitted that to happen.

74. The second reason is the innate unlikelihood that the Minister would have rejected a common-sense interpretation of the documents overall, in favour of a strict grammatical analysis of the short submission she received from a departmental official. That submission was not drafted as legislation might have been and was hardly likely to have been construed in that way.

75. The third reason is that, even if the Minister had engaged in a strict grammatical analysis of that submission (which I do not accept) to the exclusion of a consideration in the round of all documents before her, I am satisfied that any resulting error would attract the application of the *de minimis* principle. The proposition that Mr Martins, who now expressly acknowledges that he had been in breach of the immigration law of the State for over four years before that unlawful course of conduct was discovered by a Garda immigration officer, might fairly have satisfied the Minister of his good character had it not been wrongly assumed (and I do not believe it was) that he remained in that unlawful employment a short period after that discovery, is not a feasible one.

76. The third matter that Mr Martins submits the Minister failed to consider is that he is the son of a naturalised Irish citizen. Once again, this submission does not get out of the blocks because the uncontroverted evidence before the court is that the Minister considered all documents on file which included a copy of the certificate of naturalisation obtained by Mr Martins' mother.

77. But the fact that the argument was advanced on behalf of Mr Martins by his legal representatives is a matter of serious concern to the court for two reasons.

78. The first is that it runs directly counter to the express terms of the naturalisation application cover letter written by Mr Martins'

solicitors but not exhibited or otherwise disclosed on his behalf in these proceedings. The only possible relevance of the Irish citizenship of Mr Martins' mother is that it allows him to claim Irish associations (through a blood relationship to an Irish citizen) under s. 16 of the Act of 1956. And yet, the cover letter clearly stated that Mr Martins' application was based on his period of residence in the State and not on his Irish associations.

79. For a solicitor to expressly seek the Minster's decision on an application on a specific basis and then to mount proceedings challenging the resulting decision for failure to consider it on another basis entirely is, to say the least, a questionable course of action. To do so without disclosing the relevant correspondence in mounting those proceedings raises an obvious issue of professional conduct. A solicitor has an overriding duty to the court to ensure the proper administration of justice is achieved and should not, knowingly or recklessly, mislead the court.

80. If that concern could be surmounted, it would next be necessary to consider whether it can be successfully argued that the Minister, having considered and refused Mr Martins' application under s. 15 of the Act of 1956, was then obliged to go on to consider whether to accede to it under s. 16 by waiving the relevant good character requirement in exercise of the absolute discretion to do so where the applicant is of Irish associations.

81. That was one of the arguments advanced in *A.B. v Minister for Justice* [2009] IEHC 149 (Unreported, High Court (Cooke J), 18th June, 2009) where the unsuccessful applicant for naturalisation was a refugee who had, in the Minister's view, failed to meet the 'good character' condition. Under s. 16(g) of the Act of 1956, persons with refugee status and stateless persons are eligible for the waiver of naturalisation conditions by the Minister, just as persons with Irish association are under s. 16(a).

82. Cooke J first noted that in that case, as in this one, it was not clear that the Minister had exercised the absolute discretion conferred on him under s. 15, because the Minister's essential conclusion was that the applicant had failed to fulfil the good character requirement that is a condition precedent to doing so. Cooke J then continued (at para. 15):

> 'In this case the Minister has relied on absolute discretion only to the extent that it could be said that, knowing the applicant to be a refugee, he implicitly declined to consider the possible exercise of a discretion under s. 16 to waive the "good character" condition. The Court is satisfied, however, for the reasons given by Costello J in [*Pok Sun Shum v Ireland* [1986] ILRM 593], the Minister cannot be compelled by court order to consider the exercise of a discretion to waive compliance with such a condition nor to provide a statement of reasons for a refusal to waive the condition.'

83. It must at once be recognised that, as the Supreme Court has made quite clear in *Mallak*, there is an obligation upon the Minister to provide reasons for a decision made in the exercise of his or her absolute discretion under s. 15 of the 1956 Act, but I can find nothing in the judgment of Fennelly J in that case (Denham CJ, Murray, O'Donnell and McKechnie JJ concurring) that identifies an obligation on the Minister, having made a decision that the conditions for the exercise of the s. 15 discretion have not been met and having provided reasons for that decision, to consider the waiver of the relevant condition or conditions and to provide a statement of reasons where such a waiver is refused.

84. *Okornoe v. Minister for Justice* [2016] IEHC 100 (Unreported, High Court (Humphreys J), 15th February, 2016) concerned an application for leave to seek judicial review of a decision to refuse naturalisation. The application for leave was based in part on the argument that the Minister had failed to consider the application under s. 16 of the Act of 1956, having refused it under s. 15 of that Act. Humphreys J addressed that argument in the following way:

> "10. It is also submitted in the statement of grounds that the Minister failed to consider whether to exercise her discretion to dispense with the conditions of naturalisation. This submission involves the contention that a decision is arguably invalid because the Minister could have decided not to make it on the ground on which it was made. This would reduce a naturalisation decision to a box-ticking exercise whereby, as well as furnishing a ground for refusal, the Minister must also say something along the lines of "*I have considered whether to waive this ground for refusal and have decided not to do so*", possibly complete with reasons for not having waived the original reason. The administrative decision-making process is not an echo chamber whereby any reasons for a decision must also be accompanied by a further statement as to why those reasons were not waived, and so on. The reason for the decision was that the Minister was not satisfied that the applicant was of good character. That is sufficient."

85. The point was raised again in *A.M.A. v Minister for Justice* [2016] IEHC 466, (Unreported, High Court, 29th July, 2016) and was rejected once more by Humphreys J, citing the judgment of Cooke J in *A.B.* and, later, concluding (at para. 60):

> '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.'

86. In *A.A. v. Minister* [2017] IEHC 491 (Unreported, High Court (O'Regan J), 26th July, 2017), the unsuccessful applicant was the spouse of a successful refugee status applicant and naturalised Irish citizen, and the mother of two Irish born children. Her application failed on the basis that, for stated reasons relating to the circumstances surrounding her own unsuccessful refugee status application, the Minister was not satisfied that she was of good character. Presumably by reference to her husband's Irish citizenship, which would have allowed her to invoke Irish associations, the applicant argued that the Minister should have gone on to consider whether to grant her a waiver under s. 16 of the 'good character' naturalisation condition under s. 15. O'Regan J followed the decision of Humphreys J in *Okornoe* in holding that the Minister was under no such obligation.

87. While I understand that the refusal of leave in *Okornoe* was overturned subsequently by the Court of Appeal in an *ex tempore* judgment, I do not know whether that decision was based on the arguability of the contention that there is an obligation on the Minister to consider a s. 16 waiver where an applicant meets one of the necessary conditions under that section but has failed to comply with one or more of the conditions under s. 15 or on the arguability of one of the other grounds raised by the applicant/appellant in that case. Even if it were the former, I have concluded – by reference to the analysis on which it is based and a consideration of the subsequent cases in which that analysis has been endorsed – that the decision of Humphreys J on that point is correct in law and that it is right to follow it.

88. In the written submissions filed on his behalf, Mr Martins disregards the decisions in *A.B.*, *A.M.A.* and *A.A.* but invites the court to distinguish Okornoe on the basis that, in this case, the Minister's official failed to bring the Irish citizenship of Mr Martins' mother to the Minister's attention in the submission prepared on the application and, hence, failed to apprise the Minister of Mr Martins' eligibility for the application of a s. 16 waiver, whereas in *Okornoe* (and, indeed, the other cases already discussed) the Minister was aware of the applicant's eligibility for a waiver but chose not to consider one.

89. That asserted distinction merely brings Mr Martins back to the other arguments he has raised and which I have already rejected because: (a) I am satisfied that the Irish citizenship of Mr Martins' mother was brought to the Minister's attention; (b) I am satisfied that Mr Martins requested, through his solicitors, that his application be considered under the s. 15 naturalisation conditions and not as an application for a waiver of any such condition he could not meet under s. 16; and (c) because, I find as a matter of law that, having decided to reject an application for failure to comply with one or more of the naturalisation conditions under s. 15, the Minister is not then required to go on to consider separately and expressly whether to waive the said condition(s) under s. 16.

90. In response to this limb of Mr Martins' argument, the Minister raises the additional objection that it cannot in any event succeed because it is captured by the principle of waiver and acquiescence, since Mr Martins is fixed with the position adopted by his solicitors in the cover letter of 22 December 2015 that accompanied his application for naturalisation. While there is considerable force to that objection, I do not believe that it is necessary to rule on it, because of the other findings I have already made.

v. breach of the requirement to put adverse material as part of the entitlement to constitutional justice?
91. The second broad argument advanced by Mr Martins is that the Minister reached her decision on his application in partial reliance on information that he was not given an opportunity to comment upon or address, and thus did so in breach of his entitlement to natural and constitutional justice and fair procedures.

92. Mr Martins complains that, in the Minister's letter to him of 27 September 2016, stating that his application was under review, the Minister failed to explain the reason for that review and did not invite him to make any submissions on it. More specifically, Mr Martins complains that he was never furnished with a copy of the Garda immigration officer's e-mail to the Minister of 28 September 2016.

93. That e-mail, which the Minister has exhibited, principally deals with the inspection conducted at Mr Martins' workplace on 27 September 2016. It records that the inspection disclosed that Mr Martins was listed as a full-time employee there, on the payroll since 15 August 2012, as confirmed by the company accounts manager, and that Mr Martins had renewed his residence permission with the immigration officer in a different locality five times during that period as a dependent family member prohibited from entering employment in the State. It goes on to record that Mr Martins had not informed the relevant immigration registration officer of his apparent change of address. Before concluding, it notes that Mr Martins' employer showed the inspectors a copy of the letter of 6 September 2016 from the INIS to Mr Martins informing him the Minister then proposed to grant his application for naturalisation.

94. Mr Martins submits that he was denied the opportunity to make representations in response to the contents of that e-mail prior to the Minister's decision to refuse his application for naturalisation and that this amounted to a breach of his entitlement to constitutional justice.

95. I can find no merit in that argument. The information that the applicant had been in full time employment with the company concerned for over four years in breach of the conditions of his residence permission was squarely within his own knowledge and he was at all material times perfectly at liberty to make any submission he may wish in that regard. As the recommendation that formed the basis of the Minister's decision makes clear, it was Mr Martins' disregard for the conditions attached to his permission to reside in the State and for the State's legitimate interest in ensuring the integrity of its immigration system and laws that precluded the Minister from being satisfied that he was of good character, as one of the conditions necessary to permit the exercise of the Minister's discretion to grant him a certificate of naturalisation. And Mr Martins' expressly admits that the Minister's information in that regard was entirely correct.

96. Mr Martins' focuses his complaint about the failure to furnish him with a copy of this letter or to permit him an opportunity to make submissions on its contents on the other two matters it records. Yet there is no suggestion that the Minister's decision was based to the smallest degree on Mr Martins evident failure to notify the relevant Garda immigration registration officer of his change of address or on his provision to his employer of a copy of the INIS letter to him of 6 September 2016, leaving aside the fact that he makes no attempt to explain how the latter proposition could ever be characterised as an adverse consideration of any kind. Further, Mr Martins has not contested the veracity of either of those statements in these proceedings.

97. Mr Martins cites no law in support of this aspect of claim. *Tabi v Minister for Justice* [2010] IEHC 109, (Unreported, High Court (Cooke J), 16th April, 2010), concerned a refusal to grant a certificate of naturalisation where the Minster was not satisfied of the applicant's good character because he had four convictions for offences under the Road Traffic Acts. Although the applicant did not dispute the fact of those convictions he argued that the Minister had failed to adopt a fair procedure by failing to put them to him to enable him to comment or make representations before the Minister decided the application. Cooke J stated (at para. 9): 'In the judgment of the Court there was no such obligation upon the Minister in the particular circumstance of an application of this nature.'

98. In *Hussain v Minister for Justice* [2013] 3 IR 257 at 266, Hogan J found that matters the subject of mere suspicion (i.e. that involved the applicant in that case coming to 'Garda attention' but without prosecution or conviction) should be put to an applicant, but expressed sympathy for the Minister's argument that this would not be necessary where the applicant was, or ought to have been, already aware of those matters, before concluding that, in the particular circumstances of that case, the applicant could not reasonably have been aware of the need to address them. It is important to note that the applicant in that case made no admission of unlawful or criminal conduct in respect of the matters suspected, in stark contrast to the position of Mr Martins here.

99. In *A.M.A.*, Humphreys J reviewed those two decisions in addressing the applicant's complaint that their had been a failure to put adverse considerations to him, in breach of his entitlement to fair procedures and constitutional justice, before concluding :

> '56. ... In the absence of an applicant having somehow been misled as to what he or she needs to address, if a person is already aware of something (whether a Garda investigation or anything else) which it is reasonable to foresee could be taken into account, there can be no basis for suggesting that such matter needs to be put to the applicant prior to refusing an application, including a naturalisation application.
>
> 57. There is no obligation to correspond with a naturalisation applicant in relation to something of which he or she is already aware. As to whether there is such an obligation at all, insofar as there is a conflict between *Tabi* and *Hussain*, one might be inclined to prefer the *Tabi* approach because the degree of fair procedures required in the context of an absolute discretion in the grant of a privilege must be calibrated at a low level. A court might be reluctant other than in an exceptional case to find an obligation to correspond with a naturalisation applicant or give specific notice.'

100. The summary of relevant principles of law at the conclusion of that judgment includes the following: '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.' That principle was approved and applied by O'Regan J in *AA v. Minister* [2017] IEHC 491(at para. 25).

101. Applying it to the facts of this case, I am satisfied that Mr Martins has failed to establish any breach of his entitlement to constitutional justice or fair procedures.

v. Was there ever a useful purpose to be served by this litigation?
102. In a passage often quoted from an address given to law students in 1953, later included in a collection of papers entitled *Jesting Pilate* (Melbourne, 1965), Sir Owen Dixon, widely regarded as Australia's greatest ever jurist, stated (at p. 131):

> 'To be a good lawyer is difficult. To master the law is impossible. But I should have thought the first rule of conduct for counsel, the first and paramount ethical rule, was to do his best to acquire such knowledge of the law that he really knows what he is doing when he stands between his client and the court and advises for or against entering the temple of justice.'

103. The primary relief sought in this litigation is an order quashing the Minister's decision of 13 March 2017 to refuse to grant Mr Martins a certificate of naturalisation. What would the grant of such an order accomplish, if Mr Martins were entitled to it (although I have found he is not)?

104. In the Minister's letter to Mr Martins of 13 March 2017, he was informed that he could reapply for a certificate of naturalisation at any time, although he was advised that, were he to do so, he should give due regard to the Minister's reasons for refusing his initial application.

105. In the context of the present application, Mr Martins expressly admits what the evidence before the Minister made clear; that in September 2016 he had been in continuous breach of the State's immigration law for over four years. But Mr Martins has failed to engage with how that admission affects his eligibility for naturalisation, regardless of whether the present application should succeed or fail.

106. By way of brief recapitulation, it does so as follows. Section 16A(1) of the Act of 1956 provides that a period of residence in the State in breach of s. 5(1) of the 2004 Act cannot be reckoned towards the residence necessary to be eligible for the grant of a certificate of naturalisation. Under s. 5(1) of the 2004 Act, no non-national may be in the State other than accordance with the terms of a residence permission and, under s. 5(2) of that Act, a non-national who is in the State in contravention of *subsection (1)* is for all purposes unlawfully in the State.

107. Hence, the same issue of whether Mr Martins can comply with the residence requirements for naturalisation under s. 15 of the 1956 Act would arise in the event of the reconsideration of Mr Martins' naturalisation application, were these proceedings successful, as must arise in the context of any further naturalisation application he may make.

108. Similarly, on the issue of good character (and leaving to one side for the moment the finding I have already made that the Minister was aware of these matters), if Mr Martins wishes to submit that the assessment of his character should be significantly affected to his credit by the fact that, in making his original application, he provided information from which his longstanding and continuing breach of the State's immigration law could be readily inferred, despite making a sworn declaration in that application that he had not broken the laws of the State or engaged in any activity that might reflect adversely on his good character, it has been at all times open to him to do so. However, that could always – and still can - be done more easily and readily by making a fresh application for naturalisation, than by seeking an order from the court directing the reconsideration of Mr Martins' original application through the more challenging and expensive medium of the present proceedings.

109. Further, if Mr Martins wishes to submit that the assessment of his character should also be significantly affected to his credit by the fact that his unlawful employment came to an end when a Garda immigration officer uncovered it during an inspection at his employer's premises on 27 September 2016, then that too could be addressed more readily, economically and efficiently in the context of a fresh application for naturalisation.

110. Finally, these proceedings can accomplish nothing in relation to Mr Martins' complaint that the Minister was not made aware of his mother's Irish citizenship (leaving aside my earlier finding that the Minister was made aware of it), since the uncontroverted evidence before the court is that Mr Martins did not rely upon it in his original application. Mr Martins' solicitors expressly wrote: 'our client's application is based on his residence not his Irish associations.' Mr Martins left blank the box provided in the naturalisation application form for details of the Irish associations of a person claiming naturalisation on that basis. Even if Mr Martins could establish an entitlement to have his application reconsidered (and he has failed to do so), that entitlement could not extend beyond the terms of the application that he made.

111. For those reasons, even if I could identify a fatal procedural defect in the decision-making process in this case (and I cannot), I would exercise my discretion to refuse an order quashing the Minister's decision because no meaningful or practical benefit would accrue to Mr Martins were I to grant one; *Minister for Labour v Grace* [1993] 2 IR 53. When I put that concern to Counsel for Mr Martins during argument at trial, he replied that his client was pursuing these proceedings in those circumstances because of a concern on his part that the Minister's decision, if allowed to stand, might infect or taint the Minister's decision on any subsequent naturalisation application he might make. However, I cannot accept the validity of that concern since, to do so, it would be necessary to disregard the presumption of regularity, encapsulated in the Latin maxim 'omnia praesumuntur rite esse acta', that would attach to any such decision.

112. I therefore conclude that no useful purpose was ever likely to be served by these costly and time-consuming proceedings.

vi. concerns about professional standards and conduct
113. The Court has an inherent jurisdiction to govern the conduct of proceedings before it to hold to account the behaviour of lawyers whose conduct of litigation falls below the minimum professional and ethical standards which must be demanded of all lawyers who appear before the courts; see, most recently, *R (Sathivel) v Secretary of State for the Home Department* [2018] EWHC 913 (Admin) ('*Sathive*l').

114. It would be dispiriting to think that we are approaching the same position in this jurisdiction as that which led to the development of the *Hamid* jurisdiction in the immigration and asylum courts and tribunals of England and Wales; see *R(Hamid) v Secretary of State for the Home Department* [2012] EWHC 3070 (Admin) ('*Hamid*').

115. In *R (Akram) v Secretary of State for the Home Department* [2015] EWHC 1359 (Admin) ('*Akram*'), Sir Brian Leveson P stated:

> '1. It is not surprising that those who seek asylum or to regulate their immigration status in order to remain in this country

will take whatever steps are open to them in order to do so. To that extent, they are vulnerable and those who practise in this area of the law must always be acutely conscious of the need for a thorough understanding of the law, fully appreciating that pursuing litigation without arguable grounds is potentially unprofessional. This Court has demonstrated its intention to take a proactive approach to such cases in order to enforce standards and to ensure that the time of the Court (not to say public and private funding of such litigation) is not wasted. That much is clear from the principles set out in the earlier decisions of this Court in *Hamid* [2012] EWCA 3070 (Admin) and *Butt* [2014] EWHC 264 (Admin). Similar statements of principle and concern have been made in the context of appeals and jurisdiction conducted before the Upper Tribunal (Immigration and Asylum Chamber) ("UTIAC"): see *Okundu and Abdussalam v Secretary of State for the Home Department* [2014] UKUT 377 (IAC).

2. This point, it seems, must be repeated. There is a pressing need for legal representatives acting for claimants in judicial review proceedings to do so in a professional manner both towards their clients but also towards the Court, bearing in mind that the paramount duty of all legal representatives acting in proceedings before courts is to the Court itself. The need for this warning to be taken seriously increases as the resources available to the Courts to act efficiently and fairly decreases. If the time of the Court and its resources are absorbed dealing with utterly hopeless and/or unprofessionally prepared cases, then other cases, that are properly advanced and properly prepared, risk not having devoted to them the resources that they deserve.'

116. While the seriousness of the matters of concern in each of the cases I have just mentioned was very much at the higher end of the scale, I am quite satisfied that the principles identified by Leveson P are of general application to the conduct of practitioners in the field of immigration and asylum law in this jurisdiction, as well as in England and Wales.

117. Before setting out the matters of concern to the court in this case, some further relevant principles of law must be identified. In his decision in the High Court in *Adams v Director of Public Prosecutions* [2001] 2 ILRM 401, Kelly J stated (at 416):

'On any application made *ex parte* the utmost good faith must be observed, and the applicant is under a duty to make a full and fair disclosure of all of the relevant facts of which he knows, and where the supporting evidence contains material misstatements of fact or the applicant has failed to make sufficient or candid disclosure, the *ex parte* order may be set aside on that very ground.

…

The obligation extends to counsel. There is an obligation on the part of counsel to draw the judge's attention to the relevant Rules, Acts or case law which might be germane to his consideration. That is particularly so where such material would suggest that an order of the type sought ought not to be made.'

118. As already noted, paragraph 5.19 of the Code of Conduct of the Bar of Ireland states:

'In a civil case barristers must, at the appropriate time in the proceedings, inform the court of any relevant decision on a point of law and, in particular, of any binding authority or any applicable legislation of which they are aware and which the barrister believes to be on point whether it be for or against their contention.'

119. The Law Society of Ireland *Guide for Good Professional Conduct for Solicitors*, 3rd ed, provides (at para. 5.1) that:

'A solicitor has an overriding duty to the court to ensure, in the public interest, that the proper and efficient administration of justice is achieved and should assist the court in the administration of justice, and should not deceive, or knowingly or recklessly, mislead the court.'

120. I understand that the application for leave to seek judicial review was made *ex parte* to O'Connor J as duty judge during the legal vacation on Friday, 9 June 2017. The concerns that I require the legal representatives for Mr Martins to address are, primarily, the following:

(i) Why was the application for leave not made promptly in term in the Asylum List, rather than during the Whit Vacation before the duty judge?

(ii) Was the duty judge informed of the jurisprudence on the limited requirements of constitutional justice applicable to naturalisation decisions? If not, why not?

(iii) Why were those principles not referred to or acknowledged in the written or oral submissions made on behalf of Mr Martins?

(iv) Was the duty judge informed of the decision of the Supreme Court in *Ezeani*? If not, why not?

(v) Why was reliance placed on the *ex tempore* judgment of the High Court in *Ezeani* in the written submissions made on behalf of Mr Martins without acknowledging that the judgment was subsequently reversed by the Supreme Court.

(vi) Was the duty judge given to understand that rather than the limited requirements of fair procedures attendant upon the naturalisation application process, the more extensive requirements of fair procedures applicable to tribunal hearings governed the Minister's decision in this case? If so, why?

(vii) Was the duty judge informed of the provisions of s. 16A of the Act of 1956 and of s. 5 (1) and s. 5 (2) of the 2004 Act? If not, why not?

(viii) Why was no reference made to those provisions in the written and oral submissions made on behalf of Mr Martins?

(ix) Was the attention of the duty judge drawn to the fact that the applicant had made a sworn declaration that he had not committed any offences against the law of Ireland and had not engaged in any other activities that might indicate he might not be considered a person of good character? If not, why not?

(x) Why was the cover letter of 22 December 2015 from Mr Martins' solicitors to the Minister not exhibited by Mr Martins in these proceedings?

(xi) Was the statement in that letter that 'our client's application is based on his own residency not his Irish associations' brought to the attention of the duty judge? If not, why not?

(xii) Was the attention of the duty judge drawn to the fact that Mr Martins had left the box provided on the naturalisation application form for details of any Irish associations relied upon blank? If not, why not?

(xiii) Why was no reference made in the oral or written submissions made on behalf of Mr Martins to the established line of authority that the Minister is not obliged in the naturalisation process to give advance notice of an adverse consideration of which the applicant is already aware? Was the duty judge apprised of that line of jurisprudence? If not, why not?

121. To assist in the resolution of these question, in the exercise of the inherent jurisdiction of the court and, insofar as may be necessary, pursuant to the terms of Order 123 of the Rules of the Superior Courts, I will order the production of a transcript of the hearing of the application for leave that took place before O'Connor J on 9 June 2017 and the provision of a copy of that transcript to each of the parties and to the court.

Conclusion

122. For the reasons I have given, the application is refused. Further, I require the parties and, in particular, the legal representatives for the applicant to address the court on the extent to which these proceedings are captured by the principles identified by Cooke J. in *O.J. v Refugee Applications Commissioner* [2010] 3 IR 637 and, more particularly, on whether this is an appropriate case in which to make a wasted costs order under O. 99, r. 7 of the Rules of the Superior Courts. Still further, I require the legal representatives for the applicant to address the court on the issues of professional conduct identified above.

123. I will hear the parties on the appropriate directions in that regard.