Neutral Citation [2015] IEHC 446

THE HIGH COURT

[2013 No. 933 J.R.]

BETWEEN

M.A.D.

APPLICANT

-AND-

MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Ms. Justice Stewart delivered on the 14th day of July, 2015

1. The applicant is a national of Somalia who has applied for a certificate of naturalisation. He seeks an order of *certiorari* quashing the decision of the respondent pursuant to s.15 of the Irish Nationality and Citizenship Act 1956 (as amended) refusing to grant a certificate of naturalisation to the applicant, as notified by letter dated 7th October, 2013.

BACKGROUND

2. The applicant is a national of Somalia born on 16th September, 1983. His father has been living in the State since 1991. The applicant, his mother and five siblings arrived in the State in 1994 from Ethiopia, where they had been living in a refugee camp having fled the war in Somalia. The family were brought to Ireland by the UNHCR in cooperation with the Irish authorities. The applicant states on affidavit that he believed that he and his family had been granted refugee status in Ireland and avers that he has since learnt that the family's status in Ireland is based on a grant of temporary leave to remain which was renewed as required.

3. The applicant has made six applications to the respondent seeking the grant of a certificate of naturalisation.

4. The applicant's first application was sent to the minister on 1st August, 2001 (p.3). The respondent issued a letter to the applicant's solicitors on 23rd March, 2005 (p.14), giving notice that the minister had decided not to grant a certificate of naturalisation. The reason given therein was that the applicant had been in receipt of a social welfare payment in the three-year period preceding his application. As the applicant had not reached the age of majority at the time of this application, the fact that his father had been in receipt of a social welfare payment during the three-year period was taken in account.

5. The applicant made a second application for naturalisation on 20th May, 2005 (p.19), again enclosing supporting documentation. By letter dated 11th October, 2005 (p.52), the respondent informed the applicant that his certificate of naturalisation would not be granted because he did not have the requisite five-year reckonable residency at the time of his application. The respondent enclosed a document showing how this was calculated. The letter concluded with the following:

> "I am enclosing a new application form as it is open to your client to lodge a new application now."

6. The applicant submitted a third application on 8th November, 2005 (p.57), which was incorrectly dated 5th July, 2005. By letter of 19th April, 2006, the respondent stated as follows:

> "While processing your client's application it was noted that they entered the State as a minor. In these circumstances I would be obliged if you could confirm whether your client also entered the State as a member of a family unit. If this was the case please could you forward copies of your client's parent's passports showing their permission to remain stamps for a period of 10 months prior to October 2001."

The applicant furnished the necessary documents on 24th April, 2006. The respondent informed the applicant, by letter dated 23rd May, 2006, that he did not have the required five years reckonable residence at the date of application, enclosing a document showing how same had been calculated. The applicant wrote to the respondent on 15th September, 2006, stating that his reckonable residence in the State had been erroneously calculated. The letter draws attention to the previous refusal of naturalisation and the calculation of reckonable residence therein, as well as that fact that the applicant's two sisters and mother had been granted naturalisation having arrived in the State on the same date as the applicant. The application was reconsidered by the respondent. Additional documentation was submitted in the intervening period. By letter dated 22nd March, 2010, and an enclosed annotated decision, the minister refused the applicant's application for certificate of naturalisation. The reasons set out therein were as follows:

> i. The applicant has come to the adverse attention of the Garda Síochána and has a criminal record in the State; and
>
> ii. The applicant was, at the time, in receipt of social welfare support and could not be financially self-sufficient without recourse to State funds.

7. By cover letter dated 4th August, 2010, the applicant submitted his fourth application for a certificate of naturalisation together with the relevant supporting documentation. It was during the process of this application, and by letter dated 31st May, 2011, that the applicant states his residency status came to light. In the aforementioned letter, Irish Naturalisation and Immigration Service's Repatriation Unit informed the applicant that he was never granted refugee status but rather that his father was granted temporary leave to remain in 1991, and the applicant, his mother and five siblings were granted permission to join their father in the State. Enclosed with the letter was the original letter granting such permission, as sent by the immigration and citizenship division to the Garda Síochána on 26th October, 1994, and exhibited at p.228 of the booklet furnished to this Court.

8. The respondent made requests for additional documentation which were duly provided by the applicant. However, the applicant's sworn declaration form was signed and dated more than six months before the application for naturalisation was lodged. The respondent requested a new signed declaration and enclosed a new declaration with a letter dated 20th June, 2011. This was submitted by the applicant; however, the applicant did not receive confirmation of receipt of same. Instead the respondent sent another request for a statutory declaration on 26th August, 2011. In light of these issues, the applicant resubmitted the application form in its entirety along with the accompanying documentation, receiving confirmation of receipt on 8th December, 2011. Further documentation was submitted as required after that date.

9. On 22nd March, 2012, the applicant became a father to an Irish citizen child. The child's birth certificate and an accompanying

letter were submitted to the respondent on 14th April, 2012. The applicant received an acknowledgment receipt for the aforementioned documents.

10. The applicant received further correspondence, dated 19th July, 2012, from the respondent again refusing his application for a certificate of naturalisation. The reasons for that refusal, as contained in the letter at p.324 of the booklet, were as follows:

> "Section 15 of the Irish Nationality and Citizenship Act, 1956, as amended, provides that the Minister may grant a certificate of naturalisation if, among other things, the applicant has been resident in the State five years in the nine year period before the date of application i.e. 60 months. For the purposes of calculating this residency, no period may be taken into account where a non-national:
>
> 1. was required to have permission of the Minister to remain in the State but did not have that permission, or
>
> 2. had permission to remain for the purpose of study (whether or not such study necessitated the employment of the non-national during the whole or part of the period of study), or
>
> 3. had permission to remain for the purpose of seeking to be recognised as a refugee (within the meaning of the Refugee Act, 1996) where such application was either unsuccessful or withdrawn.
>
> It has been determined that your client did not meet the above criteria at the time you applied. The documentation submitted with the application, coupled with our own internal enquires, have disclosed that while your client has five year's (*sic*) residence in the State, he did not have one year's continuous reckonable residence immediately preceding the date of the application. A document showing our calculations in this regard is attached for your information.
>
> It is open to your client to lodge a new application if and when he is in a position to meet the statutory requirements."

The attached documented, entitled 'naturalisation residency calculator', set out how the calculations had been made.

11. On 26th September, 2012, the applicant submitted a further application for naturalisation. The applicant became unemployed and later returned to part-time employment, informing the respondent of his changes in circumstances on each occasion. The respondent sent a letter dated 17th June, 2013, seeking information and supporting documentation confirming that the applicant had paid a number of District Court fines imposed for motoring offences; seeking further information regarding an incident of threatening, abusive, insulting behaviour as recorded by the Garda Síochána; as well as other documentation regarding, *inter alia*, employment and current address. The applicant submitted all required documentation and supplied explanations as requested.

IMPUGNED DECISION

12. By letter dated 7th October, 2013, the applicant received notification from the respondent that his application for certificate of naturalisation was being refused. That decision is the subject matter of these proceedings. The letter, at p. 457 of the booklet, states as follows:

> "Dear Sir/ Madam,
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> I am directed by the Minister for Justice and Equality to refer to your client's application for a certificate of naturalisation.
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> The Minister has considered your client's application under the provisions of the Irish Nationality and Citizenship Acts 1956 and 1986 as amended and has decided not to grant a certificate of naturalisation.
>
> Section 15 of the Irish Nationality and Citizenship Act, 1956 provides that the Minister may, in his absolute discretion, grant an application if satisfied that the applicant is of good character. The Minister having considered your client's application and the offences referred to in the attached report, has decided not to grant your client 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.
>
> There is no appeals process provided under this legislation. However, your client should be aware that they may re-apply for the grant of a certificate of naturalisation at any time. When considering making such a re-application your client should give due regard to the reasons for the refusal given in the attached submission. Having said this, any further application will be considered taking account of all statutory and administrative conditions applicable at the time of application."

13. The reasons for the refusal were contained in the attached submission, as following:

> "The Minister may in his absolute discretion grant a certificate of naturalisation, if satisfied that the applicant fulfils the statutory conditions specified in the Irish Nationality and Citizenship Act 1956, as amended.
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> Comments: M[…] A[…] D[…] has come to the adverse attention of the Gardai, see attached Garda report and letter of explanation from the applicant regarding offence recorded in February 2008. The resulting fines imposed on him by the courts have been paid. This applicant is working on a causal basis with [company name redacted] since 19/10/2011 while also being in receipt of a payment, Jobseeker's allowance, from 2010-2013 from the Department of Social Protection. M[…] A[…] D[…] has one Irish born child, who is also an Irish Citizen.
>
> Due to the serious and repetitive nature of the offences, I would on balance not recommend this applicant for a Certificate of Naturalisation.
>
> Recommendation: Not recommended. For Minister's Decision, please."

The letter is signed by three civil servants with each dated 16th August, 2013. The decision is then signed as approved by the minister on 30th September, 2013.

LEAVE
14. On 16th December, 2013, the applicant applied for leave on an ex parte basis to seek judicial review by way of *certiorari* to quash the above decision. Leave was granted by McDermott J. on the following grounds:

> 1. The respondents erred in law in characterising the offences of which the applicant has been convicted as serious.
>
> 2. Without prejudice to the foregoing, in light of the sentences in fact imposed on the applicant, the respondent materially erred in fact in characterising the offences of which the applicant has been convicted as serious and their characterisation as such was irrational and unreasonable.
>
> 3. Without prejudice to the foregoing, to the extent, if any, that the decision determined that the applicant was not of good character, the respondents failed to take into account the fact that during the past five and a half years the applicant received no further convictions and did not come to the adverse attention of the Gardaí, and the respondent thus failed to take into account a relevant consideration and acted in breach of the applicant's right to constitutional justice.

APPLICANT'S SUBMISSION
15. Counsel for the applicant, Mr. Mark de Blacam S.C., with Mr. David Leonard B.L., submitted that although the legislation does provide the minister with absolute discretion, he should set out how this discretion is being utilised. Section 14 of the Irish Nationality and Citizenship Act 1956 (as amended) provides:

> "Irish citizenship may be conferred on a non-national by means of a certificate of naturalisation granted by the Minister."

16. The conditions for the issue of a certificate of naturalisation are set out in s.15(1) of the 1956 Act (as amended), as follows:

> "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:
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> (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 eight years immediately preceding that period, has had a total residence in the State amounting to four years;
>
> (d) he 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 a 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."

17. In relation to the 'good character' requirement, the applicant submitted that this is a condition precedent to the exercise of the minister's absolute discretion to grant or refuse an application. The applicant relied upon the judgment of Hogan J. in *Hussain v. Minister for Justice, Equality and Law Reform* [2011] IEHC 171, and para. 15 thereof, where the 'good character' requirement in the context of the legislation is defined as follows:

> "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."

18. The applicant submitted that the minister did have a table containing the offences that were taken into account, but it did not contain the applicant's age at the time, which is highly relevant in this case. Because the minister has not given an account of when she may disregard the previous convictions, the applicant argued that he is unaware of when these offences will no longer be relevant to his application.

19. The applicant further argued that since s.1(1) of the Probation of Offender Act 1907 was applied on the public order charge, the District Court has confirmed that this was not a serious offence.

20. The applicant contended that the classification of these offences as serious is erroneous for a number of further reasons. Article 38.2 of the Constitution states:

> "Minor offences may be tried by courts of summary jurisdiction."

The applicant submitted that as a matter of law, the motoring offences that the applicant was convicted of are minor as road traffic offences that are handled summarily at district level are classified as minor in legislation (s.112(1)(b) of the Road Traffic Act as amended). The applicant relied upon the case of *L.G.H. v. Minister for Justice, Equality and Law Reform & anor*. [2009] IEHC 78, where at p.4 of the judgment Edwards J. considered the status or character of convictions under the Road Traffic Acts.

> "The applicant's counsel says that it is to be inferred from the document that the reasons for refusal were that two of

the applicant's sons have criminal convictions within the State. The affidavit sworn in support of the application elaborates on the nature of those convictions.

In the case of one son there are convictions for a number of road traffic matters. Mr. J.H.Y. has convictions for drunken driving and no insurance. (There was also information before the Minister that this same son has been issued with a District Court summons, alleging possession of knives and other articles, but that case had not yet come on for trial.)

In the case of the other son, Mr. J.X.Y., he has convictions for driving without reasonable consideration, failure to present an insurance certificate and using a vehicle without a licence.

While both of these sons of the applicant do have criminal convictions, their convictions are not of a very serious nature. The offences in question are minor offences, within the meaning of that term as used in the Constitution. They were prosecuted in the District Court, and their cases were disposed of in the District Court. In respect of the charge pending against one of the sons, the prosecution has been initiated in the District Court and that is as much as can be said about that."

21. The applicant asserted that the respondent failed to take into account the applicant's lack of offending over a sustained period. The applicant maintained that it is a material error of fact to classify the offences as serious in nature. The applicant contended that the decision was almost entirely based upon 'the serious and repetitive nature of the offences' and, therefore, the finding of a lack of good character is unsustainable. The applicant also contended that no regard had been given to the fact that the applicant had not come to the attention of the authorities since February, 2008.

22. The applicant submitted that although the minister has absolute discretion, as provided by the legislation, this does not preclude an examination by judicial review. The applicant relies on *Mallak v. Minister for Justice, Equality & Law Reform* [2012] IESC 59.

RESPONDENT'S SUBMISSIONS

23. Counsel appearing on behalf of the respondent, Mr. Daniel Donnelly B.L., submitted that merely because an offence is classified as a summary offence, fit to be tried at district level, does not mean that it is not a relevant indication of the applicant's good character. The respondent pointed to the case of *A.B. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 449, where Cooke J. noted at para. 19:

"It is for the Minister to determine what criteria fall to be considered in assessing whether the condition as to 'good character' is met."

24. Counsel relied upon another decision of Cooke J., *Tabi v. Minister for Justice, Equality and Law Reform* [2010] IEHC 109, where at para. 2 he states:

"The fact of those convictions is not contested. That being so, the Minister had a sound basis in uncontested facts for making the assessment that the condition of "good character" was not fulfilled. There is therefore no defect of either fact or law in the Contested Decision which would justify the issue of an order of certiorari to quash it."

25. The respondent argued that the facts of the *Hussain* (cited above) case are completely different from the applicant's case and are completely distinguishable, as the applicant in the *Hussain* case had not been convicted of offences. At paras. 20-21 of that decision Hogan J. states:

"In the light, therefore, of the Supreme Court's conclusion in *The State (Lynch) v. Cooney* (and, indeed, a wealth of subsequent case-law to similar effect) the Minister's assessment of the good character issue is plainly subject to judicial review. It is equally plain that the Minister must direct himself properly in law by reference to the question of what 'good character' actually means, so that, for example, if the Minister's decision could not stand if irrelevant considerations were taken into account: see, e.g., the judgment of Edwards J. in *L.G.H. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 78. In that case the Minister took into account the fact that the applicant's two adult sons had (relatively minor) convictions for motoring offences in concluding that the applicant was not of good character. As Edwards J. pointed out, this was an absurd non-sequitur, since the applicant could not in any way be held responsible for the conduct of her adult children.

Nevertheless, provided that the Minister's application of these principles to the facts of the case is reasonable, then his or her ultimate decision is probably unimpeachable in law. Returning now to the facts of the present case, the Minister would obviously be entitled to conclude that a person who was knowingly in possession of either forged notes or counterfeited items was not a person of 'good character' for this purpose, since this shows a level of calculated dishonesty which is plainly at odds with ordinary standards of civic morality. The real question, however, is whether the Minister was entitled, without more, to reach this conclusion on the facts of the present case."

In light of the foregoing, the respondent submitted that the minister acted within her discretion.

DECISION

26. In the *Tabi (supra)* judgment Cooke J. states in his conclusion:

"In circumstances where the Minister has explicitly based his decision upon the existence of four convictions, even for 'minor offences', the existence of which is undisputed, it could not in any sense be said that the Minister has acted in a way which is arbitrary, capricious, partial or manifestly unfair."

This is worth contrasting with the decision of MacEochaidh J. in *G.K.N. v. Minister for Justice and Equality* [2014] IEHC 478, where at para.18 it states:

"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."

The substantial difference between both of these decisions is that, in the *Tabi* case the decision was not quashed because the learned judge held that it was within the minister's discretion to take into account minor offences when assessing an applicant's character; whereas in the *G.K.N.* case, the decision was quashed because the minister did not have relevant material before her, in relation to the minor nature of those offences and the exculpatory evidence, at the time of taking the decision. In this case the minister had before her a table, headed with the applicant's name, address and date of birth, followed by the court date; court; offence; and the result. In this case, all relevant information was before the minister when arriving at her decision.

27. Now turning to the classification of the offence. Counsel for the applicant argued that it was a material error to classify these offences as serious. The refusal of naturalisation is summarised in the letter from the minister as follows: "Due to the serious and repetitive nature of the offences, I would on balance not recommend this applicant for a Certificate of Naturalisation." The applicant submitted documents to highlight the minor nature of the offences. Article 38.2 of the Constitution states: "Minor offences may be tried by courts of summary jurisdiction". This, counsel stated, is indicative of the offences being minor in nature. Further, counsel pointed to the fact that the two offences in 2008 did not result in conviction and the Probation of Offenders Act 1907 was applied. In *Hussain (supra)*, Hogan J. stated at paras. 20-22:

> "It is equally plain that the Minister must direct himself properly in law by reference to the question of what 'good character' actually means, so that, for example, if the Minister's decision could not stand if irrelevant considerations were taken into account: see, e.g., the judgment of Edwards J. in *L.G.H. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 78. In that case the Minister took into account the fact that the applicant's two adult sons had (relatively minor) convictions for motoring offences in concluding that the applicant was not of good character. As Edwards J. pointed out, this was an absurd non-sequitur, since the applicant could not in any way be held responsible for the conduct of her adult children.
>
> Nevertheless, provided that the Minister's application of these principles to the facts of the case is reasonable, then his or her ultimate decision is probably unimpeachable in law. Returning now to the facts of the present case, the Minister would obviously be entitled to conclude that a person who was knowingly in possession of either forged notes or counterfeited items was not a person of 'good character' for this purpose, since this shows a level of calculated dishonesty which is plainly at odds with ordinary standards of civic morality. The real question, however, is whether the Minister was entitled, without more, to reach this conclusion on the facts of the present case.
>
> It is true that the applicant has never been charged, much less convicted, arising from these incidents. That, in itself, cannot be decisive. It would be easy to think of instances where an applicant came to adverse Garda attention by reason, for example, of the possession of contraband in circumstances where a prosecution was never initiated. It could not be suggested that in such circumstances the Minister's hands were tied even though the applicant in question had never even been prosecuted. Assuming always that fair procedures have been complied with, the Minister would be entitled to refuse the application if it could reasonably be concluded that the applicant was involved in serious criminal wrong-doing, even though he had never been convicted or even charged with such an offence."

28. The factors that are clearly open to the minister to take into consideration when assessing an applicant's good character are as follows:

> 1. It is open to the minister to have regard to offences committed by an applicant, notwithstanding the classification of those offences;
>
> 2. It is not open to the minister to take into account factors that would be outside of the applicant's control when assessing good character;
>
> 3. It is within the minister's discretion to consider the repetitive nature of such offences;
>
> 4. It is open to the minister to have regard to the quantity of convictions and the time that has elapsed since the last conviction or offence.

I am not prepared to accept the applicant's submission that for the minister to classify an offence as serious, for the purposes of the assessment of an applicant's good character in naturalisation applications, would require the offence to be an indictable offence.

29. Here, I would refer to the decision in *Tabi (supra)*, where at para. 7 Cooke J. states as follows:

> "[I]t is a matter for the Minister to decide what criteria are relevant in this regard and criminal convictions of any kind are clearly matters which are directly relevant to the issue which the Minister has to consider. In effect, when considering each application, the Minister is asking the question whether the applicant is someone who will make a good citizen. As the case law has repeatedly emphasised, there is no right to citizenship as such: it is a privilege which the State extends on a discretionary basis in exercise of a primary facet of its sovereignty. The Minister is, after all, the Minister responsible for the operation of the Road Traffic Acts and for road safety generally. It would be wholly unreasonable to hold that the Minister is not entitled to consider a series of infringements of the Road Traffic Acts as being relevant and important considerations in assessing eligibility for citizenship. Implicit in the submission is the notion that the term 'good character' can only be understood as meaning that the applicant is not shown to be someone who would be regarded by people generally as of 'bad character' in the sense of having committed serious crimes or failed to pay their debts or taxes or otherwise demonstrated a socially reprehensible character. 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 has a responsible attitude to the civic responsibilities of the society in which he or she seeks to be a citizen."

30. Counsel for the applicant opened the Garda vetting procedure document, wherein it was stated that certain minor offences over seven years old will be subject to an administrative filter and not disclosed as a result of the vetting process. The issuance of a Garda vetting certificate and the issuance of a certificate of naturalisation to a person are entirely different functions. The minister has an absolute discretion regarding what is to be taken into account in regards to naturalisation and in the assessment of good character, as mandated by legislation, in comparison to the issuing of a Garda vetting certificate.

31. At this juncture, I feel that I should say that I have great sympathy for the position the applicant finds himself in. He arrived in this country with the permission of the Irish state and the assistance of the UNHCR in 1994, together with his mother and siblings. For many years, and as is set out earlier in this judgment, he operated under the misapprehension that he had been granted a declaration of refugee status. The applicant had, in fact, never been granted such a status and was legally resident in Ireland under humanitarian leave to remain. He has made numerous applications for naturalisation and all have been refused for varying reasons, as have been set out earlier in this judgment. Each time he has received notification of refusal, he has been advised that he may reapply.

32. However, notwithstanding this, I cannot lose sight of the nature of this application and these proceedings. These are judicial review proceedings and the granting of citizenship through naturalisation is bestowed absolutely on the ministerial holder as part of her function in office.

33. It is a fact that the applicant has a criminal record. The following is the table that was before the minister upon making her decision in respect of the application for naturalisation, as was set out before the minister and the departmental officials.

Court date	Court	Offence	Result
05/02/2008	Kilmainham District Court	Threatening/ abusive/ insulting behaviour in a public place	Probation Act section 1(1) applied
05/02/2008	Kilmainham District Court	Intoxication in public place	Probation Act section 1(1) applied
27/09/2005	District Court 53 (Summons Court)	No driving licence	Fine: €150
27/09/2005	District Court 53 (Summons Court)	Failure to produce driving licence/ learner permit (within 10 days)	Taken into consideration
27/09/2005	District Court 53 (Summons Court)	Use of vehicle without NCT certificate	Fine: €150
27/09/2005	District Court 53 (Summons Court)	Fail to produce NCT certificate	Taken into consideration
27/09/2005	District Court 53 (Summons Court)	No insurance (user)	Fine: €250
27/09/2005	District Court 53 (Summons Court)	Failure to produce insurance certificate	Taken into consideration
29/01/2003	Kilcock	No insurance (user)	Fine: €634 Disqualification order Consequential: 1 year endorsement order 3 years
28/01/2003	Kilcock	Failure to produce insurance certificate	Fine: €190
28/01/2003	Kilcock	No driving licence	Fine: €90
28/01/2003	Kilcock	Fail to produce driving licence/ learner permit (within 10 days)	Fine: €102
28/01/2003	Kilcock	Non display of disc (use)	Fine: €253
24/01/2003	Kilmainham District Court	Unauthorised carriage- in/ on MPV	Sentence suspended: 36 months Sentence: 3 months Fine: €350 Compensation: €890
27/05/2002	District Court 46, Chancery St. Dublin 7	Intoxication in public place	Probation Act section 1(1) applied
27/05/2002	District Court 46, Chancery St. Dublin 7	Threatening/ abusive/ insulting behaviour in a public place	Probation Act section 1(1) applied

34. The relevant parts of ss.14 and 15 of the Irish Nationality and Citizenship Act 1956 (as amended) are worth setting out hereunder.

> "Certificates of naturalisation
>
> 14. Irish citizenship may be conferred on a non-national by means of a certificate of naturalisation granted by the Minister.
>
> Conditions for issue of certificate
>
> 15. (1) 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."

35. To define the term absolute, it would be useful to look at the judgment of Hogan J. in *Hussain v. Minister for Justice, Equality and Law Reform* [2011] IEHC 171, where at paras. 16-17, it states as follows:

> "This brings us to the question of the 'absolute' nature of the Minister's discretion under s.15. By describing the discretion as 'absolute', the Oireachtas intended to emphasise that the grant by the Minister of a certificate of naturalisation 'is the purely gratuitous conferring of a privilege in exercise of the sovereign authority of the State': *Jiad v. Minister for Justice, Equality and Law Reform* [2010] IEHC 187, per Cooke J.
>
> This description nevertheless cannot mean, for example, that the Minister is freed from the obligations of adherence to the rule of law, which is the very 'cornerstone of the Irish legal system': *Maguire v. Ardagh* [2002] IERSC 21, [2002] 1 I.R. 385 at 567, per Hardiman J. Nor can these words mean that the Minister is free to act in an autocratic and arbitrary fashion, since this would not only be [in]consistent with the rule of law, but it would be at odds with the guarantee of democratic government contained in Article 5 of the Constitution."

36. Higgins C.J. in the Supreme Court in decision of *State (Lynch) v. Cooney* [1982] I.R. 337 stated that this consideration must be one "which is bona fide held and factually sustainable and not unreasonable".

37. In this instance, that which is under review is the exercise of an executive power. It is clear that the minister has been bestowed by statute with an absolute discretion in relation to this matter. While such a decision does certainly fall within the scope of judicial review, courts should be reluctant to intervene where the applicant might seek to achieve precision in the form of guidelines, especially where this would result in a fettering of the discretion conferred upon the minister by the statute.

38. In addition, I have had regard to the decision of *McKevitt v. Minister for Justice and Equality, Irish Prison Service & anor.* [2014] IEHC 551, in which Kelly J. sets out the legal position with respect to applications seeking judicial review of executive functions. While the background to that case is different to this case, involving as it did a decision regarding the early release of a prisoner and the programme of enhanced remission of a sentence, I find the judgment of assistance in arriving at my decision in this case.

39. It seems to me that notwithstanding the sentiments expressed in relation to the position that the applicant finds himself in, I am satisfied that, as a matter of law, the minister has an absolute discretion. I find nothing arbitrary, capricious, partial or manifestly unfair in the manner in which she has exercised that discretion.

40. I, therefore, refuse the relief sought herein.