

**THE HIGH COURT**

**JUDICIAL REVIEW**

**[2013 No. 705 J.R.]**

**IN THE MATTER OF THE IRISH NATIONALITY AND CITIZENSHIP ACT 1956 (AS AMENDED) AND IN THE MATTER OF APPLICATION  
FOR JUDICIAL REVIEW**

**BETWEEN**

**G.K.N.**

**APPLICANT**

**AND**

**THE MINISTER FOR JUSTICE AND EQUALITY**

**RESPONDENT**

**JUDGMENT of Mr. Justice Colm Mac Eochaidh delivered on the 22nd day of October 2014**

1. This is an application for judicial review of the respondent's decision of 2nd July 2013, refusing the applicant's application for naturalisation.
2. The applicant was declared to be a refugee on 27th November 2002. He is married to an Irish citizen and is the father of two Irish citizen children.
3. Three previous applications for naturalisation were made in 2003, 2008 and 2009, which were refused. The present application was made on 1st September 2010.

The letter submitting the application for naturalisation stated:

"We wish to draw to your attention that the applicant was in a minor road traffic incident, and as a result of same was disqualified from driving for a period of two months in January 2007. The applicant has had a clean driving history since then and has not come to the gardaí's attention in respect of any other matters."

4. The application form for naturalisation was accompanied by a Tax Clearance Certificate, a Bank Statement, proof of refugee status, and a Certificate of Marriage (from the Republic of Kenya).

5. On 14th August 2012, the applicant's solicitors asked to be updated in relation to the application. On 12th December 2012, the respondent's Immigration Service (INIS) wrote to the applicant's solicitor, saying:

"I would be obliged if he could confirm that the fine of €300 (hit and run) imposed on your client at Galway Circuit Court on 23/01/2007 has been paid and forward receipt of payment to confirm this.

With reference to the incident recorded by the gardaí on the above date, please; provide further information on same."

6. Other information was also sought

7. The applicant's (new) solicitors replied to the respondent on 9th January 2013, enclosing a receipt from Galway District Court confirming payment of a fine of €300, and saying:

"With respect to the hit and run incident on 23rd January 2007, this occurred when our client grazed a parked Jeep in his own motor vehicle. This occurred at 11.00 pm at night. Our client stopped and tried to locate the owner of the Jeep. However, there was no-one in the vicinity and after a while he drove off.

The incident was reported to the gardaí and our client was subsequently arrested and convicted of hit and run and leaving the scene of the accident. He was fined €300 in respect of both of these offences which he duly paid and there was €700 compensation to effect repairs to the damaged vehicle which was also paid, and all these are demonstrated by the receipt from the District Court."

8. On 2nd July 2013, the respondent wrote to the applicant's solicitors saying:

"The Minister, having considered your application and the offences referred to in the attached report, has decided not to grant you a Certificate of Naturalisation.

A copy of the submission that was prepared for the Minister, with his decision annotated thereon, is enclosed for your information."

9. The submission referred to in the letter of 2nd July 2013 is very short. In its operative part, it says as follows:

"Comments

This applicant has come to the adverse attention of the gardaí, see report attached. The resulting fine has been paid. He

has two Irish-born children and is a self-employed taxi driver. Given the serious nature of the offence, I would not recommend this applicant for a Certificate of Naturalisation."

The submission bears the initials of the Minister with the handwritten annotation 'Refuse App'.

10. The garda report attached to the submission is also very short. It records that on 23rd January 2007, at Galway Circuit Court, an offence of "Hit and Run (Failing To Stop)" resulted in a fine of €300 and "Disqualification Order Consequential 2Mths" and it records "Hit and Run (Failing To Remain At Scene)" resulting in "Fine €300, Compensation €700".

### Statutory Provisions

11. Section 15 (as amended) of the Irish Nationality and Citizenship Act, 1956 provides that on an application for naturalisation, "the Minister may, in his absolute discretion, grant the application, if satisfied that the applicant . . . (b)... is of good character".

12. Section 16 of the Act, as amended, provides, that the Minister, in his absolute discretion, grant a Certificate for Naturalisation, notwithstanding that the conditions for naturalisation (established by s. 15) are not met "where the applicant is a person who has refugee status".

### Submissions

13. The applicant argues that the decision in suit should be quashed because it was taken in breach of fair procedures and the right to constitutional justice arising from the failure of the Minister to have regard to critical matters which were on file, contained in the application. The most important matter which was not considered by the Minister, according to the applicant, is the fact that the episode which resulted in a criminal conviction was a very minor incident involving the grazing of a vehicle by the applicant's vehicle. In addition, it is said that critical facts were not weighed by the Minister, including the fact that the applicant was married, that he had two children (Irish citizen children), the date of his refugee status and that he was tax compliant.

14. The Court accepts that all of this information was sent to the respondent and that the applicant has established that in all probability the respondent did not examine all of the documentation and correspondence which comprised the application for naturalisation, but instead, relied, and was so entitled, on the very short summary of the application and recommendation, signed by three of his officials on the 19th of April 2013. That summary, and its attachment, in my view, presents a picture of the applicant which is in stark contrast to the picture that emerges from a consideration of the full application file comprising completed application form, correspondence, including answers to requests for further information about the incident which gave rise to the conviction, as well as various documents. The only information which the Minister appears to have had was the short summary most of which is quoted above and the Garda extract indicating that the applicant had been involved in a hit and run incident, for which he was convicted, and a recommendation which refers to "the serious nature of the offence".

15. The offence in question arises under s. 106 of the Road Traffic Act 1961, which criminalises failure to stop and failure to remain at the scene of an incident whereby injury is caused to a person or to property. In my view, the documents before the Minister did not indicate that the injury in this instance was not to a person, but to a vehicle. Neither did the document indicate that the injury was of a very minor nature involving only the grazing of the vehicle in question. In addition, the recommendation contained an ambiguous statement which asserted "the serious nature of the offence". It is unclear whether this statement was referring to the serious nature of the general offence created by s. 106, or the serious nature of the offence committed by the applicant for which he was convicted. Either interpretation creates problems for the respondent. If the nature of an offence under s. 106 is of itself sufficiently serious to warrant a refusal of naturalisation, this would appear to be too broad an analysis upon which to build a negative naturalisation recommendation. I say this because offences under s. 106 of failing to stop and failing to remain at a scene of an incident can involve extremely minor occurrences or events involving loss of life. Thus, the mere fact that an offence under s. 106 is recorded against an applicant could not, of itself, rationally ground a negative naturalisation recommendation. On the other hand, if the statement by the author of the advice to the Minister was suggesting that the events on the night of January 2007 involving the grazing of a third party vehicle was, of its nature, sufficiently serious to warrant refusal of naturalisation, then, in my view, such an analysis would have to be deemed to be irrational. The connection between character and criminality can only be established where the Minister has all relevant information in connection with the crime. A person who double parks his vehicle in front of a maternity hospital to rush a woman in labour inside commits a criminal offence. However, no one could say that any indication as to character can be inferred from the criminal act.

16. I agree with the comments of Lang J. in *Hiri v Secretary of State for the Home Department* [2014] ETHIC 256

"35... .In my judgment, in deciding whether an applicant for naturalisation meets the requirement that "he is of good character", for the purposes of the British Nationality Act 1981, the Defendant must consider all aspects of the applicant's character. The statutory test 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. Plainly, criminal convictions are relevant to the assessment of character, but they are likely to vary greatly in significance, depending upon the nature of the offence and the length of time which has elapsed since its commission, as well as any pattern of repeat offending. So, in order to conduct a proper assessment, the Defendant ought to have regard to the outline facts of any offence and any mitigating factors. She ought also to have regard to the severity of the sentence, within the sentencing range, as this may be a valuable indicator of the gravity of the offending behaviour in the eyes of the sentencing court. Although I asked for details of the number of applications she has to process, none was provided. Her letter of 26th September 2012 stated that the majority of applicants do not have any unspent convictions. I was not provided with any evidence to support a view that it was too onerous for her to consider individual convictions.

36. The Defendant is entitled to adopt a policy on the way in which criminal convictions will normally be considered by her caseworkers, but it should not be applied mechanistically and inflexibly. There has to be a comprehensive assessment of each applicant's character, as an individual, which involves an exercise of judgment, not just ticking boxes on a form."

17. In my view the approach suggested in the passage just quoted has much to recommend it, especially in the matter of the connection between criminal convictions and good character.

18. I note that the author of the short submission to the Minister selects certain information only from the overall application for the attention of the Minister. The author informs the Minister that the fine has been paid, that the applicant has two Irish-born children and that he is a self-employed taxi driver. In my view, it was incumbent upon the author of the report to draw the attention of the Minister to the circumstances surrounding the incident on the night in question, in particular, because the respondent's agent had

specifically sought information about the conviction of the applicant of an offence under s. 106 of the Road Traffic Act. Having sought that information, which, in my view, transpired to be exculpatory in nature, it ought to have been brought to the Minister's attention. In its absence, the Minister merely had documents saying that an offence of a serious nature had been committed and that this was a 'hit and run'. It was a denial of the applicant's constitutional rights not to place all of the relevant information before the Minister. I am satisfied that the decision should be quashed on this ground.

19. Other matters have been argued by the applicant. In particular, it has been said that the Minister's decision is irrational because a minor event involving the grazing of one vehicle against another, including the departure from the scene of the incident before the arrival of gardaí, could not be sufficient to negate the good character that the State has required to be established by an applicant. Given that I have decided that the minor nature of the events had not been drawn to the Minister's attention, it would be meaningless to determine the argument as to rationality which assumes that the Minister was aware that the incident in question was allegedly very minor in nature.

20. Finally, the applicant seeks to argue that the Minister ought to have considered exercising his discretion under s. 16 of the 1956 Act, as amended, which permits the Minister to grant naturalisation to a declared refugee, even if he is found not to have met one of the requirements of s. 15 - in this case, not to have met the requirements as to good character. In my view, the Court is not required to determine this argument in circumstances where it has found that the Minister's decision that the applicant is not of good character is unlawful. Had a lawful decision as to character been made, a relevant argument would then be before the Court as to whether, in those circumstances, the Minister must or may proceed to consider exercising discretion s. 16. That is an argument for a case with more appropriate facts.

21. The respondent has sought to meet the applicant's first complaint in these proceedings by asserting that many of the matters as to good character sought to be relied on have been introduced after the application process. In addition, the respondent indicates that the Minister did have regard to all of the matters which were comprised in the application, including the correspondence. There are no averments to support this submission, and on the basis of the evidence before the Court, I find, as indicated above, that on the balance of probability, the Minister's decision is based only upon two documents comprising the submission made to him by his official and the accompanying Garda extract. With regard to the failure of the Minister to consider matters of good character introduced after the application process, if this is the crux of the respondent's case, it also fails. The applicant has demonstrated that very important information about the criminal conviction was communicated to the officials before the Minister took the decision but this was not communicated to the Minister. This is enough to undermine the decision. Clearly the Minister cannot be faulted for not considering matters raised *ex post facto*

22. The respondent has relied on the decision of Cooke J. in *Tabi v. The Minister for Justice, Equality and Law Reform* (16 April 2010) [2010] IEHC 109, to the effect that, in naturalisation application, the Minister enjoys broad discretion and is entitled to use the fact of four road traffic offences resulting in a fine as the basis of a failure of a naturalisation applicant to establish good character. The learned judge said:

"In the Court's judgment, nothing in the Act suggests a legislative intention which would preclude the Minister from considering generally an applicant's record and conduct while in the State with a view to assessing whether the applicant is someone who is has a responsible attitude to the CIVIC responsibilities to the society in which he or she seeks to be a citizen."

My view is that the *Tabi* decision does not assist the respondent in answering the fundamental case advanced by the applicant that the Minister took a decision in the absence of a full and fair description of the facts relating to the applicant's character. *Tabi* may well be authority for the proposition that the Minister, even if all of the facts had been disclosed, could lawfully refuse naturalisation. However, those facts are absent in this case and the applicant was not required to argue that the Minister could not refuse naturalisation even if he had all the facts. For the avoidance of doubt I see no contradiction between the decision in *Tabi* and the decision in *Hiri*. If, in accordance with *Tabi* the minister relies on criminal convictions to come to conclusions on the question of character, then the approach described in *Hiri*, in my view, must be followed.

23. I order that the decision of the Minister refusing naturalisation be quashed.