Neutral Citation Number: [2009] IEHC 78

THE HIGH COURT

2007 1438 JR

BETWEEN

L. G. H.

APPLICANT

AND

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM,

IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Mr. Justice John Edwards delivered the 30th day of January, 2009

The applicant in this matter is a Chinese national who arrived in the State on or about the 30th March 2000, as a programme refugee. It is understood that sometime in 2005, the applicant applied to the first named respondent for a Certificate of Naturalisation; that is, to become an Irish citizen.

The application was made pursuant to s.15 of the Irish Nationality and Citizenship Act of 1956 as amended. It took some time to process her application but, eventually, she received a decision communicated to her in a letter dated the 18th May, 2007 from the first named respondent.

That letter was exhibited, and I now quote the relevant portion thereof:

> I am directed by the Minister for Justice, Equality and Law Reform, to refer to your application for a Certificate of Naturalisation. The Minister has considered your application under the provisions of the Irish Nationality and Citizenship Acts of 1956 to 1986, and has decided not to grant a Certificate of Naturalisation. A copy of the submission that was prepared for the Minister for his decision thereof is enclosed for your information. In reaching this decision the Minister has exercised his absolute discretion as provided by the Irish Nationality & Citizenship Acts, 1956 to 1986. There is no appeal process provided under this legislation. However, you should be aware that you may reapply for the grant of a Certificate of Naturalisation at any time.
>
> When considering making such a reapplication, you should give due regard to the reasons for refusal given in the attached submission. Having said this, any further application will be considered, taking into account all statutory proofs and conditions applicable at para. 18."

The document accompanying that letter and described as a submission, is a two-page document under the signature of a civil servant in the citizenship section of the Minister's department. It is dated the 23rd April 2007, and commences by setting out the personal details of the applicant, including her name, address, date of birth, nationality, marital status and the nationality of her spouse. It also includes the details of her children and the number of her children. It provides for the notation on the document of any representations made in respect of the application; in this instance there were none. The document then goes on to state that the Irish Nationality & Citizenship Act, 1956, as amended in 1986 and 2001, provides that the Minister may, in his absolute discretion, with the words "absolute discretion" underlined, grant a Certificate of Naturalisation, if satisfied that the applicant fulfils the following conditions:

> A. Is of full age?
>
> In this instance, the answer to that question is recorded "yes".
>
> B. Is of good character?
>
> In this instance the answer to that question is recorded as "yes".
>
> C. Fulfils the statutory residency requirement?
>
> In this instance the answer to that question is recorded as "yes".
>
> D. Intends in good faith to continue to reside in the State after naturalisation?
>
> In this instance the answer to that question is recorded as "yes".

The document concludes with a section headed "Other Relevant Information," and in this section the following material is recorded. It states, quote:

> "Mrs. L.G.H. has not come to the adverse attention of the Garda Siochana. A file is attached relating to her sons; J.H.Y., who has two convictions in the State, J.X.Y., who also has a conviction in the State, and her son J.S.Y. who has not come to the adverse attention of the Garda Síochána."

The conclusion of the civil servant who prepared this submission document is then recorded, and in this instance, the word "recommended" appears. Now, it would appear that the case was later reviewed by another civil servant, presumably a higher grade of civil servant, and the further words "recommended for naturalisation" are endorsed on the submission document in handwriting, together with that other person's signature.

A further (third) endorsement then appears under the title "Rúnaí Aire". That further endorsement reads "recommended for naturalisation, 15/5/07".

Finally, the document bears a fourth endorsement simply stating "application refused", which is signed "Aire" and dated 17th May, 2007. That concludes the submission document.

Although the letter of 18th May 2007 advised the applicant that she could re-apply for naturalisation at any time, she was cautioned that when considering the making of a re-application "you should give due regard to the reasons for refusal given in the attached submission". However, that is something easier said than done, because the document characterised as the submission is somewhat cryptic. The reasons for refusal are not clearly stated therein.

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.

The applicant applied to me for leave to apply for judicial review on the 12th of November 2007. I was satisfied that she had made out an arguable case for an Order of Certiorari to quash the decision of the first named respondent to refuse her application for a Certificate of Naturalisation, and for an Order of *Mandamus* directing him to reconsider in the application afresh.

She was also granted leave to apply for a declaration, that the first named respondent's refusal was *ultra vires*, unreasonable and contrary to natural and constitutional justice.

The reliefs sought are claimed on various grounds, and they are set out in para. E of the Statement of Grounds filed with the application.

To the extent that they have been pursued before me today, they were confined to two grounds; namely, that the first named Respondent took into account irrelevant considerations, and that the decision of the first- named respondent was an irrational one.

I am grateful to the parties for their helpful submissions. In arriving at my decision I have had particular regard to the cases of *Tesco Stores v. Secretary of State for the Environment,* [1995] 1 WLR 759; *Mischa v. Minister for Justice,* [1996] 1 ILRM 189, *The State (Keegan) v. O'Rourke,* [1986] ILRM 95 and the case of *Pok Sun Shum v. Ireland,* [1986] ILRM 3.

I have decided to grant partial relief to the applicant. I am going to grant her an Order of *Certiorari* quashing the decision of the first named respondent to refuse her application for a Certificate of Naturalisation. Further I will direct that the matter be remitted to the Minister, and that he should reconsider her application afresh.

I grant these orders on the basis that I am satisfied that the Minister took into account irrelevant considerations in making his decision. Before elaborating on this I should say that it is quite clear that the Minister enjoys an absolute discretion. It is also quite clear that an applicant for naturalisation has no right or entitlement to a particular outcome. If naturalisation is granted, it is a privilege. I also accept that the Minister is not generally obliged to give reasons, although in the particular circumstances of this case I think he ought to have given reasons having regard to the fact that he issued a letter to the applicant suggesting that she might re-apply, but that she should have due regard in any new application to the reasons for the Minister's refusal on this occasion. She cannot possibly do so unless she is told the reasons for the present refusal. While the letter referred to the reasons "given in the attached submission" it is the case, as I have already commented, that no clear statement of reasons is contained in that document.

Notwithstanding this, I am prepared to accept the submission urged upon me by counsel for the applicant that it is reasonable in the circumstances of this case to infer that at least part of the reason why the applicant's application was refused was the fact that two of her sons have convictions for road traffic matters, and the fact that one son is facing a charge in respect of a crime of violence.

I take Mr. Barron S.C.'s point that we do not know if these were the only reasons, because the Minister is not obliged to give reasons, generally speaking. However, even allowing for this Mr Barron has not sought to suggest that the matters pointed to by the applicant were not in fact relied upon, at least in part. Now because there may have been other considerations, I cannot express any judgment on whether the Minister's decision was rational or not. But, to the extent that the considerations that we know about were taken into account, namely, the convictions of the two sons, and the fact that one of the sons is facing a charge, I am satisfied that those were irrelevant considerations and that they should not have been taken into account.

This applicant is an applicant of good character. This applicant meets all of the statutory requirements for naturalisation. While the Minister has, at the end of the day, absolute discretion, he must act judicially in the exercise of that discretion. He appears to have held against this Applicant, in the consideration of her application, that she is the mother of two sons, both of whom have criminal convictions in the state, and one of whom is facing a charge for a crime of violence.

Now, it is true that she lives with these two sons, but they are not in any sense persons under her control. They are in their late 20's, and are fully adult persons. The only conclusion that this court can come to is that the mere fact that the applicant is related through blood to these two men, who have unfortunately acquired convictions, or have gotten into trouble, is being held against her. I am satisfied that that is not something to which any consideration could be legitimately be given. The Minister was incorrect to have regard to the character of the applicants' sons when making his decision.

I consider that it is offensive to all notions of justice that a person can be prejudiced on account of his or her family associations, in circumstances where the person concerned is of acknowledged good character. We cannot help the families we are born into, anymore than a child can help it as to who his parents are.

The applicant cannot be held responsible in any way for the failures of her adult sons, directly or indirectly. It would be an entirely different situation if these children were under the age of 18 and could reasonably be expected to be under the control and significant influence of a parent. However, the applicant's sons have long since attained their respective majorities. The fact that they have let their mother down, and have let the State down in so far as they were afforded the privilege of refugee status, is regrettable. However these things are not matters for which the applicant can be held responsible, or on account of which she can be subjected to prejudice. They should not have been taken into account in a consideration of the applicant's application for naturalisation. They were not relevant.

Accordingly, I propose to quash the Minister's decision solely on the ground that irrelevant considerations were taken into account. As I said I am making no finding on the question of rationality, and I do not therefore consider that it is necessary or appropriate to make the declaration sought in para.1 of the Notice of Motion. I am refusing that declaration, but I am granting the Order of *Certiorari* claimed at para. 2, and the Order of Mandamus at para. 3. The latter follows as it is effectively a direction that the matter is to be remitted to the first named respondent for his consideration afresh.

There remains the question of costs.

I propose to follow the normal rule, namely, that costs should follow the event, and I will award the applicant her costs.