



UNAPPROVED

THE COURT OF APPEAL

Neutral Citation Number: [2020] IECA 135

Record Number: 2019/184

High Court Record Number: 2018/398 JR

**Noonan J.
Haughton J.
Power J.**

BETWEEN/

IRFAN TALLA

APPLICANT/APPELLANT

- AND -

MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT delivered by Mr. Justice Robert Haughton on the 12th day of May, 2020

Introduction

1. This appeal arises out of judicial review proceedings in which Barrett J. declined to grant the appellant *certiorari* of a decision of the Minister for Justice and Equality (“the Minister”), refusing

the appellant a Certificate of naturalisation on the basis that the appellant was not “of good character” because he had committed certain offences under the Road Traffic Acts.

Background Facts

2. Leave to seek judicial review was granted to the appellant by Humphreys J. on 15 May 2018, and background facts appear from the affidavit of the appellant sworn on 15 May 2018 and a supplemental affidavit sworn by the appellant on 9 July 2018 and the exhibits therein referred to, and the affidavit of Ray Murray sworn on behalf of the Minister on 8 October 2018.

3. The appellant was born on 22 December 1987 and is a Kosovan national who entered the state lawfully in 2002 aged approximately fourteen years. He is married to a Kosovan and they have two children both born in Dublin, in 2011 and 2012 respectively. The appellant is currently self-employed and operates a take-away restaurant, but previously was employed as a chef by his older brother Valdet Talla.

4. On 3 March 2011 the appellant was found guilty of speeding (Excess Built up Area Speed Limit 50Km/h) on 27 July 2010. He avers that he didn't receive the notice requiring him to pay a fixed penalty fine, and thereafter he was summoned before the District Court and on pleading guilty he was fined €380. The fine was paid on 4 April 2011.

5. On 26 May 2011 the appellant was convicted of driving without insurance (a further charge of failing to produce was taken into account), and fined €400, but without disqualification or endorsement. The appellant avers that he was driving one of his brother Valdet Talla's cars and that he believed he was covered by insurance at the time as he routinely drove his brother's cars, and a letter from FBD Insurance of 2 July 2014 does confirm that the appellant was a named driver on the relevant policy of Valdet Talla T/A Roma Takeaway during the period from 7 February 2007 to 14 February 2011. However the appellant was not in fact insured on the car which he was driving.

6. The appellant applied for naturalisation on 2 July 2013. The application form contains a series of questions. Under question 11.1 in the “Background” section it asks “Have you ever committed any offences against the laws of Ireland or any overseas country?” to which the appellant answered “No”. Under question 11.2 “Do you have any convictions in the state or any other country (Including Traffic Offences) or any civil judgments made against you?” to which the Appellant answered “No”. It is clear from the facts set out above, and confirmed by a Garda Report furnished to the Irish Naturalisation and Immigration Service (“INIS”) that these answers were not correct.

7. INIS engaged in correspondence with Ferrys Solicitors acting on the appellant’s behalf in relation to his application for naturalisation. By letter dated 15 May 2014 INIS *inter alia* referred to the Garda Report and requested submissions/explanations on the offences listed, confirmation on payment of the fines, and an explanation as to why the appellant did not disclose the offences in his application form.

8. Ferrys Solicitors responded initially on 13 June 2014 and more fully by letter dated 18 August 2014 which enclosed receipts in respect of the payment of the two fines, and then addressed explanations for the offences as follows: -

“We have discussed the position in detail with Mr. Talla in relation to both offences and his explanation in respect of same is as follows: -

1. **Speeding 27/07/2010:** *‘I confirm that this was me. I was done for speeding. I don’t remember ever getting the notice from the Guards about the speeding tickets. I didn’t pay and then I got a Summons. I went to Court and I agreed that I had been speeding. The Judge imposed a fine and I paid the fine.’*
2. **User of MPV, No Insurance:** *‘Yes, I remember when this happened. I was always an insured driver on my brother’s car. I never knowingly drove without insurance. I was stopped one night by the Guards driving another car that was brother’s. I thought*

I was insured because I was always insured on his cars. I didn't know I wasn't insured driving this car. The Guard prosecuting me [sic]. I went to Court and I didn't oppose what had happened. It had happened. I explained to the Judge about always having insurance and how I misunderstood the position thinking I was insured on this car. The Judge understood what I said but had put a fine on me. The fine was €400 which I paid.'

In respect of these offences we would comment as follows: -

- (1) The first offence is a routine speeding offence of a type frequently incurred and, with respect, not of significance in the context of an application for naturalisation. In particular it is noted that the fine was paid on the 4th of April 2011, within one month of the Court date.
- (2) It is accepted that a conviction in respect of driving with no insurance may potentially be viewed as a more serious matter. Mr. Talla however was driving without insurance in circumstances where there was a genuine mistake. He always had been insured on his brother's car and in that regard we enclose a letter from FBD Insurance confirming the position in that regard. In the present case he was driving a different car owned by his brother and therefore wasn't insured. It is evident that in imposing penalty by way of fine only and not disqualification or endorsement that the Judge accepted what was outlined to the Court by Mr. Talla on that date. We respectfully submit that had the position been otherwise the Judge would, without doubt, have imposed a more serious fine or ordered disqualification or endorsement of particulars or indeed imprisonment but declined to do so."

9. In follow up letters of 27 February 2015 and 5 May 2015 INIS requested a copy of the insurance policy in respect of the car that the appellant was driving when charged with no insurance, and indicated that the naturalisation application would not be processed further until receipt of same. That policy was duly forwarded by Ferrys solicitors to INIS on 15 May 2015.

10. By letter of 3 March 2016 INIS enclosed “an interim Garda Vetting Report... indicating that a Court date is pending for 09/05/2016” and this indicated charges of no insurance/failure to produce insurance certificate, failure to produce driving licence/learner permit, driving without driving licence and failing to produce driving licence/learner permit (within 10 days). Ferrys Solicitors replied on 22 June 2016 confirming that they had attended the District Court on that date on the appellant’s behalf and that –

“The proceedings related to alleged driving without insurance and driving licence. Mr. Talla had in fact the relevant documentation and had produced them to the Garda Station on request but for some reason this was not recorded at the Garda Station and the summons was issued, apparently in error.

We confirm that when the matter came before the Court the Garda concerned was satisfied with the insurance and driving licence position and the summonses were struck out on the Garda application.”

INIS sought supporting documentation and on 10 May 2017 Ferrys Solicitors furnished the District Court Order, only perfected on 8 May 2017, confirming that all of the charges have been struck out.

11. On 12 May 2017 INIS again wrote to Ferrys Solicitors advising receipt of another “Interim Garda Vetting Report (copy attached) indicating that a Court date is pending for a date yet to be assigned”. This related to a charge of no insurance and a related charge of failing to produce for offences on 16 December 2016. Ferrys Solicitors responded on 2 October 2017, enclosing orders received from Blanchardstown District Court Office and dated 28 September 2017, indicating that

the appellant having pleaded guilty it was adjudged the complaints be struck out. Ferrys Solicitors explained that –

“As you will note from same both charges were struck out by Judge Jones in circumstances where the court accepted the explanation and plea of mitigation advanced on our client’s behalf, that the policy of insurance had not been renewed as a result of a genuine oversight on the part of his brother, who had always taken responsibility for insuring the family vehicles. It was only when our client went to his brother to obtain a copy of his Insurance Certificate to produce to the Gardaí, as he had previously undertaken to do, that he became aware that the policy had expired and had not been renewed. The oversight was immediately rectified. In circumstances where the court accepted our client’s explanation and struck both charges out we trust that the unfortunate episode will not have any negative impact on our client’s outstanding application for citizenship...”

12. By letter of 11 December 2017 INIS requested the appellant’s passport, a copy of his Public Services Card and a copy of his GNIB Card, which was sent in on 21 December 2017.

13. By letter of 20 February 2018 INIS issued a letter dated 20 February 2018 from Alice A. Treacy. “Further Processing LSR Team” of INIS on behalf of the Minister notified the appellant that his application for a Certificate of naturalisation had been considered and refused by the Minister. The relevant part of the letter stated: -

“Section 15 of the Irish Nationality and Citizenship Act, 1956 as amended, provides that the Minister may, in his absolute discretion, grant the application if satisfied that the applicant is of good character. The Minister, having considered your application, is not satisfied that you are of good character and has decided not to grant a Certificate of naturalisation in this case.

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

14. The submission that was attached is headed “Adult Application for a Certificate of naturalisation” and after giving the appellant’s biographical details contains the following text, which is quoted in full because of its central relevance to this appeal: -

“The Minister has absolute discretion to grant or refuse a Certificate of naturalisation, if satisfied or not that the applicant fulfils the statutory conditions specified in the Irish Nationality and Citizenship Act, 1956, as amended. Naturalisation is a privilege and not a right and the Minister is under no obligation to grant a Certificate of naturalisation.

The onus is on each applicant to disclose in their application all appropriate information and evidence to help demonstrate that he or she satisfies the conditions for a Certificate of naturalisation, including character.

Comments: Information has come to light in the course of the processing of this application which the applicant could have reasonably foreseen could be taken into consideration in the decision making process. The Minister is not obliged to give advance notice of information of which the applicant is already aware. The attached Garda report details motoring offences on 3/3/2011 and 26/5/2011. Also detailed are motoring offences on 21/9/2017 which court result of Strike Out and Strike Out – Poor Box Payment: reason - €1,000 paid to Blanchardstown Hospice.

Recommendation: This applicant has a history of non-compliance with the laws of the State. The relevant information is attached to this submission. Given the nature of the offences, I am not satisfied that the applicant is of good character and I would not recommend this applicant for a certificate of naturalisation.

Not recommended. For Minister’s decision please.

[Signed]

Breda Henebry/Breda McGuinness

Further Processing LS Team

11-1-2018

Michelle Bartlett

Further processing LS Team

19-1-2018

Ray G. Murray

Assistant Principal

5-2-2018

[In handwriting]

Application referred [?] and recommended for refusal.

R Cahill

19/2/2019

Michael ... [illegible]

19/2/18

”

The court was informed that the last signatory at the bottom left of the application was that of the Director General of the Department for Justice and Equality, an officer duly authorised to consider the application and determine it on the Minister's behalf. No issue was taken at first instance or on this appeal in relation to the power of the Minister to delegate authority to the Director General to take the decision on the Minister's behalf.

15. The “information... attached to this submission” was a report under hand of a recipient of An Garda Síochána and furnished pursuant to a request under Section 8 of the Immigration Act, 2003, and received by the Department of Justice and Equality on 29 November 2017. This referred to the speeding conviction fine from 3rd March, 2011, the no insurance conviction and a fine from on 26 May 2011, with failure to produce “taken into consideration”; and to the no insurance/failure to produce charges dealt with at Blanchardstown District Court on 21 September 2017 with the recorded result of “strike out – poor box payment: reason - €1,000 paid to Blanchardstown Hospice” in respect of no insurance, and a simple strike out in respect of the failure to produce.

16. It is relevant to note that the Garda Síochána report does not contain any reference to the exculpatory factors set out in Ferrys Solicitors’ letter of 2 October 2017 which appeared to have led the District Judge to strike out the charges on the basis of a poor box payment. Also the submission prepared for the Minister does not go beyond reciting the details of the motoring offences dealt with on 21 September 2017 as set out in the Superintendent’s report, and does not set out any reference to the exculpatory information set out in Ferrys Solicitors’ letter. It is therefore not evident on the face of the notification letter of 20 February 2018 or the submission that was prepared for the Minister and signed by successive members of the “Processing LS Team” and an assistant principal and a Mr. Cahill, and ultimately by the Director General who made the decision, whether they and in particular the Director General considered the exculpatory information set out in Ferrys Solicitors’ letter of 2 October 2017.

17. In the Statement of Grounds the appellant sought *certiorari* of the Minister’s decision, and an order directing reconsideration of his application for naturalisation on the following grounds: -

- “ i. The Respondent made an unreasonable or irrational finding in respect of the offences at issue being sufficient to impugn the character of the Applicant by reference to the actual standard of ‘good character’.

- ii. The Respondent made an unreasonable or irrational finding in defining the ‘nature’ of the offences as a factor which impugns the character of the Applicant.
- iii. The rationale or reasoning of the Respondent is not sufficiently clear on the face of the decision in relation to the following:
 - a) The severity or significance of the convictions at issue being sufficient to impugn the character of the Applicant in circumstances in which,
 - charges in 2017 were struck out;
 - convictions in 2011 were considered minor and therefore subject only to fines; and explanations were given that the fine notice was not received by the Applicant in respect of speeding and the failure to have insurance was accepted as being inadvertent and the basis for that inadvertence was set out in evidence;
 - convictions in 2011 were almost seven years prior to the decision of issue (seven years being the period in which the conviction is considered ‘spent’ within the meaning of Criminal Justice (Spent Convictions and Certain Disclosures) Act of 2016;
 - the offences are of a regulatory character and do not involve any unlawful act against another individual;
 - no analysis was undertaken of the explanations given by the Applicant and it is not clear whether they were accepted or rejected or why, if rejected, they were so rejected; or if they were accepted, why they were not material to the issues which the Minister considered.

- b) Whether it was clear to the decision-maker that the Applicant was invited to explain the offence, and was told that his explanation would be taken into account, and that the Applicant did proffer an explanation.
 - c) No reference was made to the evidence supporting the Applicant's good character such as the character references submitted in respect of him, nor to the significance, if any, of the fact that he has been lawfully in the State for sixteen years and gainfully self-employed in the State.
- iv. The Respondent erred in effect in law and acted irrationally in treating the offence at issue as if it had not been brought to the attention of the Applicant during the processing of his application, when in fact it had been, and an explanation in respect of it had been proffered.
 - v. The Applicant had a legitimate expectation that his explanation in respect of the offences at issue would be considered."

18. In the Statement of Opposition, the Minister joined issue with the appellant's claims, pleading that the Minister had acted reasonably and rationally in considering the offences and in processing the application. The most relevant pleas are as follows: -

- "5. It is pleaded that the reasoning of the Respondent is clear on the face of the decision. The statement that the Applicant has a history of non-compliance with the laws of the state is factually correct. The Respondent is entitled in law to take into account the nature of the offences committed by the Applicant and these offences are admitted by the Applicant and a matter of record.
- 6. The statement by the Applicant in his Statement of Grounds that the charges in 2017 were struck out is not factually correct. The District Court applied the Poor Box to the offences of driving without insurance, in lieu of a conviction.

7. It is pleaded that the Criminal Justice (Spent Convictions and Certain Disclosures) Act, 2016 is of no relevance to the Respondent's decision.
8. It is pleaded that it is for the Respondent to decide the criteria to be considered in assessing the good character of an Applicant for a certificate of naturalisation and in doing so in relation to the Applicant herein the Respondent has not acted in any way that it arbitrary, capricious, partial or manifestly unfair.
9. It is pleaded that it is for the Applicant to show that the Respondent has not taken into consideration the explanations offered and that the Applicant has not done so.
10. Without prejudice to the foregoing, it is pleaded that the Respondent did consider the explanations offered by the Applicant for the offences committed.
11. It is pleaded that in circumstances where the Respondent is satisfied that the existence of the offences and their nature is sufficient reason for considering that the Applicant does not satisfy the 'good character' condition for a certificate of naturalisation, the Respondent is not obliged to weigh these views against character references submitted in respect of the applicant."

19. An affidavit of a Ray Murray was sworn on 8 October 2018 in support of the Statement of Opposition. In this short affidavit, at paragraph 4, Mr. Murray exhibits the Garda Vetting Report in relation to the appellant, and dated the 27 November 2017, in support of his averment that: -

"... while the offence committed by the Applicant for failure to Produce Insurance Certificate was struck out per se at Blanchardstown Court No. 2 on the 21st September 2017, the offence of No Insurance (User) was Struck Out – Poor Box Payment, such payment being made in lieu of conviction."

20. Mr. Murray then avers:-

“5. I say with respect to the Criminal Justice (Spent Convictions and Certain Disclosures) Act, 2016, the requisite period of 7 years outlined in the said Act had not elapsed in relation to the offences committed by the Applicant in 2011, at the date of the Respondent’s decision in February 2018 not to grant the Applicant a certificate of naturalization.

6. I say that there was considerable correspondence between the Respondent and the Applicant in relation to the various offences committed by him and the majority of the said correspondence has been exhibited by the Applicant in his grounding affidavit at exhibits “IR4” to “IR7”. I say that this correspondence is evidence of the active consideration of the various explanations offered by the Applicant and the documentation provided by him.”

Decision of the High Court

21. In his judgment dated 5th March, 2019 the trial judge notes the Minister’s wide discretion regarding naturalisations is recognized in case law and that: -

“... Those cases show the court’s role is limited to reviewing whether the Minister acted arbitrarily/capriciously/autocratically. It is clear since *Tabi v. MJELR* [2010] IEHC 109 that the Minister may consider motor offences when assessing character.”

22. At paragraph 3 the trial judge makes a general observation (the “General Observation”) as follows:

“the court notes that (a) the Minister states in his letter that he has considered Mr Talla’s application, (b) there is no reason to believe this means anything other than the complete application file, including submissions made by/for Mr Talla, with (c) material that accompanied the decision letter also being considered.”

The judgment then refers to a Table setting out the charges that led to the 2011 convictions, and the 2017 charges, and the outcome, and refers to that part of the Minister’s letter of 20 February 2018, which refers to s.15 of the 1956 Act and states that: -

“The Minister, having considered your application, is not satisfied that you are of good character and has decided not to grant a certificate of naturalisation in this case.”

23. The trial judge then proceeds to give his reasons for refusing the reliefs sought by addressing, in turn, four questions raised by the appellant in his written Submissions to the High Court as follows:

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“4. [1] What was the standard of good character applied? Was it set unreasonably or unlawfully high? See the General Observation. The Minister was entitled to, and did, decide properly by reference to the material before him that Mr Talla is not a person of good character. There is nothing to suggest that the Minister deviated from, e.g., the concept of good character identified in *Hussain v. Minister for Justice* [2011] IEHC 171.

5. [2] (A) Were the decisions on character reasonable/rational by reference to how the facts were rendered? (B) Can those facts be clearly linked to the finding that Mr Talla is not of good character? See the General Observation. There is nothing to indicate that the Minister departed from, e.g., *GKN v. Minister for Justice* [2014] IEHC 478 or *Zaigham v. Minister for Justice and Equality* [2017] IEHC 630. On the basis of the information referenced in the General Observation the Minister decided that Mr Talla is not a man of good character. That was a decision reached and reasoned properly.

6. [3] Did the Minister properly weigh all relevant factors or demonstrate that such factors were weighed and no irrelevant considerations were taken into account, by reference to the reasons given for the decision? See the General Observation. Having regard to same and the

entirety of the evidence before it, the court concludes that the Minister took everything relevant/nothing irrelevant into account.

7. [4] (A) Was the Minister in error or acting irrationally in treating the offences at issue as if they had not been brought to the attention of the Minister during the processing of his application, when they had been, and an explanation in respect of same proffered? (B) Did Mr Talla have a legitimate expectation that his explanation of the offences at issue would be considered? Question (A) arises because of the statement in the documentation accompanying the Minister's decision that 'Information has come to light in the course of the processing of this application which the applicant could reasonably have foreseen could be taken into consideration in the decision making process'. In his affidavit evidence, Mr Talla avers, inter alia, as follows: 'By letter dated 15th May 2014, my solicitors received correspondence from the Minister enclosing a Garda report and which requested that I provide 'submissions/explanations' on the offences listed and to confirm the payment of fines. My solicitors wrote on 13th June 2014 and set out that they believed that I may have wrongly pleaded guilty to the offence of no insurance and that they were investigating the matter further. They again wrote on 18th August...setting out that the speeding matter was a routine matter and the reason why it was in Court is that I didn't get the notice to pay the fine.' So patently the text in the documentation accompanying the Minister's decision is correct: there was some information that came to light, which Mr Talla could have expected would come to light, and about which queries were raised. It was not the entirety of the information but it is not suggested by the Minister that it was. As to (B), the question does not arise: the information referenced in the General Observation was considered."

24. The trial judge went on to find that the Minister had complied with the case law on reasoned administrative decisions, and that the appellant "received sufficient information to enable him to

assess whether the decision was lawful, to enable him to assess the chances of success in a judicial review application and adequately to make that application. There was also sufficient information to enable the court to discharge its role in this application.”

25. The trial judge also found that, while there were cases where a person successfully obtained naturalisation notwithstanding some history of driving without insurance, each naturalisation case “is considered on the particular facts presenting”, and there was nothing to stop the Minister reaching the decision that he did on the appellant’s application on the facts before him.

26. Finally, the trial judge rejected the complaint that, because the recommendation to the Minister states that “Given the nature of the offences, I am not satisfied that the applicant is of good character”, the process of re-application referred to in the decision letter was pointless because the nature of the offences will never change. The trial judge stated: -

“That, with respect, is not correct. Over time the nature of the offences will change in part by their becoming increasingly historical in nature. In any future application that changed nature may or may not benefit Mr Talla. Whether it does is a matter for the Minister, whose future decision/s (if further application/s is/are made) will doubtless also be informed in part by the entirety of Mr Talla’s history to the point of such future decision/s.”

Grounds of Appeal & Grounds of Opposition

27. The Grounds of Appeal sets out ten grounds in which, in effect, the appellant challenges all of the findings of the trial judge. It is not necessary to set these out in full – in summary the appellant asserts that:

- (i) The standard of review set by the trial judge was too narrow.
- (ii) The Minister acted arbitrarily/capriciously/autocratically in deciding that the appellant did not meet the condition of “good character”.

- (iii) That the correct test for assessing good character is that identified in *Hussain v. Minister for Justice* [2011] IEHC 171, and that it is not for the Minister to decide the criteria to be considered when assessing “good character”.
- (iv) That the trial judge erred in finding that the Minister complied with the requirements described in “*GKN v. Minister for Justice* [2014] IEHC 478” to conduct a proper assessment having regard to the outline facts of any offence and any mitigating factors, and to carry out a comprehensive assessment of an applicant’s character.
- (v) That the Minister failed to comply with the duty to give reasons and “not all relevant factors were weighed”.
- (vi) That the trial judge erred in ascribing to the Minister’s use of the phrase “Given the nature of the offences”, a meaning that includes how historical the offence in question is.
- (vii) That the trial judge erred in assessing irrationality, insofar as the Minister’s decision indicates the offences were not brought to the attention of the appellant, when they had been, and explanations were proffered that the existence of which explanations were not referred to in the impugned decision.
- (viii) The trial judge erred in finding that legitimate expectation of consideration of explanations did not arrive.
- (ix) The trial judge erred in holding that the appellant would not be prejudiced in any re-application.

28. The Grounds of Opposition deny in full all of the ten grounds of appeal, and assert, essentially for the reasons given by the trial judge, that the Minister applied the right standard, and that he did not act arbitrarily/capriciously/autocratically; that he correctly applied legal principles in respect of

“good character”; and that the appellant’s case was assessed by the Minister on an individual basis, and that “no error of fact or law is demonstrated”; that the Minister complied with his own duty to give reasons; that the “pertinence of antiquity to criminal offences in a consideration of a naturalisation application is well recognized in established authorities”; that the trial judge considered the relevant documents and correctly concluded that the text of the Minister’s documentation was correct, and that the appellant had not disclosed convictions, and that they came to light in the course of considering his application; that the Minister confirmed in his letter of notification that he had considered the appellant’s application “which contained any asserted explanations submitted therein”; and that the trial judge did not make any finding that the appellant would not be prejudiced in any re-application, but merely made observations which were not in error. It is not necessary to set out them in full.

29. This Court had the benefit of written and oral legal submissions by counsel on behalf of the appellant and the Minister, and these will be referred to, as appropriate, in the consideration of the issues arising in this appeal.

Considerations

30. Naturalisation applications are determined under the Irish Nationality and Citizenship Act, 1956, and the relevant provision, as amended, provides:-

“15A(1) Notwithstanding the provisions of *section 15*, and the Minister may, in his or her absolute discretion, grant an application for a certificate of naturalisation to the non-national spouse or civil partner of an Irish citizen if satisfied that the applicant –

(a) is of full age

(b) is of good character

(c) and that the citizen –

(i) are married to each other, have been married to each other for a period of not less than 3 years, and are living together, as attested to by affidavit submitted by the citizen to the Minister in the prescribed form, or

(ii) are civil partners of each other, have been civil partners of each other for a period of not less than 3 years, and are living together, as attested to by an affidavit submitted by the citizen to the Minister in the prescribed form.

(d) is, in the case of his spouse, in a marriage recognised under the laws of the State as subsisting,

(e) Had, immediately before the date of the application, a period of one year's continuous residence in the island of Ireland,

(f) had, during the 4 years immediately preceding that period, total residence in the island of Ireland amounting to two years,

(g) intent in good faith to continue to reside in the island of Ireland after naturalisation, and

(h) 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 a prescribed manner, of fidelity to the nation and loyalty to the State, and

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

(2) The Minister may, in his or her absolute discretion, waive the conditions at (c), (e), (f) or (g) of *subsection (1)* or any of them if satisfied that the applicant would suffer serious consequences in respect of his or her bodily integrity or liberty if not granted Irish citizenship.”

31. In *Hussain v MJELR* [2011] IEHC 171, Hogan J. explored what is meant by the words “good character” stating: -

“[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 of the Act of 1956 is designed to empower the respondent 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 these words are themselves borrowed directly from Article 9.2 of the Constitution of Ireland of 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 be measured up to reasonable standards of civic responsibility as gauged by reference to contemporary values. The respondent cannot, for example, demand that applicants meet some exalted standard of behaviour that would not realistically be expected of their Irish counterparts. Nor can the respondent impose his or her own private standard of morality that is isolated from contemporary values.”

Hogan J. went on to consider the “absolute” nature of the Minister’s discretion under section 15, seen in the context 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 MJELR* [2010] IEHC 187, (Unreported High Court) – Cooke J. 19th May 2010) He stated that –

“[18] Yet if the Minister could act *entirely* upon his own personal conceptions of what was entailed by good character on the basis that the Oireachtas had thereby vested him with an ‘absolute’ discretion, the way would be open for the imposition of private morality and arbitrary choice in this sphere of public law. In fairness, counsel for the respondent fairly disclaimed any such contention, although she did argue that the words gave the maximum possible degree of leeway to the respondent in making an assessment of this kind.”

32. Counsel for the Minister relied on earlier authorities which it was submitted demonstrated “that it is the Minister who determines what criteria fall to be considered” in determining good character. Reliance was placed on the decision of Cooke J. in *A.B. v MJELR* [2009] IEHC 449, at paragraph 12, and the decision of the same judge in *Tabi v MJELR* [2010] IEHC 109. While this is so, the Minister’s determination of criteria is not unfettered and Hogan J.’s measure of “reasonable standards of civic responsibility as gauged by reference to contemporary values” has received approval in the Supreme Court. Moreover the Minister’s exercise of his discretion in the determination and application of criteria is clearly amenable to judicial review. This was accepted by Cooke J. in *A.B.* and also by Hogan J. in *Hussain*, and in other authorities approved by the Supreme Court in *Mallak v MJELR* [2012] IESC 59. In the judgment of Fennelly J. –

“[45] The fact that a power is to be exercised in the ‘absolute discretion’ of the decision maker may well be relevant to the extent of the power of the court to review it. In that sense it would appear potentially relevant principally to questions of the reasonableness of decisions. It could scarcely ever justify a decision-maker in exceeding the limits of his powers under the legislation, in particular, by taking account of a legally irrelevant consideration. It does not follow from the fact that a decision is made at the absolute discretion of the decision-maker,

here the Minister, that he has no reason for making it, since that would be to permit him to exercise it arbitrarily or capriciously. Once it is accepted that there must be a reason for a decision, the characterisation of a Minister's discretion as absolute provides no justification for the suggestion that he is dispensed from observance of such requirements of the rules of natural and constitutional justice as would otherwise apply.”

33. Fennelly J. also noted that –

“[47] ... A distinction has been made in some of the cases, so far as the power of review is concerned, between cases where the Minister finds that an applicant has failed to comply with one of the statutory conditions in s.15(1) and what might be called his more general ‘absolute discretion’”.

Fennelly J. then referred to the decisions in *A.B.* and *Hussain* and stated –

“[50] It does not appear from these cases that the courts generally regard the mere fact that a person is applying for an important privilege, Irish citizenship, which he has no legal right to compel the State to grant him, as meaning that he enjoys inferior legal protection when pursuing his application. Nor do I think that a distinction can be drawn for this purpose between compliance with the naturalisation conditions in s.15(1)(a) to (e) and the broader and more general discretion which the Minister enjoys under the section. On the assumption that the applicant was, in fact, made aware of the Minister's reason for refusal, there is no good reason why he should be prevented from seeking review of its lawfulness to the same extent as he would be entitled in relation to any alleged failure to comply with any statutory obligations.

[51] The extent of the obligations of the Minister to give reasons for his decision must be considered, firstly, in the context of the developing general principles of judicial review and, secondly, by reference to the particular statutory provision.”

34. There is ample authority for the proposition that it is open to the Minister, in the exercise of his absolute discretion, to determine that a person is not of “good character” by reason of the commission of offences under the Road Traffic Acts, particularly where the offences are at the more serious end of the spectrum of such offences, where a court appearance is mandatory, and upon conviction certain penalties are mandatory. See for example Keane J. in *Kareem v. Minister for Justice* [2018] IEHC 200 – where the applicant had a conviction for driving without insurance. In *Hussein v MJLER* [2015] IESC 104 the Minister had refused an application for variation in his residence permission pursuant to s.4(7) of the Immigration Act, 2004, and that decision was quashed in the High Court. The Minister’s appeal was allowed, and Hardiman J. noted at paragraph [22] that –

“... The Minister certainly regarded a conviction for driving without insurance as a serious matter. She was entitled to do so. In the context of the present case, this offence was committed because the applicant could not get insurance in his own name because he held only a Bangladeshi driving licence and had apparently taken no steps to get an Irish one. This occurred, of course, in the case of a man who had been in the State for some years.

35. In the present case the trial judge also refers to the case of *Zaigham v MJELR* [2017] IEHC 630, where Faherty J. upheld the decision of the Minister to refuse naturalisation to an applicant who had been convicted of driving without road tax or a driving licence. However that case must be approached with caution because the recommendation to the Minister to refuse naturalisation was not on the basis on the offences themselves but rather on failure to disclose material information, which is an offence under Section 29 of the 1956 Act. The reason for upholding the Minister’s refusal appears at paragraph 40 of the decision where Faherty J. states that –

“The refusal rests squarely on the issue of the applicant’s non-disclosure... It is of course well established that the mere existence of criminal convictions will not debar a grant of naturalisation – much will depend on the nature of the offences. It is not disputed that the

offences in the present case were minor in nature and, without more, it would be difficult to conceive that they should debar an otherwise meritorious application. But the issue in this case is not about the 2010 offences of themselves; that relates to the issue of the applicant's non-disclosure and the obvious reliance placed on the respondent to refuse the application".

36. In the instant case it is "the nature of the offences" that led the Minister to refuse the application on the grounds that the appellant was not of "good character". As noted by Faherty J not all road traffic offences will debar an application. Minor offences do not necessarily reflect on a person's "good character", particularly if balanced against other matters in their favour. It is therefore the case that where there are road traffic offences it is the nature of those offences and the circumstances in which they were committed that will demand more attention. The decision of Mac Eochaidh J. in *G.K.N. v MJE* [2014] IEHC 478 is in point and was relied upon by the appellant. There the applicant for naturalisation had been involved in what the Garda Report characterised as a "hit and run" in respect of which he was fined €300 at Galway Circuit Court. The applicant's solicitors in correspondence explained: -

"This occurred when our client grazed a parked Jeep in his own motor vehicle. This occurred at 11.00pm 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 these are all demonstrated by the receipt of the District Court."

Mac Eochaidh J. noted that the offence arose under section 106 of the Road Traffic Act, 1961, but he observed that –

“15. ... It can involve extremely minor occurrences or events involving loss of life. Thus, the mere fact of an offence under s.106 is recorded against an applicant could not, of itself, rationally ground a negative naturalisation recommendation and... the connection between character and criminality can only be established when the Minister has all relevant information in connection with the crime.”

Mac Eochaidh J then adopted 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 purpose 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. 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.”

37. I too would adopt the principles enunciated by Lang J. The Minister in determining whether a person is of ‘good character’ must undertake a comprehensive assessment of each applicant’s character as an individual. While criminal convictions, or the commission of offences, are relevant to this enquiry and assessment, it is wider in scope than that, and the outline facts and any mitigating circumstances, the period of time that has elapsed since the last conviction, and other factors that may be relevant to character, must all be taken into consideration.

38. In *G.K.N. Mac Eochaidh J.* granted *certiorari* because he was not satisfied that the Minister was given all the information that he should have been in the submission that led to the decision. This has particular relevance to the present case where criticism is made of the Submission. At paragraph 18, Mac Eochaidh J. states that:

“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 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.”

39. It follows that if the Minister is relying on the “nature” of road traffic offences to determine that a person is not of “good character”, the Minister must have an understanding of the nature of the offences. Further, the understanding that led the Minister to conclude that the applicant was not of “good character” needs to be expressed in reasons that can be understood by the applicant. In *A.P. v. MJE* [2019] IESC 47, a naturalisation case, Clarke C.J. observed the following in relation to the obligation to give reasons: -

“4.1 ... The obligation of a public law decision maker to give reasons is, of course, well established. It is clear that there are two separate, although frequently overlapping, bases for the obligation in question. The first can be found in the obligation of transparency, whereby persons with a legitimate interest in public law decisions are entitled to know why those decisions were taken. The second stems from the fact that persons who may be affected by public law decisions are entitled to sufficient information to enable them to consider whether it might be appropriate to exercise a right of appeal (if one exists) or to seek to challenge the decision through judicial review decisions.”

40. *A.P.* also highlights the additional importance of the Minister giving reasons for refusal where there may be a future application for naturalisation. In the High Court, McDermott J. said the following as to the importance of furnishing reasons on the question of ‘good character’:

“31. It is important that this matter be reconsidered in accordance with these legal principles. The refusal of a certificate of naturalisation on the basis of ‘good character’ is a matter of considerable importance to the applicant in any future application. It is essential that he be

given to understand as fully as possible the precise basis and context of that refusal. It is common case between the parties that the applicant has no prior convictions. He is the father of two Irish citizen children born in 1994 and 1997. He has resided for 23 years in the State and has made five applications for naturalisation, all of which have been refused in 1997, 2004, 2008, 2010 and 2013. He is now 48 years old. It is important in any future application that he be given the opportunity to address as far as possible the reasons for the refusal if he is to make a meaningful application. I do not consider that the respondent adequately complied with the obligation to furnish the reason for the refusal in this case notwithstanding the exigencies under which the respondent must operate...”

O’Donnell J. at paragraph 12 of his judgment in the Supreme Court considered this to be “a careful and indeed rigorous application of the existing law with a view to ensuring the utmost transparency that was possible which should be afforded to the applicant.”

Clarke C.J. also noted this:-

“4.11 In the context of a decision concerning naturalisation such as is at issue in these proceedings, it is also necessary to take into account the fact that a person can renew or repeat an application despite a previous refusal. The decision is not of the sort where, once taken, it is binding in practice for the future and not capable of re-opened, or only is subject to being re-opened in limited and defined circumstances. Thus, there may, in reality be little difference in practice between establishing a right to greater reasons for an adverse decision once taken as opposed to obtaining information which may be relevant to making representations in respect of a decision under consideration. If adequate reasons are given in a decision, having regard to all relevant circumstances, then a party who feels that there is anything that they may be able to add to their application can always make a renewal application and deal with those issues in whatever way they consider appropriate.”

41. The importance of the Minister considering all relevant material, and the accuracy of information in any summary or recommendation prepared to assist the Minister in taking a decision, were emphasised in the recent decision of the Court of Appeal in *A.A. v. MJE* [2019] IECA 272. There the court allowed an appeal from an order of the High Court refusing to quash a decision of the Minister refusing a certificate of naturalisation. The applicant had been an applicant for asylum but had withdrawn her application, and in the following year visited her country of origin, Sudan. Baker J. giving the judgment of the court allowed the appeal on account of the Minister's reliance on the appellant's visit to Sudan because the Minister did not have the asylum file before her, and there was nothing on the documents which were before the recommending body or the Minister which showed the basis upon which asylum had been sought or refused. Baker J. cited a further difficulty relating to the recommendation that was before the Minister: -

“57. I have difficulty with the description in the recommendation to the Minister that the application for asylum of the appellant was ‘refused’. That description is, in my view, unduly prejudicial to her and does not carry the nuance of the circumstances in which this appellant found herself. She successfully sought judicial review of the decision of the RAT on appeal from the refusal to grant her asylum, and the appeal was never determined because she withdrew it, on her own explanation, because she had, by then, obtained residence in the State, and a grant of refugee status would not have afforded her any further privileges.”

42. Mention should also be made here of the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016. This Act provides for the limitation of the effect of certain criminal convictions after certain periods of time. It applies, in general, to Road Traffic Offences. Under s.5 a conviction may be regarded as “a spent conviction” if *inter alia* “not less than seven years shall have passed since the effective date of conviction”. Under subsection (3) “Subject to subsection (5) no more than one conviction may be regarded as a spent conviction and if a person has more than one

conviction, this section shall not apply to that person.” Subsection (5) provides that subsection (3) does not apply to sentences imposed in the District Court under the Road Traffic Acts, 1961 to 2015 other than s. 53 of the Road Traffic Act 1961 (Dangerous Driving), section 37A of the Intoxicating Liquor Act, 1988 and certain sections of the Criminal Justice (Public Order) Act, 1994. Where the conviction is “a spent conviction” under s.6(1) the person concerned is not required to disclose a conviction for the purpose of any rule of law or any agreement or arrangement which purports to require disclosure. However, there is a limitation on this section that is material. Section 8(1) provides that s.6 shall not apply where *inter alia* a person is required to disclose previous convictions

–
“(b) In respect of an application by the person –

- (i) to enter, be or remain in the State, or
- (ii) for Irish citizenship...”

43. Accordingly, an applicant for naturalisation cannot avoid disclosing previous convictions, even those that would otherwise be “spent convictions”. It follows that the Minister is entitled to have regard to what would otherwise be “spent convictions” in considering ‘good character’ for the purposes of assessing an application for a naturalisation certificate.

44. Notwithstanding the exemption in section 8 of the 2016 Act, it is nonetheless of some significance that the legislature has in that Act differentiated certain categories of offences. In the first category are more serious offences such as sexual offences, offences reserved by law for trial in the Central Criminal Court, and offences, other than those prosecuted in the District Court, attracting imprisonment for a term of more than twelve months. In the second broad category are less serious offences attracting a lesser punishment, including convictions under the Road Traffic Acts. A third category is those listed in s.5(5) where *more than one conviction* may be regarded as spent, and this includes all convictions arising under the Road Traffic Acts other than dangerous driving, and also

applies to many public order offences. The categorisation in this contemporary statute shows that the Oireachtas recognises differing levels of opprobrium for different types of offence depending on seriousness and/or the nature of the offence, and recognises the general view that older minor offences should, after the lapse of 7 years, cease to be a blot on a person's good name or a continuing impediment to access to rights and opportunities.

45. To this should be added that under the Road Traffic Act, 2002 a system of penalty points was established in respect of motor offences. Penalty points attracted by an offence remain on the record of a person for three years, and where the number reaches or exceeds twelve (or seven points for learner drivers or novice drivers who have a full licence but are in their first two years) an automatic six-month disqualification will apply without the involvement of any court order. In most penalty point cases a person will be allowed the opportunity to pay a fixed charge which will allow him or her to receive fewer penalty points than would be attracted to a conviction in court for the same offence. Under section 4 the Minister must cause the penalty points to be removed from entry on the record at the end of the three-year period, and notify the person accordingly. As the system currently stands, exceeding a speed limit attracts three penalty points on payment of a fixed charge and five penalty points on a conviction; and driving a vehicle without insurance results in five penalty points on conviction together with a fine. The system of penalty points is particular to road traffic offences and the fact that they have a limited life span of three years effect on a driving licence may be regarded as further recognition by the Oireachtas that such offences fall into a different category to other offences.

Discussion

I propose to address in turn two central issues pursued on this appeal which broadly stated, encompass most of the grounds of appeal and the argument in written submissions and at hearing. These are :

(1) did the trial judge err in finding that the Minister considered the explanations for the offences/charges given in the appellant's solicitors correspondence with INIS;

(2) does the impugned decision satisfy the obligation on the Minister to give reasons.

Did the Minister consider the appellant's/his solicitor's explanations of the offences?

46. Notwithstanding that the Minister has an absolute discretion in determining an application for a certificate of naturalisation, it is beyond question that the Minister has a duty to act fairly and judicially in accordance with the principles of constitutional justice. It follows that in addressing the condition that an applicant be of 'good character' the Minister must consider and analyse all relevant material, and a failure to do so makes the lawfulness of the decision susceptible to judicial review. Put another way, the appellant had a legitimate expectation that the material favourable to him, including explanations for road traffic offences, would be considered and weighed by the Minister. This does not mean that the decision maker must consider the entire file, or that a system of presenting a summary and recommendation cannot be adopted – provided that all of the relevant material and information is fairly brought to the decision maker's attention and is considered.

47. The appellant's history of Road Traffic Act offence convictions in 2011, and the record of the 2017 no insurance charges – albeit that they did not result in any conviction – were undoubtedly relevant matters that the Minister was entitled to take into account. However the decision was based on "the nature of the offences" so equally relevant were the circumstances that gave rise to these charges, together with any facts tending to explain the outcome. This is particularly so where offences such as having no insurance carry strict liability, and the spectrum or seriousness runs from deliberately, knowingly and repeatedly driving without insurance on the one hand, to driving while believing with good reason that there is insurance cover in place, on the other. It is only in the fuller context that the Minister can identify and assess the connection between character and criminality; it is for the same reason that the Minister may consider charges brought against a party even if they do

not result in a criminal conviction – and instead, as here, result in a strike-out with a contribution to the ‘poor box’. As Lang J. stated in *Hiri*, “In order to conduct a proper assessment, the [Minister] ought to have regard to the outline facts of any offence and any mitigating factors.... 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.”

48. The onus is on the appellant to satisfy the court that the Minister has considered all relevant information on file. No direct evidence was adduced to show that the Minister did not have regard to the explanations proffered in the correspondence from the appellant’s solicitors. That is hardly surprising. It will be an unusual case where an applicant for judicial review is in a position to give such evidence, or even sufficient evidence to justify an application for cross-examination of the decision maker as to precisely what materials were taken into account. *A.A.* was perhaps such a case, as it became apparent that the Minister did not have the appellant’s asylum file before her when relying on the fact that the appellant had visited Sudan less than a year after she withdrew her asylum appeal. The appellant in the present case relies instead principally on the absence of any reference to the explanations, exculpatory information or solicitor’s correspondence in the notification of decision, the Submission or the Garda Report, but he also points to the wording of the Submission, and the reliance by the Minister on “the nature of the offences” which led to the conclusion that the applicant was not of “good character”.

49. The trial judge in his General Observation found sufficient the simple statement in the Minister’s letter of notification that the decision was reached “having considered your application”, and he found that there was “no reason to believe this means anything other than a complete application file, including submissions made by/for Mr. Talla” and material that accompanied the decision letter.

50. On consideration of the letter of notification and the Submission I have come to the conclusion that the trial judge erred in this General Observation, and that it cannot be concluded that the decision maker – the Director General on behalf of the Minister – considered all the relevant material on file. The letter of notification is not signed by the decision-maker – it is unsigned but under the name Alice A. Treacy, one of the INIS ‘Further Processing LS Team’, and dated one day after the decision was made. While there is no legislative or other legal requirement that the Minister or deciding office personally sign off on notification of a decision, the fact remains that there is no document signed by the Director General confirming that he personally considered all relevant evidence in the file.

51. More particularly a number of features of the Submission give rise to concern. Critically there is no mention of any of the explanations given by the appellant or his solicitors, or even the fact of the solicitor’s correspondence. This is a surprising omission given that these contain facts of central importance to the application. The result is a Submission, which, when read with the Garda Report, is imbalanced in that there is no reference to exculpatory or mitigatory information nor any reason given for the poor box payment in respect of the 2017 charges.

52. In this respect the facts resemble those in *G.K.N.* where the minor nature of the ‘hit and run’ offence in question was not brought to the Minister’s attention. Counsel for the Minister sought to distinguish *G.K.N.*, and it is arguable that the description of the offence in the submission as ‘hit and run’ was more serious in terms of the shadow that it cast upon GKN’s character. That said, on its facts, the District Court there imposed a fine of €1,000 and, unlike in the present case, there was some car damage. It should also be recalled that Mac Eochaidh J found 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” (paragraph 21). Counsel for the Minister also submitted that in *G.K.N.* the High Court did not determine that the ‘nature’ of the offence was not properly considered, but rather that the Minister had not considered all relevant material. I do not

think this wholly correct: In paragraph 18. Mac Eochaidh J refers to the absence of information in the submission on the surrounding circumstances of the incident and says:

“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.” [Emphasis added]

As in the instant case it was the relevance of the omitted material to the nature of the offence that that was critical, and this could not be properly considered without all relevant material.

53. Secondly, this imbalance is heightened by the manner in which the Submission refers to the onus on the appellant to disclose all appropriate information, yet a failure to disclose information does not form part of the reasoning for recommending refusal of a certificate, or for suggesting that the applicant is not “of good character” (unlike in the *Zaigham* case).

The second paragraph of the submission refers to the onus on each applicant to disclose all appropriate information and is immediately followed by the comment –

“Information has come to light in the course of the processing of this application which the applicant could reasonably have foreseen could be taken into consideration in the decision making process. The Minister is not obliged to give advance notice of information of which the applicant is already aware.”

This last sentence is confusing because on one reading it suggests that the appellant was not given advance notice of the Garda Reports (which he was) and the passage also suggests that he did not disclose any information on previous convictions or charges, whereas in fact he and his solicitors did engage, and in some detail, yet the explanations are not reproduced or even summarised.

54. Thirdly, in the Recommendations section the authors refer to a “history of non-compliance with the laws of the State” and then state “The relevant information is attached to this submission” – viz. the Garda Report. The reader could be forgiven for thinking that there was no further relevant information in relation to this history, or the “nature of the offences”.

55. This again bears comparison to the quality of the short submission to the Minister which led Mac Eochaidh J. to quash the refusal in *G.K.N.* He considered that the submission: -

“..selects certain information only from the overall application for the attention of the Minister... 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.” (paragraph 18).

The trial judge took the view that “there is nothing to indicate that the Minister departed from, e.g. *GKN*”, but I disagree. The core feature common to *G.K.N.* and the instant case is that in both of them the submission upon which the Minister based his decision failed to set out the applicant’s exculpatory/mitigatory explanations for road traffic offences. Counsel for the Minister urged this court to follow the decision *Tabi* to the effect that the “absolute discretion” allows the Minister to determine what criteria are taken into account in determining “good character” and that the Minister is entitled to take into account a series of infringements of the Road Traffic Acts. However this submission fails to recognise the overriding requirement for the Minister to take into account a full and fair description of the underlying facts relating to the charges/offences that are relevant to the appellant’s character.

56. In his grounding affidavit the appellant at paragraph 11 deposes that –

“The content of the recommendation appears to suggest that neither the author nor those who approve the recommendation, were aware that I had in fact been informed of the intention to consider this offence, or that I had in fact submitted an explanation.”

This averment probably goes too far in relation to the author of the Submission/recommendation, because it is reasonable to assume that the author considered the entire file in preparing that Submission. However the point is in my view well made in relation to the decision maker. In this regard I note that the recommendation for a refusal was signed off by ministerial official R. Cahill on 19 February 2018, and on the same date the application was considered by the Director General who determined it and signed “Application refused” on the submission.

57. I am not therefore satisfied that as a matter of probability the decision maker considered all information or material relevant to the “nature of the offences”, such as: -

- (1) That the speeding offence occurred on 27 July 2010, and that the appellant maintained he did not get a speeding ticket, and that when he got the summons he went to court, pleaded guilty and accepted and paid his fine.
- (2) That the first no insurance charge arose out of 16 September 2009 when the appellant was insured on other cars owned by his brother, and believed that he was insured to drive the car in question; that he was in fact insured on other cars belonging to his brother, as confirmed by FBD Insurance, and that the District Judge appeared to accept this.
- (3) That there were no other charges (other than those brought mistakenly in 2016, which were struck out) before the no insurance charge brought to court on 21 September 2017; that the appellant pleaded guilty to the no insurance and failing to produce charges, but the District Judge accepted the explanation and plea of mitigation that the policy of

insurance had not been renewed as a result of a genuine oversight on the part of the appellant's brother.

58. The respondent had every opportunity to rebut the appellant's averment at paragraph 11 of his affidavit, and indeed any plea or argument that the decision maker failed to take into account relevant considerations. A replying affidavit was sworn by Mr. Murray, the Assistant Principal who signed the Submission on 5 February 2018. There is a rather circumspect averment at paragraph 6 of his affidavit where, after referring to the fact that "there was considerable correspondence between the respondent and the applicant in relation to the various offences committed by him" he goes on to say that –

"I say that this correspondence is evidence of the active consideration of the various explanations offered by the Applicant and the documentation provided by him."

This begs the questions "By whom was there active consideration of the applicant's various explanations and documentation?", and "Was this correspondence/these explanations considered by the decision maker?" This was an obvious opportunity for Mr. Murray to attempt to rebut any suggestion that the Minister/Director General failed to consider those explanations, and to set out precisely what material was considered by the Director General before signing the Submission and thereby approving the recommendation and making the impugned decision. Perhaps more to the point, an affidavit could have been sworn by the Director General deposing to these matters. I am left with the impression that the file was presented to the Director General on 19 February 2018 with the Submission and Garda Report on top, and that these were the only documents and information that were actually considered before the decision was made.

59. Accordingly, I am not satisfied that the Minister considered and weighed all relevant considerations before deciding to refuse a certificate for naturalisation, and that the trial judge erred

in finding that there was “no reason to believe” that the complete application file including submissions made by or on behalf of the appellant were considered by the Minister.

Was the obligation to give reasons satisfied?

60. Counsel for the appellant relied on two recent decisions of this court in which the obligation to give reasons for refusing naturalisation was considered. In *A.A. Baker* J referred to the Supreme Court decisions in *Mallak* and *A.P.*, and summarised the obligation to give reasons:

“30. In my view, the Supreme Court must be seen to have endorsed a general proposition that sufficient and intelligible reasons must be given, reasons capable of being understood by the person receiving them, and which flow from facts before the decision maker of which the recipient is aware, and that the requirement would not be met by the furnishing of reasons in form and not in substance, and where the “underlying rationale” was not known.”

61. In *Borta v MJE* [2019] IECA 255 the applicant sought naturalisation based on “Irish Associations” (s.16 of the 1956 Act). The reasons given for refusing a certificate were brief and vague – the Minister acknowledged that the applicant had Irish associations but did not consider them sufficiently strong to warrant the exercise of the Minister’s discretion in her favour. It was argued that if the Minister was permitted to consider the strength of the associations he must provide reasons as to how and why the accepted associations are not sufficiently strong; in the absence of any such reasons, the essential rationale of the decision was not disclosed. Donnelly J agreed that the Minister had not identified which factors had gone towards the strength of the Irish associations, and stated –

“40...If the reason is that she needed a longer period of Irish association then the passage of time might raise an expectation of naturalisation in the future. There may be other reasons but those are for the Minister to state. It goes without saying that a clear statement of reasons would permit Ms. Borta to challenge them if she believed there were good grounds to do so.

41. I do not accept that requiring these kind of reasons amounts to a fettering of a discretion on the part of the Minister or indeed amounts to requiring guidelines to be given by the Minister...”

62. Counsel for the appellant submitted that these observations, and the approach taken by the High Court in *G.K.N.*, following Lang J in *Hiri*, apply to the instant case where the decision turned on the “nature of the offences”, yet the Submission does not set out any facts, analysis or reasoning related to the circumstances of the offences/charges.

63. Counsel for the Minister argued that the trial judge was correct in finding no inadequacy in the reasons provided, and that the rationale was capable of being inferred from the terms and context of the decision. Counsel relied particularly on the statement in the Submission that “This applicant has a history of non-compliance with the laws of the State. The relevant information is attached to this submission.” It was submitted that there was sufficient information to enable the appellant to ascertain whether there existed a ground for seeking judicial review, and to enable the court to exercise its power of judicial review.

64. There is an obvious overlap between the question of reasons and the earlier question of whether the decision maker considered all relevant material. If not all relevant explanations were considered then the Minister cannot have carried out the analysis that could lead to a decision based on the “nature of the offences”. In that I have formed the view that the decision maker did not consider all relevant material it follows that the reason given based on the “nature of the offences” cannot be upheld.

65. If I am wrong in this, and all relevant material was considered, then the Minister’s rationale for deciding that the “nature of the offences” meant the appellant was not of ‘good character’ is not apparent from the Submission. It can readily be inferred that the “history of non-compliance” refers to the two convictions in 2011 (for offences that occurred in 2009 and 2010) and the no insurance

charges in 2017, but there is no analysis of why road traffic offences that are so far apart in time constitute a history that amounts to the appellant not being of “good character”.

66. It is probably reasonable to infer that the “nature of the offences” is a reference to the ‘no insurance charges’ in 2011 and 2017, although it is notable that the Submission does not differentiate between the speeding offence and the no insurance charges. However this short phrase does not identify the Minister’s essential rationale for regarding the appellant’s ‘no-insurance’ offences, which might (in light of the explanations given by the appellant and apparently accepted by the District Court) be regarded as technical and lacking any intent or *mens rea*, as reflecting on his character such as to regard him as not being of “good character”. As I have indicated earlier although the Criminal Justice (Spent Convictions and Certain Disclosures) Act, 2016 does not apply to naturalisation applications, nonetheless the Oireachtas has for certain character reference purposes drawn a distinction between Road Traffic Act convictions (other than for dangerous driving) and other offences. Further, within ‘no insurance’ offences there is a wide spectrum of possibilities from serious and repeated, to inadvertent/unintentional. The state of mind of the offender is surely relevant to assessment of the bearing that the offence may have on their general character, as also is the manner in which the offence is met e.g. is it faced up to early, is there a plea? In *Hussein*, where the Minister exercised her discretion to refuse to grant an application for variation of a residency permission on the basis that the applicant was not of ‘good character’ due to a no insurance conviction, Hardiman J held that the Minister was entitled to view the conviction as a serious matter, adding –

“[22]...this offence was committed because the applicant could not get insurance in his own name because he held only a Bangladeshi driving licence and had apparently taken no steps to get an Irish one. This occurred, of course, in the case of a man who had been in the State for some years.”

That was clearly a case where the appellant deliberately drove without insurance. It is also worth noting that the issue in that case was moot, because the Mr. Hussein became a naturalised citizen

despite the conviction, but the appeal was heard by the court notwithstanding its mootness. Of some relevance to the present case Hardiman J observed:

“[23] ...It is also very relevant to notice that the applicant has since become an Irish citizen, thereby demonstrating that the authorities have indeed taken into account the further period he has spent in the State without coming to unfavourable notice.”.

In *Kareem v MJE* [2018] IEHC 200 again the applicant who was refused naturalisation admitted knowingly driving while uninsured (and his letter with this admission was annexed to the submission that was considered by the Minister), thus rendering his offence higher in the scale of seriousness.

It is therefore important that the Minister explain why the nature of road traffic offences in a particular case reflects decisively on a person’s character.

67. As *Hussein* demonstrates transparency is all the more important where it can be anticipated that a person refused a certificate due to a history of road traffic offences may in time reapply, and the rationale for the refusal will therefore have a bearing on whether, and when, re-application may be made, and the manner in which a renewed application might address the historical offences. As Clarke C.J. stated in *A.P.* –

“[4.11]...Thus, there may, in reality, be little difference in practice between establishing a right to greater reasons for an adverse decision once taken as opposed to obtaining information which may be relevant to making representations in respect of a decision under consideration. If adequate reasons are given in a decision, having regard to all relevant circumstances, then a party who feels that there is anything that they may be able to add to their application can always make a renewed application and deal with those issues in whatever way they consider appropriate.”

68. I would therefore allow the appeal on this second ground and determine that the decision should be quashed because the Minister failed in all the circumstances to give reasons and in particular

failed to express his rationale for deciding that the “nature of the offences” meant that the appellant was not a person of “good character”.

Other grounds

69. In light of my view that the Minister did not consider all relevant materials, and that in any event the decision does not give his essential rationale for deciding character on the basis of the “nature of the offences”. It is not necessary or appropriate for me to consider whether such findings as they appear in the Submission should be struck down as being unreasonable or irrational. Nor is it necessary for me to explore any further than this judgment already does the question whether the limit of the court’s role in reviewing the decision is to ascertain whether the Minister acted arbitrarily, capriciously or autocratically in refusing a certificate.

70. The appellant raises as a separate ground of appeal a challenge to the trial judge’s finding that that the appellant would not be prejudiced in any future re-application, and his statement that -

“Over time the nature of the offences will change in part by their becoming increasingly historical in nature. In any future application that changed nature may or may not benefit Mr. Talla. Whether it does is a matter for the Minister, whose future decision/s (if further application/s is/are made) will doubtless also be informed in part by the entirety of Mr Talla’s history to the point of such future decision/s.”

71. I do not believe that there is anything wrong with this statement *per se*. It is a truism that offences become “increasingly historical” with the passage of time, and that it is a matter for the Minister to consider alongside the entirety of an applicant’s history up to the point of any future decision. Further in addressing the Minister’s obligation to give reasons I have taken into account that an applicant for naturalisation who has a history of road traffic offences may have an entitlement to greater reasons for a refusal precisely because of the possibility of repeat applications.

72. Accordingly I would allow this appeal and order that the Minister's decision refusing naturalisation be quashed and that the appellant's application for a certificate be remitted to the Minister for reconsideration in accordance with the terms of this judgment.

As this judgment is to be delivered electronically, Noonan and Power JJ. have indicated their agreement with it.

