

APPROVED

[2022] IEHC 206



**THE HIGH COURT
JUDICIAL REVIEW**

2020 No. 441 JR

IN THE MATTER OF THE TAXI REGULATION ACT 2013

BETWEEN

MD. SAYDUR RAHMAN

APPLICANT

AND

**SUPERINTENDENT COLUMBA HEALY
SUPERINTENDENT THOMAS MURPHY
(AS AUTHORISED OFFICERS FOR THE DUBLIN METROPOLITAN REGION)
COMMISSIONER OF AN GARDA SÍOCHÁNA**

RESPONDENTS

JUDGMENT of Mr. Justice Garrett Simons delivered on 25 April 2022

INTRODUCTION

1. This judgment addresses the extent, if any, to which a person's immigration status may be taken into account in deciding whether to grant them a licence to drive a small public service vehicle (including, relevantly, a taxi).

NO REDACTION REQUIRED

LEGISLATIVE FRAMEWORK

2. There is a statutory requirement for a person to hold a licence in order to drive a small public service vehicle for the carriage of persons for reward. This requirement is provided for under section 22 of the Taxi Regulation Act 2013. A licence of this type will be referred to in this judgment as an “*SPSV driver’s licence*”. It should be explained that a separate licence is required in respect of the vehicle itself. Whereas this judgment is concerned with the refusal of an SPSV driver’s licence, it will be necessary to make brief reference, by analogy, to how an applicant’s immigration status is addressed in the context of the vehicle licensing regime. The Taxi Regulation Act 2013 uses the term “*licence*” to describe both types of licences.
3. The Taxi Regulation Act 2013 envisages that the National Transport Authority will, ultimately, be the licensing authority. However, An Garda Síochána are acting as the licensing authority on an interim basis pending the making of the requisite Ministerial Order pursuant to section 7 of the Act. The Commissioner of An Garda Síochána has nominated the first and second named respondents as authorised officers for the Dublin Metropolitan Region pursuant to section 70 of the Act.
4. The fact that the National Transport Authority has not yet assumed its intended role as licensing authority has the consequence that there is currently a split between the licensing function and the wider regulatory function under the Taxi Regulation Act 2013. It is the National Transport Authority which is responsible, under section 7 of the Act, for prescribing the terms and conditions relating to the grant of a licence and the information and documentation to accompany an application. The National Transport Authority is also

responsible, under section 8 of the Act, for the establishment of requirements and conditions for the purpose of the assessment of applicants for the grant of licences.

5. The National Transport Authority has made regulations which prescribe a number of matters which must accompany an application for a new or renewed SPSV driver's licence. These include, *inter alia*, (a) evidence that the applicant has held a valid driving licence without endorsement for more than twelve months; (b) evidence that the appropriate fee has been paid; (c) an undertaking not to drive the vehicle for more than eleven hours in any one day in any period of three consecutive days; (d) a valid tax clearance certificate; (e) evidence of the successful completion of the relevant SPSV driver entry test for the chosen area of operation; (f) information in relation to any other occupation held by the applicant; (g) a declaration in respect of health matters; (h) if requested, information in relation to the applicant's mental health; (i) a declaration in respect of convictions; and (j) such other items as may be directed from time to time by the licensing authority.
6. The regulations made by the National Transport Authority do not impose any obligation, in the context of an application for an SPSV driver's licence, for an applicant to provide information or documentation in respect of their immigration status. This is to be contrasted with the position obtaining in respect of an application for an SPS vehicle licence. In the case of an applicant who is a non-national, an application for an SPS vehicle licence must be accompanied by a declaration by such person that the conditions of their immigration permission do not preclude them from operating a business or being self-

employed in the State: see Taxi Regulation (Small Public Service Vehicle) Regulations 2015, reg. 13.

7. A licensing authority is precluded, under section 10 of the Taxi Regulation Act 2013, from granting a licence unless it is satisfied that the applicant is a “*suitable person*” to hold a licence. The term “*suitable person*” is not defined, but a number of criteria are prescribed as follows under section 10(2) of the Act:

“(2) In assessing whether a person is a suitable person to hold a licence, the licensing authority may, amongst any other matters, have regard to the following:

- (a) whether the applicant is of good character;
- (b) any concerns raised by the Authority or the Garda Commissioner or other member of the Garda Síochána regarding the applicant’s suitability to hold a licence;
- (c) any convictions for offences (including offences under the enactments mentioned in the Schedule) committed by the applicant, and the extent to which those convictions are of relevance to the activities of the person in respect of providing small public vehicle services or driving a small public service vehicle, as the case may be;
- (d) in respect of an application for a licence to drive a small public service vehicle, the health of the applicant and his or her ability to provide small public vehicle services or drive a small public service vehicle;

[...]

- (f) where an applicant has previously held a licence, his or her compliance with any obligations applicable to him or her as a licence holder under this Act or regulations under section 34 of the Act of 2003 or section 82 of the Act of 1961.”

8. (The criterion at subparagraph (e) concerns corporate applicants, and, accordingly, is not relevant as an SPSV driver’s licence may only be granted to an individual).

9. Section 9(12) of the Act provides that the licensing authority may, when granting a licence, attach such terms and conditions to the licence as it sees fit.

DURATION OF SPSV DRIVER'S LICENCE

10. It may be convenient, as part of the overall consideration of the legislative framework, to address the following net issue of statutory interpretation at this point in the judgment. The parties are in disagreement as to whether there is a mandatory five year duration prescribed for an SPSV driver's licence.

11. The duration of an SPSV driver's licence is addressed as follows under regulation 7(3) of the Taxi Regulation (Small Public Service Vehicle) Regulations 2015 (S.I. No. 33 of 2015):

“(3) A licence to drive small public service vehicles shall remain in force until the earlier of—

- (a) the expiry of a period of five years from the date of its grant or renewal,
- (b) the surrender of the licence by the holder,
- (c) the revocation of the licence under the Principal Act, and
- (d) the disqualification of the licence holder pursuant to section 30 or 38 of the Principal Act.”

12. This is complemented by the provisions of regulation 7(2)(e) which stipulate that the expiry date must be stated on an SPSV driver's licence.

13. The Applicant submits that, subject to certain *ex post facto* exceptions, a licence remains in force for five years. Conversely, the licensing authority submits that it has considerable latitude in the granting of a licence and that it is entitled to impose such terms and conditions as it deems appropriate: this allows it to specify a duration shorter than five years. It is further submitted that the

reference to five years should be regarded as merely directory and not mandatory. The licensing authority urges a purposive approach to interpretation, noting that immigration permissions will often be for a period of less than five years. It is said that, on the Applicant's rival interpretation, the licensing authority could potentially be compelled to issue a licence to an applicant for five years knowing that there was a significant likelihood or risk that their temporary immigration permission would not be renewed. This, it is said, would result in an "*entirely contradictory position*" where one arm of the State was licensing an applicant and another arm determining that the same person was not entitled to work or reside in the State.

14. The ordinary and natural meaning of regulation 7 of the Taxi Regulation (Small Public Service Vehicle) Regulations 2015 is that an SPSV driver's licence has a fixed duration of five years. Whereas there is much force in the submissions made on behalf of the licensing authority as to the practical difficulties presented by such an interpretation, the criteria for departing from the literal interpretation of a statutory instrument are not met. A court is only entitled, pursuant to section 5 of the Interpretation Act 2005, to depart from the literal interpretation where it would fail to reflect the plain intention of the statutory instrument as a whole in the context of the Act under which it was made. It cannot be said that it is the "*plain intention*" of the 2015 Regulations that the duration of an SPSV driver's licence must always be coterminous with the duration of an applicant's immigration permission. As previously noted, the 2015 Regulations do not address immigration status at all in the context of the licensing of drivers (as opposed to the licensing of vehicles).

15. That is not, however, an end of the matter. The licensing authority enjoys a wide discretion under the Taxi Regulation Act 2013 to impose such terms and conditions to the licence as it sees fit (section 9(12)). Of course, such conditions must be related to the purpose of the legislation: the licensing authority is not at large. As discussed presently, I have concluded that the statutory concept of “*suitability to hold a licence*” allows the licensing authority to consider whether the applicant holds a current immigration permission (where required). Accordingly, it would be a proper exercise of its statutory discretion to impose terms and conditions for the licensing authority to make it a condition of a licence that the licensee produce to the authority a renewed immigration permission on the expiration of the current one. If a renewed immigration permission is not produced on time, then the licensing authority would be entitled to revoke the SPSV driver’s licence forthwith pursuant to section 12 of the Taxi Regulation Act 2013.

PROCEDURAL HISTORY

16. The applicant for judicial review (“*the Applicant*”) is a citizen of Bangladesh. The precise immigration history of the Applicant is a matter of controversy between the parties to these proceedings. For present purposes, it is sufficient to summarise the position as follows.
17. The Applicant had married an EU citizen on 14 May 2012 and had thereafter been granted a residence card as a family member of an EU citizen on 17 May 2013. This residence card had been revoked briefly but was subsequently reinstated.

18. The marriage between the Applicant and the EU citizen was dissolved by a decree of divorce granted by the Circuit Court on 25 January 2018. The very next week, the Applicant applied to the Minister for Justice to retain a right of residence in the State on an individual and personal basis. This application was made pursuant to the domestic regulations which give effect to the EU Citizenship Rights Directive (Directive 2004/38/EC), namely the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015). To this extent, the decision-making process “*engages*” EU law rights.
19. The domestic regulations provide that a person, such as the Applicant, whose application to retain their right of residence following divorce has been refused may seek a review of that initial decision. The domestic regulations envisage that the process of removing that person from the State will normally be suspended pending a decision on the review.
20. The application to retain a right of residence was refused by an initial decision on 25 May 2019. The Applicant invoked his right to seek a review of the initial decision. The review decision was ultimately made on 23 March 2021, and upheld the initial decision. (The review decision postdates the institution of these judicial review proceedings on 30 June 2020).
21. In the interim, pending the review decision, the Applicant had been granted a series of temporary immigration permissions which allowed him to reside in the State and to enter into employment.
22. For completeness, it should be recorded that the Applicant had made a parallel application for a permission to remain pursuant to section 4 of the Immigration Act 2004. This has since been refused.

23. The events at issue in these judicial review proceedings occurred at an earlier stage in the chronology, at a time when the review of the initial decision to refuse a right of residence was still pending. The Applicant had submitted an application for an SPSV driver's licence on 4 March 2019. The Applicant was notified by letter dated 8 November 2019 from the Garda Carriage Office that the authorised officer proposed to refuse his application on the basis that the Applicant was not a "*suitable person*" to hold an SPSV driver's licence due to his having no immigration permission. The Applicant was then invited to make representations within fourteen days in respect of the proposed decision in accordance with section 13 of the Taxi Regulation Act 2013. The Applicant duly made representations through his solicitors on 14 November 2019. It was explained that the Applicant had recently received confirmation from the Department of Justice that he had (temporary) permission to reside and work in the State from 11 November 2019 until 20 April 2020.
24. The Garda Carriage Office responded by email dated 22 November 2019 indicating that the authorised officer had examined the file and correspondence, and had instructed that the Applicant be issued with an SPSV driver's licence valid for the duration of his current immigration permission, i.e. until April 2020.
25. A licence duly issued on 2 December 2019. The period of validity of the licence had been specified as being from 2 December 2019 to 7 April 2020. The rationale for this temporal limitation had been explained as follows in the covering letter enclosing the SPSV driver's licence:

"Please find attached your SPSV Licence. It is valid until the 07/04/2020. This is due to the fact that your current immigration status expires on that date. Upon renewal of your immigration status, please provide evidence of same to this office. Once this has been received, a new SPSV licence will be issued to you for the duration of your new

immigration status or until 01/12/2024 whichever comes first.”

26. The contingent nature of the licence reflected the then policy of An Garda Síochána, Dublin Metropolitan Region. The Applicant did not raise any objection to the temporal limitation at the time the licence was issued to him.
27. The Applicant applied to renew his SPSV driver’s licence by letter dated 19 March 2020. As of this date, the Applicant had the benefit of a (further) temporary permission which allowed him to reside and work in the State until 6 December 2020, pending the determination of the review of the decision of 25 May 2019 to refuse him a right to remain as the former spouse of an EU citizen. This latest temporary permission enabled the Applicant to obtain a “*Stamp 4*” endorsement on his passport.
28. The Applicant was notified of a proposed decision to refuse his application by letter dated 24 April 2020 from the Garda Carriage Office. The letter recited that the authorised officer was not satisfied that the Applicant was a “*suitable person*” to hold an SPSV driver’s licence due to the following two reasons: first, that the Applicant’s immigration permission had not been regularised, and, second, that the Applicant’s current immigration permission to remain and work in the State was temporary.
29. The Applicant was then invited to make representations within fourteen days in respect of the proposed decision in accordance with section 13 of the Taxi Regulation Act 2013. The Applicant duly made representations through his solicitors on 30 April 2020 and 8 May 2020.
30. Thereafter, a decision to refuse to renew the licence issued on 12 May 2020 as follows:

“This is to inform you that I, Superintendent Thomas Murphy, an Officer of An Garda Síochána, the Authorised Officer for the Dublin Metropolitan Region, authorised by the Garda Commissioner under Section 70 of the Taxi Regulation Act 2013, having considered any representations made by you or on your behalf, have, under Section 10 of the Taxi Regulation Act 2013, decided to REFUSE your application to renew your Licence to drive Small Public Service Vehicles, due to the following reasons:

- 1) That your immigration permission has not been regularised.
- 2) That your current immigration permission to remain and work in the State is temporary.”

31. The notification goes on then to explain that there is a right of appeal against the decision to the District Court under section 13(3) of the Taxi Regulation Act 2013.
32. The Applicant filed a notice of appeal with the District Court on 4 June 2020. Shortly thereafter, the Applicant’s solicitors wrote to the authorised officer on 17 June 2020 to put him on notice of intended judicial review proceedings. The letter drew attention to the fact that the prescribed period for an SPSV driver’s licence is five years, and called upon the authorised officer either to correct the licence issued on 2 December 2019 or to issue a new licence valid for five years from 2 December 2019. Following upon receipt of a number of “*holding letters*” from the authorised officer and the Office of the Chief State Solicitor, the Applicant ultimately instituted these judicial review proceedings on 30 June 2020.
33. The High Court (Meenan J.) directed that the application for leave be made on notice to the respondents. Thereafter, the High Court (Barr J.) granted leave to apply for judicial review following an *inter partes* hearing on 27 July 2020.

Relevantly, the court made an order extending the time for the making of the application for leave.

34. As flagged earlier, there has been a significant development since the institution of the proceedings. A decision has been made in respect of the Applicant's application for a review of the first-instance decision refusing him a right of residence following his divorce. The first-instance decision has been affirmed by the review decision of 23 March 2021.
35. The initial response of the licensing authority to this development had been to say that these judicial review proceedings are now moot. More specifically, it was said that the Applicant had no right, not even a temporary right, to remain and work in the State and accordingly there was no basis for his being entitled to an SPSV driver's licence.
36. At the hearing of the proceedings, however, the licensing authority indicated that it wished to have the issues of principle in the proceedings determined in any event. Counsel explained that there are a number of appeals against the refusal of SPSV driver's licences pending before the District Court. These judicial review proceedings have thus taken on the character of a "*test case*". The judgment in these proceedings, including any judgment on appeal, will be of assistance to the District Court in determining the proceedings before it.
37. I am satisfied that these proceedings fulfil the criteria as laid down in *Lofinmakin v. Minister for Justice, Equality and Law Reform* [2013] IESC 49; [2013] 4 I.R. 274 for allowing a moot to be heard and determined. By the very nature of the issues raised, legal challenges to the refusal of an SPSV driver's licence on grounds related to immigration status will often be overtaken by events. This is because the applicants will, by definition, almost always be

awaiting a decision on their long term immigration status. In many instances, judicial review proceedings will be rendered moot as a result of the anticipated decision having been made on their immigration status before the hearing and determination of the proceedings. If an applicant is, for example, granted a right to reside, then the supposed impediment to the grant of an SPSV driver's licence will have fallen away. Conversely, if a final and conclusive decision is made refusing the applicant leave to remain, then they are not entitled to an SPSV driver's licence.

38. Put otherwise, the issues raised in this type of proceeding are ephemeral, and will often evade capture because of the likelihood of a change in the immigration status of the applicant prior to the determination of the judicial review. Given that there is a public interest in there being an authoritative interpretation of the Taxi Regulation Act 2013, and having regard to the pending appeals before the District Court, I am satisfied that the present proceedings should be heard and determined.
39. The fact that the Applicant no longer has any immigration permission means that the issues to be decided are narrowed significantly. A major plank of the licensing authority's defence to the proceedings had been that the Applicant should be refused relief as a matter of discretion having regard to his (allegedly) chequered immigration history. It would seem to be unnecessary to decide this issue in circumstances where, subject always to any successful challenge to the immigration decisions, the Applicant cannot now obtain any practical benefit from these proceedings. There would not appear to be any point in remitting the application to the licensing authority for further consideration in circumstances where as of now the Applicant has no immigration permission to be in the State.

The licensing authority would, accordingly, be entitled to refuse the application. I will, however, discuss with counsel what the up-to-date position is in respect of the Applicant's immigration permission.

40. For similar reasons, the objection made by the Applicant to the effect that the licensing authority is not entitled to rely on "*sensitive personal data*" allegedly obtained from the Department of Justice in contravention of the General Data Protection Regulation (Regulation (EU) 2016/679) does not now need to be addressed in these judicial review proceedings. Relief is not being refused by reference to any of the immigration-related material exhibited by the licensing authority, other than the review decision of 23 March 2021. This review decision is clearly relevant to the proceedings and it is a document which the Applicant himself would have had to put before the court in the event that the licensing authority had not done so.

PURPORTED CHANGE IN LICENSING POLICY

41. The authorised officer for the Dublin Metropolitan Region, Superintendent Thomas Murphy, has filed a detailed affidavit in opposition to these proceedings. The authorised officer has explained that there had been a significant change in licensing policy introduced in or about February 2020.
42. The past policy had been that any SPSV driver's licence granted to a non-national would be for a period of time coterminous with the duration of their immigration permission. This policy is explained as follows (at paragraph 10 of Superintendent Murphy's affidavit):

"However, certain non-nationals present in the State may have been granted permission to reside and work in the State for a limited period. I say that it was the past policy of this office to grant an SPSV Licence to such non-nationals, if all

other factors were satisfied, only for the duration of their permission, depending on the length and nature of that permission. This was to ensure that SPSV Licence holders were not operating under a licence (previously granted to them when they were in permission) when in fact they subsequently no longer held permission to reside and work in the State and were therefore in the State illegally but yet continued to operate under the SPSV licence.”

43. The authorised officer then explains the change in policy post- February 2020 as follows:

“In recent years there has been a rise in the number of non-nationals who are present in the State on a temporary permission seeking SPSV Licences. This matter and the implications of this was considered by the Garda Carriage Office and myself as Authorised Officer in conjunction with other State agencies and the Garda National Immigration Bureau (hereinafter ‘GNIB’) in or around February 2020. As a consequence it was determined that in assessing the suitability of applicants for SPSV Licences in the future, regard would be had to the nature of the permission held by the applicant and the length of such permission.

Where an applicant was present in the State on a short and temporary permission, this would be taken into account in assessing suitability. For the most part Applicants present in the State on a short and temporary permission would not be deemed as suitable candidates for SPSV licences.”

44. The authorised officer’s affidavit goes on to explain that this changed policy applies not only to persons, such as the Applicant, in respect of whom a decision to refuse immigration permission had been made, but also extends to individuals who have applied for a residence card under the domestic regulations which give effect to the EU Citizenship Rights Directive and in respect of whom no assessment has yet been completed.

45. The authorised officer offers the following sceptical view of such applications:

“I say and believe that temporary permissions such as these are not acceptable for the purpose of obtaining an SPSV licence, as such person’s applications for residence may be entirely without merit and once their application for

residence permission has been examined it may be rejected entirely.”

46. This change in policy has, potentially at least, significant consequences for compliance with the Irish State’s obligations under the EU Citizenship Rights Directive. It has the potential to cut against the domestic regulations which implement the EU Citizenship Rights Directive, especially in respect of third-country nationals who are asserting derived rights as the family members of an EU citizen and are awaiting an initial decision on their application for a residence card upon arrival to the State.
47. It is at least arguable that such individuals are in a materially different position than a person, such as the Applicant, against whom an adverse finding has been made by the immigration authorities. For the reasons explained under the next heading, I have concluded that the existence of such an adverse finding, albeit subject to a right of review, is a relevant consideration in the context of an application for an SPSV driver’s licence because it goes to the assessment of “*good character*”. The same rationale does not extend to a person who has applied for a residence card upon their entry into the State and that application has not yet been determined. By definition, the immigration authorities will not yet have made any finding against such a person.
48. The initial stance of the licensing authority had been to say that until such time as the administrative formalities have been completed and a decision made by the immigration authorities, EU law does not require the recognition of a right to reside on a temporary or any basis. With respect, it must be doubtful that this is correct having regard to the provisions of the EU Citizenship Directive and the judgment in Case C-459/99, *MRAX*, EU:C:2002:461 (at paragraph 74). The

issuance of a residence card is merely declaratory: it does not *create* a right of residence.

49. At all events, the licensing authority has since refined its position in subsequent submission. It is now accepted that a person whose application for a residence card has not yet been determined may well be entitled, as a matter of EU law, to reside in, and enter into employment in, the State. It is submitted that this entitlement does not, however, extend to a right to obtain a licence to drive a public service vehicle. It is said that the State is allowed to have regard to differences in the status of non-nationals (including EU citizens and their family members) in the interests of protecting public safety.
50. The European Commission, in a notice published in February 2022, has emphasised that restrictions on the right to drive a taxi must be objectively justified. See Commission Notice on well-functioning and sustainable local passenger transport-on-demand (taxis and PHV) (2022/C 62/01):

“Member States’ rules concerning the access to the profession of taxi/PHV-drivers as well as taxi/PHV-operators, whether at national, regional or local level, such as requiring a licence and conditions to obtain the necessary licence, can constitute a market entry barrier and a restriction on the freedom of establishment; such rules hence need to meet the criteria for justification.”

51. I have grave reservations as to the legality of the stated policy of the licensing authority that a temporary immigration permission, granted pending the determination of an application for a residence card, is not acceptable for the purpose of obtaining an SPSV driver’s licence. No objective justification has been articulated by the licensing authority as to why the family members of an EU citizen should systematically be denied the right to drive a public service vehicle pending the completion of immigration formalities which can take in

excess of six months. In this regard, it should be emphasised that the licensing authority would be entitled to carry out background checks on an applicant by consulting the records of An Garda Síochána and liaising with the police authorities in the applicant's home country. The licence application could properly be refused on the basis of such checks.

52. Had this specific issue arisen on the facts, I would have referred the matter to the Court of Justice of the European Union for a preliminary ruling pursuant to Article 267 TFEU. I am satisfied, however, that the present case can be resolved on the narrower ground that the Applicant is a person against whom an adverse finding has been made and that this finding goes to an assessment of his “*good character*” as required under section 10 of the Taxi Regulation Act 2013.
53. More generally, it is unsatisfactory, to say the least, that significant changes in licensing policy, which have potential implications for the Irish State's compliance with the EU Citizenship Directive, should be introduced in an *ad hoc* manner by the interim licensing authority. If such a change in policy is to be effected, then it should be introduced by the National Transport Authority by way of regulations. The National Transport Authority is obliged to consult with certain specified bodies before making regulations. The regulations themselves take the form of a published statutory instrument. All of this ensures transparency and adherence to the rule of law.

RELEVANT CONSIDERATIONS UNDER TAXI REGULATION ACT 2013

54. The Taxi Regulation Act 2013 envisages that the detail of the licensing regime for the drivers of small public service vehicles will be prescribed in regulations made by the National Transport Authority. The regulations currently in force do

not impose any obligation, in the context of an application for an SPSV driver's licence, for an applicant to provide information or documentation in respect of their immigration status. It is necessary, therefore, to examine the wording of the primary legislation to determine whether immigration status is a relevant consideration.

55. The Taxi Regulation Act 2013 envisages that a broad range of factors may be taken into account in deciding whether to grant a licence. These include, *inter alia*, the driving abilities of an applicant; whether the applicant has committed any relevant criminal offences; whether the applicant is of “*good character*”; the physical and mental health of the applicant; and whether the applicant holds a valid tax clearance certificate. This evinces a legislative intent that an applicant must not only meet technical criteria relevant to their ability to safely operate a public service vehicle, they must also be compliant with the law of the land. It would be inconsistent with this legislative intent to interpret the Act as precluding the licensing authority from having regard to the immigration status of an applicant. A non-EU national who is present in the State without the requisite immigration permission is here unlawfully. It would be anomalous were the licensing authority to be entitled to refuse to grant a licence merely because an applicant is not tax-compliant, but would be required to disregard the fact that they are present in the State unlawfully. On its proper interpretation, the statutory concept of “*suitability to hold a licence*” certainly allows the licensing authority to consider whether the applicant holds a current immigration permission (where required).
56. Of course, the submissions on behalf of the licensing authority go much further. The licensing authority contends that—even where an applicant is lawfully

present in the State pursuant to a temporary immigration permission—the authority is entitled to have regard to the nature and duration of that immigration permission. In the present case, the licensing authority had regard to the fact that the Applicant’s immigration permission has not been regularised.

57. To elaborate: the Applicant had previously been allowed reside in, and enter into employment in, the State as the spouse of an EU citizen. This status persisted for a period of some five years, between 2013 and 2018. The Minister for Justice now maintains—as she is in principle entitled to do—that the marriage was a marriage of convenience only, and that the Applicant had secured his immigration status by fraud. The core question for determination in these proceedings is whether the licensing authority had been entitled to have regard to this finding, notwithstanding that the finding was at the time the subject of a review procedure.
58. A finding of serious dishonesty made against an applicant is a relevant consideration in assessing whether an applicant is a “*suitable person*” to be licensed to drive a public service vehicle. It goes to the character of the applicant. The legislative intent underlying the Taxi Regulation Act 2013 is to ensure that only individuals of “*good character*” are permitted to operate public service vehicles. The licensing authority is entitled to rely on the finding notwithstanding that it is subject to a review process. The first-instance decision represents a red flag and the appropriate balance is struck by refusing to grant an SPSV driver’s licence until such time, if any, as the initial finding of dishonesty is set aside. It would be disproportionate—and contrary to the legislative intent of ensuring public safety by confining licences to those of “*good character*”—

to oblige the licensing authority to disregard the finding and to grant a licence in the interim.

FINDINGS OF THE COURT

59. The Applicant seeks to challenge two decisions. It is proposed to address these in chronological order.

Decision of December 2019 to grant time-limited licence

60. The first decision had been to grant an SPSV driver's licence with a duration coterminous with that of the Applicant's temporary immigration permission. This decision was invalid. For the reasons explained at paragraph 14 above, an SPSV driver's licence has a fixed duration of five years. The licensing authority is not entitled to grant a licence for a shorter period of time. The licensing authority is, however, entitled to make it a condition of a licence that the licensee produce to the authority a renewed immigration permission on the expiration of the current one. If a renewed immigration permission is not produced on time, then the licensing authority would be entitled to revoke the SPSV driver's licence forthwith pursuant to section 12 of the Taxi Regulation Act 2013.

61. Ordinarily, the appropriate remedy in respect of a finding that a licence-decision is invalid would have been an order setting aside the decision and remitting the matter for reconsideration by the licensing authority in light of the findings of the court. It would not be appropriate simply to sever the time-limit from the decision and leave the balance of the licence intact. Severance is only appropriate in circumstances where the court is satisfied that had the relevant decision-maker known of the limitation on its legal powers it would nevertheless have granted the relevant licence in the same terms. Had the licensing authority

been aware of the limitations on its powers, it is likely that it would have imposed a different condition, i.e. one requiring the production of a renewed immigration permission.

62. As explained under the next heading below, an order of remittal may not now be appropriate given that the Applicant, seemingly, no longer enjoys any immigration permission allowing him to remain in the State.
63. For completeness, I should record that I am satisfied that the challenge to the first decision is not inadmissible on the grounds of delay. First, had the licensing authority wished to rely on delay then it should have actively pursued this issue at the leave stage. The application for leave to apply for judicial review had, by order of the court, been heard on notice to the licensing authority. The question of whether or not judicial review proceedings have been brought within the time-limit prescribed is a matter which should, in theory, be capable of determination at the leave stage. Order 84, rule 21(5) stipulates that an application for an extension of time must be grounded on an affidavit which shall set out the reasons for the applicant's failure to make the application for leave within time. The leave judge should, again in theory, have sufficient information to allow them to determine, first, whether the application has been made within time, and, if not, to determine, secondly, whether an extension of time should be granted.
64. Of course, in almost all instances the respondent to the judicial review proceedings would not have been on notice of the leave application and, by definition, will not have had an opportunity to make submissions on the time-limit point. For this reason, then, the respondent is generally allowed to reopen the matter as part of the substantive hearing. However, different considerations apply where, as in the present case, the respondent has been put on notice of the

leave application. It would entirely defeat the purpose of directing an *inter partes* hearing of the leave application if the respondent simply defers all issues to the substantive hearing. See, generally, the judgment of the High Court (Humphreys J.) in *F.G. v. Child and Family Agency* [2016] IEHC 156 (at paragraph 21). Here, the Applicant had specifically sought an extension of time in the originating notice of motion and set out the basis for same in his statement of grounds. The respondents were thus on express notice of the point. Having failed to pursue the time-limit point at the *inter partes* leave application, the respondents are precluded from reagitating the issue at the substantive hearing. This is especially so where the leave judge made an order extending time.

65. Secondly, and in any event, I am satisfied that there is good and sufficient reason for extending time under Order 84, rule 21 of the Rules of the Superior Courts and that the delay was due to circumstances outside the control of the Applicant. The decision of December 2019 had been accompanied by a letter of comfort from the licensing authority which indicated that a new SPSV driver's licence would be issued once evidence of renewal of the Applicant's immigration permission had been provided to the Carriage Office. The letter of comfort envisaged that the renewed permission might also be temporary: it was stated that the new licence would be issued for the duration of the Applicant's new immigration status or until the expiration of five years from the date of the first licence, whichever came first.
66. Given the content of this letter of comfort, not only did the Applicant not have cause to challenge the decision, it is likely that any application for judicial review would have been dismissed as unnecessary. Put otherwise, the licensing authority, having made an express representation to the Applicant that a new

licence would be granted on production of a renewed immigration permission, cannot now be heard to say that the Applicant should have challenged that decision.

67. Finally, it should be noted that whereas breach of legitimate expectation is pleaded in the statement of grounds, this ground was not pursued at the hearing.

Decision of May 2020

68. The second decision impugned in these proceedings is the refusal of an SPSV driver's licence in May 2020. The Applicant has not established any grounds for setting aside this decision. For the reasons explained at paragraphs 56 to 58 above, the licensing authority acted lawfully in having regard to the adverse findings made against the Applicant by the immigration authorities.
69. It should be emphasised that the licensing authority's second decision only passes muster because it had been informed by the adverse findings made by the Minister in the context of the immigration process. This adverse finding goes to the issue of "*good character*". The licensing authority would not have been entitled to refuse to grant an SPSV driver's licence solely on the basis that the immigration permission had been temporary in nature.

CONCLUSION AND PROPOSED FORM OF ORDER

70. For the reasons set out above, I have concluded that the first decision of the licensing authority had been invalid. Ordinarily, the appropriate remedy in the circumstances would have been an order setting aside the decision and remitting the matter for reconsideration by the licensing authority in light of the findings of the court. Matters are complicated by the fact that the Minister, by a decision

which postdates the institution of these judicial review proceedings, has affirmed the first-instance decision to refuse the Applicant a right of residence.

71. It would appear, therefore, that as of the moment the Applicant has no entitlement to remain in the State, still less to work here. Were the matter to be remitted against this factual background, it seems inevitable that the application for a licence would be refused. I will, however, hear further from counsel before forming a concluded view as to the appropriate order. This is done against a background where, as I understand it, there are separate judicial review proceedings pending before the High Court which seek to challenge the refusal of a right of residence. Indeed, I note that there is some suggestion in the supplemental written submissions that the review decision of 23 March 2021 may already have been set aside.
72. These proceedings will be listed before me on 16 May 2022 at 10.30 am for final orders.

Appearances

Rosario Boyle, SC, Aengus Ó Corráin and Marie Flynn for the applicant instructed by Thomas Coughlan & Co. Solicitors (Cork)
Robert Barron, SC and Kilda Mooney for the respondents instructed by the Office of the Chief State Solicitor

Approved
Gareth S. Mans