

APPROVED

[2024] IEHC 464



THE HIGH COURT
JUDICIAL REVIEW

2022 147 JR

BETWEEN

A.O.

APPLICANT

AND

MINISTER FOR JUSTICE

RESPONDENT

JUDGMENT of Mr. Justice Garrett Simons delivered on 26 July 2024

INTRODUCTION

1. This judgment is delivered in respect of an application to strike out these judicial review proceedings as being premature and/or an abuse of process. The principal relief which is sought in the proceedings is a mandatory order directing the Minister for Justice to determine an application for a certificate of naturalisation within a specified period of time. The Applicant alleges, in effect, that there has been unreasonable delay in processing his application to become an Irish citizen.

NO REDACTION REQUIRED

2. The Minister makes the objection that the application for judicial review is premature in circumstances where, as of the date of the leave application, there was paperwork outstanding from the Applicant. In brief, the Minister says that it was unreasonable to expect a decision in circumstances where the Applicant had not yet provided all of the paperwork necessary to allow an informed decision to be made.

PROCEDURAL HISTORY

3. Irish citizenship may be conferred on a non-national by means of a certificate of naturalisation granted by the Minister for Justice pursuant to the Irish Nationality and Citizenship Act 1956. The Applicant submitted an application for a certificate of naturalisation on 27 August 2020 (“*the citizenship application*”). The citizenship application had still not been determined by January 2022. The Applicant, through his then solicitor, wrote to the Department of Justice on 25 January 2022. This letter indicated that if a decision were not made in respect of the citizenship application within a period of twenty-one days from the date of that letter, the solicitor had instructions to issue judicial review proceedings.
4. The Department of Justice responded by way of letter dated 7 February 2022. This letter outlined a number of factors which were said to have given rise to significant delay in the processing of applications for naturalisation. The letter indicated that the processing time for a standard application had increased to 24 months. The Department of Justice sent a second letter, on the same date, requesting that the Applicant complete a form entitled “*Form NVBI(a) Vetting Invitation*”. The letter explained that completion of this form was necessary to allow the Minister to request an up-to-date report from An Garda Síochána. To

elaborate: the Applicant, by completing the form, would authorise the Garda National Vetting Bureau to furnish certain information to the Minister in relation to matters such as any prior criminal convictions. This form will be referred to in this judgment as “*the vetting authorisation form*”.

5. The Applicant completed the vetting authorisation form and returned it to the Department. Crucially, however, there was an error in the form in that the Applicant had, mistakenly, written in his date of birth in the box which was intended to indicate the date upon which the form had been completed. The Department of Justice wrote to the Applicant on 3 March 2022 explaining that the vetting authorisation form had been completed incorrectly and asking that he complete a new form. A reminder letter was sent to the Applicant on 16 March 2022. In the event, a completed vetting authorisation form was returned in or about 22 March 2022.
6. In the interim, an *ex parte* application for leave to apply for judicial review was made on behalf of the Applicant on 28 February 2022. This was so notwithstanding that a properly completed vetting authorisation form had not been submitted as of that date.
7. Thereafter, a further difficulty arose in relation to the citizenship application. The Department of Justice had a concern as to the validity of the Nigerian passport which had been submitted as part of the citizenship application. These concerns were raised by way of letter dated 23 March 2022 and the Applicant was requested to provide an explanation as to why a “*false passport*” had been submitted. As explained presently, the Applicant contends that a new passport has since been issued to him by the Nigerian authorities.

8. The solicitors acting on behalf of the Applicant issued a motion seeking to come off record on 17 May 2022. The High Court made an order on 27 May 2022 declaring that the firm had ceased to be the solicitors acting on behalf of the Applicant in these proceedings.
9. It does not appear that any further significant steps were taken in the proceedings until March 2024. The Minister issued a notice of motion on 22 March 2024 seeking to strike out these judicial review proceedings as being premature and/or an abuse of process. The notice of motion had an initial return date of 24 April 2024.
10. The Applicant submitted a short affidavit (dated 3 July 2024) in reply to the motion. This affidavit explains that—at least in the Applicant’s opinion—the concern in relation to the passport has been resolved by the issuing of a fresh passport by the Nigerian authorities. This affidavit had not been filed by the Applicant in the Central Office of the High Court. The Registrar, at my direction, has since arranged for it to be filed.
11. The motion came on for hearing before me on 19 July 2024. There was an initial logistical difficulty at the hearing in that whereas copies of the motion papers were available, there was only one spare copy of the *substantive pleadings* available in court. In circumstances where the Applicant appeared as a litigant in person, I was anxious to ensure that he would have a full set of papers in front of him for the purpose of the hearing. The spare copy was thus given to the Applicant. This meant that I did not have a copy of the substantive pleadings available to me. Rather than delay matters further by adjourning the motion, I indicated to the parties that I would hear the motion but would not deliver my judgment until such time as I had an opportunity to consider the paperwork in

full. To this end, I directed that the solicitor on behalf of the Minister was to file a full set of papers. In the interim, a copy of the statement of grounds was emailed to my judicial assistant and then shared with me. I have since received a full set of the pleadings and have had regard to same in preparing this judgment.

12. The Applicant explained at the hearing that he has since obtained a new passport from the authorities in Nigeria. The Applicant is anxious that his application for naturalisation should be progressed.

DISCUSSION

13. The principal relief sought in these judicial review proceedings had been an order directing the Minister to make a decision on the citizenship application within a period of ten weeks.
14. No decision-maker can reasonably be expected to make a decision in circumstances where an applicant has not yet provided the decision-maker with all of the documentation requested. (This may be subject to an exception if a decision-maker makes a manifestly unreasonable request, but no such consideration arises in the present case). Here, the decision-maker, i.e. the Minister for Justice, had sought the submission of a completed form by which the Applicant would authorise the Garda National Vetting Bureau to furnish certain information to the Minister. This was an entirely reasonable request for the Minister to have made in circumstances where one of the statutory criteria to be considered on an application for a certificate of naturalisation is whether an applicant is a person of “*good character*”: see Part III of the Irish Nationality and Citizenship Act 1956.
15. The vetting authorisation form which had initially been submitted by the Applicant was invalid in that it did not contain the date of completion of the

form. The Department of Justice wrote to the Applicant on a number of occasions, and a properly completed form was ultimately submitted in or about 22 March 2022. Crucially, however, the application for leave to apply for judicial review was made on a date *prior* to the submission of the properly completed form. Put shortly, the Applicant was seeking a mandatory order directing the Minister to make a decision on a citizenship application which was deficient in that crucial documentation was missing.

16. This difficulty is not cured by the fact that the properly completed form was subsequently submitted. It is essential that, as of the date of the institution of judicial review proceedings seeking mandamus, an applicant must have complied with all of the requirements of the decision-maker. A decision-maker cannot reasonably be expected to reach a decision in advance of the submission of all the necessary paperwork.
17. Applying these principles to the present case, the Applicant did not have arguable grounds for seeking an order of mandamus as of the date of the institution of these judicial review proceedings by reason of the fact that a properly completed vetting authorisation form was outstanding. It follows, therefore, that the Minister is entitled to an order striking out the proceedings as having been brought prematurely.
18. For completeness, it should be noted that a further difficulty arose in relation to the citizenship application. The Department of Justice identified concerns as to the validity of the passport which had been submitted as part of the citizenship application. It was entirely legitimate for the Minister to defer making a final decision on the citizenship application until the Applicant provided a satisfactory explanation in this regard. It appears that this issue has only belatedly been

addressed by the Applicant and the Minister is entitled to further time to consider whether the explanation resolves her concerns. All of this represents a further reason for finding that the judicial review proceedings were premature.

CONCLUSION AND PROPOSED FORM OF ORDER

19. The Applicant did not have arguable grounds for seeking an order of mandamus as of the date of the institution of these judicial review proceedings in circumstances where a properly completed vetting authorisation form had not yet been submitted. It follows, therefore, that the Minister is entitled to an order striking out these judicial review proceedings as having been brought prematurely.
20. As to legal costs, my *provisional* view is that no costs order should be made, i.e. each party should bear their own costs of the proceedings. The Applicant has explained that he had been ill at the time that the letters requesting the submission of a completed vetting authorisation form had been sent. It seems likely that the solicitors then acting for the Applicant were unaware of this correspondence at the time these proceedings were instituted. Certainly, it is apparent from the affidavit grounding the solicitors' application to come off record that the firm had been unaware of the potential difficulty arising in respect of the authenticity of the passport submitted as part of the citizenship application. It appears from the correspondence that there was a proposal by the Applicant's then solicitors that the proceedings be struck out in April/May 2022. No satisfactory explanation has been proffered as to why this proposal was not actioned: the solicitors were still on record for the Applicant and should have been able to obtain instructions from their client. Having regard to the fact that

the Applicant is now a litigant in person, it would seem harsh to require him to pay the legal costs in circumstances where it seems that the proceedings could have been disposed of in April/May 2022 with minimal costs having been incurred by the Respondent. Moreover, the Applicant did not oppose the application to strike out the proceedings and his reasonable conduct in this regard is a factor which may be taken into account in allocating costs under section 169 of the Legal Services Regulation Act 2015.

21. Finally, the Department of Justice is requested to write to the Applicant and to indicate what procedural steps he should take to progress his application for citizenship. It seems that the new passport (which he has, seemingly, received from the Nigerian authorities) has been submitted to the Department in the context of the existing naturalisation application. The Department of Justice should indicate, in correspondence to the Applicant, whether the existing naturalisation application will now be processed, or whether, alternatively, it is necessary for the Applicant to make a *fresh* naturalisation application.
22. If either party wishes to address any aspect of the proposed orders, they should notify the registrar within twenty one days and arrange to have the matter relisted before me on 11 October 2024 at 10.45 AM. In the absence of such notification, an order will be made striking out the proceedings with no order as to costs.

Appearances

The applicant appeared as a litigant in person
Helen-Claire O'Hanlon for the respondent instructed by the Chief State Solicitor