THE HIGH COURT

2024 IEHC [661]

Record No. 2023 1173 JR

BETWEEN

MUHAMMED NADEEM AHMED

APPLICANT

AND

MINISTER FOR JUSTICE

RESPONDENT

Judgment of Ms. Justice Siobhán Phelan, delivered on the 22nd day of November, 2024

INTRODUCTION

1. This matter comes before me by way of an application for judicial review challenging a decision of the Minister to refuse a certificate of naturalisation under s. 15(1)(b) of the Irish Nationality and Citizenship Act, 1956 (as amended) [hereinafter "the 1956 Act"] because he failed to satisfy the "*good character*" condition under that provision. The question I am asked to determine is whether the decision that the Applicant was not of good character due to a finding of providing a false identity in his failed asylum application in 2008 and prior convictions under the Road Traffic Acts is sustainable in law and adequately reasoned.

2. A challenge on the basis that the process does not benefit from the *Carltona* principle is maintained but is not being pursued before me in the light of the recent decision in *M v. Minister for Justice* [2024] IEHC 105 (O'Regan J.) which it is accepted is binding on me in line with *Worldport* principles.

FACTUAL AND PROCEDURAL BACKGROUND

3. The facts relevant to the issue that I must decide include that the Applicant is a Pakastani national who has been resident in the State since June of 2007. He made an application for asylum under the provisions of the Refugee Act, 1996 (as amended) utilising a false name. He corrected this during the consideration process in 2008 (at interview stage). He was refused refugee status on appeal in October, 2009.

4. The Applicant married a Latvian national in March, 2020 and was lawfully resident in the State on Stamp 4 permission to remain from April, 2011 until May, 2022.

5. He first made application for a certificate of naturalisation in 2016. This application was refused in March, 2018, on grounds that the Minister was not satisfied that the Applicant was of good character. The reasons for refusal stated in the accompanying submission included the commission of offences, one of which had not been disclosed by the Applicant. It was stated under "*Comment*":

> "*Information has come to light in the course of the processing of this application which the applicant only partially disclosed and could reasonably have foreseen would 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 20/09/2011 and 02/05/2014.*"

6. The recommendation was recorded as follows:

> "*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 and the fact the applicant did not disclose the 2014 offence, I am not satisfied that the applicant is of good character, and I would not recommend this applicant for a certificate of naturalisation.*"

7. It appears from the records disclosed, therefore, that the application was refused because of a history of road traffic offences, including information which had come to light in the course of the processing of the application which showed that the applicant only partially disclosed previous offending in making his application and had not disclosed road traffic offences dating to 2014. The offences dating to 2011 included an offence of driving without insurance.

8. A further application was submitted in May, 2020. In the cover letter from a firm of solicitors accompanying this further application, reference was made to the previous application for certificate of naturalisation which had been refused on the 5th of March 2018 stating that it had been refused on the ground that:

> "*Information came to light in the course of processing of this application which the applicant only partially disclosed and could reasonably have foreseen would be taken into consideration in the decision-making process*."

9. Disclosure was made of road traffic offences dating to 2014 and 2011 on this further application. An apology was tendered for the failure to disclose previous offences in the earlier application was attributed to a mistake on the part of his former solicitors. It was stated that:

"*The applicant respectfully submits his apology that he did not disclose his offences in his previous application. He instructed a legal advisor Imtiaz Khan to represent him in his certificate of naturalisation matter. He was not a Solicitor at that time. Although he discloses both offences to his previous legal representative Imtiaz Khan and instructed to disclose both offences the previous legal representative only disclose the 2011 offence and did not disclose his 2014 offence in the application. He was advised that there is no space in the section 11.5 of the application to disclose the 2014 offences.*"

10. A curious feature of the terms of this letter is that the previous legal representative is referred to by name as though he no longer acted for the Applicant, but the same individual is identified as the Principal Solicitor in the firm corresponding on behalf of the Applicant in this further application, being the firm also on record for the Applicant in these proceedings. One would expect that the solicitor would therefore write to confirm that he personally had received instructions to disclose both offences and the failure to do so arose from his mistake and by reason of his belief that there was no space in section 11.5 of the application and through no fault of the Applicant given the importance of the issue for the Applicant in establishing good character and knowing that non-disclosure had been relied upon in refusing his previous application. I note that although affidavits have been sworn by the said solicitor in these proceedings, they do not address the previous failure to disclose and the reason for it. While this issue is now historic and of only peripheral relevance for my purposes, it is surprising not to see it addressed on affidavit.

11. By letter date the 10th of June, 2022, the Minister notified the Applicant of her intention to grant a certificate of naturalisation subject to the completion of the declaration of fidelity to the nation and loyalty to the State, the payment of the fee and submission of required documentation (including current residence permission). The letter was headed:

"*This letter does not constitute a grant of a Certificate of Naturalisation or permission to enter or remain in the State*."

12. The Applicant was advised that:

> "*If your application for a Certificate of Naturalisation is to be granted the next letter you will receive from this office will include your Certificate of Naturalisation*."

13. The Applicant duly paid the fee indicated but was subsequently told by letter dated the 18th of July, 2022, that the letter of the 10th of June, 2022, notifying an intention to issue a certificate of naturalisation had issued in error. No formal explanation for the error has been provided but the submission documentation recommending refusal was signed in May, 2022 and approved on the 9th of June, 2022, so the issue of a letter indicating an intention to grant a certificate of naturalisation is entirely at odds with the file record and does not correctly evidence an intention ever formed by the Minister.

14. By second letter of the 18th of July, 2022, the Applicant was advised that the Minister had decided not to grant a certificate of naturalisation. The submission prepared for the Minister in respect of the decision not to grant a certificate of naturalisation was enclosed. It was indicated that the certification fee which had been paid by the Applicant would be refunded.

15. The submission prepared for the Minister set out the Applicant's immigration history, including the use of a false identity when first seeking protection which had not been referred to in the refusal of his first application, his subsequent marriage to an EU citizen and the fact that information had come to light during the processing of the application relating to road traffic offences dating to 2011 and 2014, which had been disclosed by the Applicant. The recommendation to the Minister on this second application that the application be refused, was expressed to be made because of the recorded history of non-compliance by the applicant with the laws of the State, as evidenced by his disregard of the Road Traffic Acts and the immigration regulations in the State by providing false and misleading information in the course of an asylum application in 2008. The use of a false identify was referred to as:

"*[A] very serious matter as it undermines public confidence and impacts genuine asylum seekers*."

16. It was noted in hand at the foot of the submission "*May consider applying in 2 years from Jan.'22*".

17. This second refusal decision was the subject of challenge by way of judicial review (Record No. JR 864/2022). The pleadings in the said judicial review proceedings are not before me on this application. It appears, however, that these earlier proceedings were subsequently compromised on the basis that the decision to refuse a certificate of naturalisation was withdrawn with an order remitting the application for fresh consideration. Under the terms of settlement as referred to in evidence before me, the application was remitted for reconsideration to be decided by the 22nd of August, 2023.

18. By letter dated the 19th of May, 2023, seemingly after the compromise of judicial review proceedings challenging the refusal of a certificate of naturalisation, the Minister wrote to the Applicant's solicitor enclosing a Garda Vetting Report dated the 13th of April, 2023. It was stated:

"*The purpose of this letter is to allow your client an opportunity to provide within 28 days of the date of this letter, any relevant factual and/or contextual information in connection with the matters outlined in the Garda Vetting Report, as well as any submissions you may wish to make as to the basis upon which these matters should now be assessed in deciding whether you are of good character.*"

19. By the terms of this letter, the Minister afforded the Applicant an opportunity to respond with any relevant factual or contextual information or submissions within a period of 28 days. The Applicant was requested to specifically address a case relating to dangerous driving which had been disclosed in E-Vetting on this occasion but had not appeared on earlier Garda Reports disclosed in the process.

20. In the absence of a response to the letter of the 19th of May, 2023, the Minister followed up by letter dated the 4th of July, 2023, noting that under the terms of settlement, the Minister had agreed to issue a determination on the application on or before the 22nd of August, 2023 and seeking a reply to the earlier letter. A request was also made for an in-date immigration permission and clarification was sought in relation to a discrepancy in spelling of the Applicant's name as between different documents (marriage, birth certificates, revenue documentation etc.).

21. By letter dated the 24th of July, 2023, the Applicant's solicitors replied to the letter seeking further information which had issued in May, 2023, more than two months previously indicating that in regard to the dangerous driving matter dated to 2011 (although the Garda Report had noted "*case pending*"), no prosecution had ensued. They further confirmed and clarified the spelling of the Applicant's name. As for his residence permission, it was indicated that he was residing in the State pending an "*outcome of Chenchooliah application*", which application had been made on his behalf of the 4th of July, 2023. It appears that at that time a temporary permission issued for one year on the 7th of July, 2022, had expired.

22. Although not expressly raised in the Minister's correspondence, the Applicant's solicitor also took the opportunity to explain the use of a false name in his previous application for refugee status. It was stated:

> "*Our client does not deny that he had in fact relied upon a false identity in the context of his interactions with IPO office. He apologies for his misconduct causing the inconvenience to relevant authorities. Details of what happened back in his home country was provided during his IPO interview. Our client submits that through his journey to the State, he had to conceal his real identity to protect himself, out of fear. He was mentally distressed and could not think of other better options to do so due to the language barrier. He does not wish to defend himself as it is a fact that he was using false name. However, we submit that such act of him, though wrong, was adopted for self-protection purpose and should be given kind consideration. He hopes that the deciding officer could*

deliberate this dearly and to accept it as a mitigating factor in this matter."

23. It was not suggested on behalf of the Applicant that the Minister refrain from making a decision pending clarification from the Gardaí in relation to the pending dangerous driving prosecution from 2011, although some issue has been raised in this regard in these proceedings.

24. By letter dated the 21st of August, 2023, the Applicant was notified of a decision to refuse the application pursuant to s. 15(1)(b) of the 1956, considered in detail below. For completeness, it is appropriate to record that following the decision to refuse the application for a certificate of naturalisation, a separate decision issued by letter dated the 5th of September, 2023, granting the Applicant temporary permission to remain. This letter stated:

"*Having examined the facts of your immigration history, it is evident that your case falls within the parameters of the European Court of Justice (ECJ) Ruling in the Chenchooliah case. As you may already be aware, the ECJ's Ruling in that case requires a new process to be developed in this State to deal with the cases of third country national persons who have been deemed to come within the scope of the EU Free Movement Directive but for whom the circumstances which allowed those persons to remain in the State no longer apply. The required process is still under development but will be finalised in the coming months.*

In light of the fact that your longer-term position in the State remains to be determined, allied to the fact that the new post-Chenchooliah process is still being developed, a decision has been taken to grant you a short-term permission to remain in the State, to enable you to earn an income to support yourself and any dependants who rely on you for financial support. This short-term permission is of twelve months duration and on Stamp 1 conditions. It is, however, a nature of Stamp 1 based permission to remain which will allow you to work in the State without a Work

Permit. It will not, however, allow you to set up your own business. The relevant short-term permission to remain decision letter is enclosed."

25. In a separate letter of the same date, the grant of temporary permission was conditioned on factors including the Applicant obeying the laws of the State. It was further stated that it was important to note that:

"*This short-term permission to remain in the State is granted to you subject to the result of enquiries as to whether you have obeyed the laws of the State or been convicted of any offence and have not been involved in criminal activity. In the event that information comes to the attention of the Minister which is relevant to the granting of this short-term permission to remain to you, he may re-consider your status in the State and may revoke this permission… Without offering a complete list of types of information that may lead him to do so, they include the following:*

(a) Information that shows that you have not complied with these conditions,

(b) Information which relates to yow- character or conduct (whether prior to or subsequent to this letter), including criminal convictions,

(c) Information which indicates that you have failed to register as required,

(d) Information which indicates that you have provided misleading or inaccurate information to the Minister or to other authorities of the State."

REFUSAL DECISION

26. Upon reconsideration and by letter dated the 21st of August, 2023 (issued within the time frame agreed in compromise of earlier judicial review proceedings), the Applicant was notified of a decision to refuse the application pursuant to s. 15(1)(b) of the 1956 Act. In this letter it was stated:

> "*You may re-apply for the grant of a certificate of naturalisation at any time. When considering making such a re-application your client should give due regard to the reasons for refusal given in the attached submission. Having said this, any further application will be considered taking into account all statutory and administrative conditions applicable at the time of application.*"

27. The Applicant was referred to the submission to the Minister which was appended for the reasons for refusal. Given its centrality to the issues which I am required to determine in these proceedings, the submissions warrant being set out in some detail here. Having provided a summary of the Applicant's history in the State, the submission document, in relevant part, stated as follows under the heading "*Matters relevant to an assessment of the Applicant's character*":

> "*It is proposed to address matters relevant to an assessment of the Applicant's character in the following order:*
>
> *(a) concluded criminal proceedings;*
> *(b) current or ongoing proceedings;*
> *(c) other matters relevant to an assessment of the Applicant's character.*
>
> *In the case of each matter, it will be indicated below whether, based on the information available, the matter is considered;*
>
> *(a) to reflect negatively on the Applicant's character, with the result that it falls to be weighed adversely as regards an assessment of the Applicant's character;*

(b) to reflect positively on the Applicant's character. with the result that it falls to be weighed favourably as regards an assessment of the Applicant's character; or

(c) to be a neutral factor. with the result that it does not require to be considered further in an assessment of the Applicant's character.

Not all factors will be of the same magnitude or relevance. A decision will only be reached as to the appropriate Recommendation to be made to the Minister following a full assessment of all relevant matters considered in their proper context, and having balanced positive and negative factors as appropriate.

(a) Concluded criminal proceedings:

Based on the information and documentation referred to above, the following are key details in relation to criminal proceedings brought against the Applicant while resident in the State and which are concluded.

Vetting searches conducted by the National Vetting Bureau, An Garda Siochana, dated 13/04/2023 details the following motoring offences:-

20/09/2011- No Insurance (User) - Endorsement and Fine: €60

20/09/2011- Failure to produce insurance -Taken into Consideration

02/05/2014 - Driving without Driving Licence - Fine €120

02/05/2014- Valid NCT Disk not Displayed- Fine €100

02/05/2014 - Use of Vehicle without NCT Certificate - Taken into Consideration

02/05/2014 - Fail to Produce Driving Licence/Learner Permit

In addition to the above offences listed the vetting disclosure of the 13/04/2023 lists a case pending with a court date 'to be assigned' for an offence of Dangerous Driving.

On the 19/05/2023 this office issued correspondence to Mr Ahmed's legal representative to afford the applicant an opportunity to provide any relevant factual and/or contextual information to the Minister relating to the matters outlined in the Garda vetting report as well as any submissions that the applicant may wish to make on the basis upon which these matters should be assessed in deciding whether the applicant was of good character. On 04/07/2023, Citizenship Division issued further correspondence to Mr Ahmed's legal representative advising that a response had not been received from their office in relation to the matters outlined on the Garda vetting report.

On 24/07/2023, the applicant's legal representative responded to the correspondence of the 19/05/2023 and 04/07/2023. No further information was offered in relation to the listed offences. Information relating to the listed case pending was supplied. This issue is discussed further below at paragraph current or ongoing proceedings.

On 20/09/2011 the applicant was before Kilmallock Court for an offence of driving a vehicle without insurance which resulted in an endorsement and fine of €600 whilst the offence for failure to produce insurance certificate was taken into consideration. A conviction of No Insurance (User) is considered to lie at the more serious end of the spectrum of road traffic offences and constitutes relatively serious matter which reflect adversely on the Applicant.

The fact that this matter was disclosed is to the applicant's credit. In his application for naturalisation dated 14/05/2020, Mr. Ahmed states:

"In 2011, I was driving car without insurance, Gardai stopped and Kilmallock District Court, Co. Limerick fined EUR 600. The fine was paid and receipt is enclosed".

This account offered by the applicant is scant in mitigating circumstances. Mr. Ahmed's decision to drive without insurance on a public road highlights a disregard for other road user's. This action is considered to fall far short of the normal standard of civic responsibility.

On 02/05/2014, Mr Ahmed was convicted at Ennis Court for the offence of Valid NCT Disk not Displayed resulting in a fine of €100. Driving without Driving Licence resulting in a fine of €120. The charges for Use Vehicle without NCT Certificate and fail to produce Driving Licence Learner Permit were both taken into consideration.

The applicant self-disclosed on Section 11 of his application form, dated I4/05/2020, that he had these convictions in the State. The fact that these matters was disclosed is to the applicant's credit. His former legal representative appended a cover letter disclosing motoring offences, enclosed evidence of the fines paid and made submissions thereon. The submission failed to provide an exculpatory account of the offences but did express the applicant's remorse. I have carefully and fully considered the explanation submitted by his legal representative when formulating this recommendation in relation to the 2014 offence -

"Our client had booked his NCT. He showed the booking reference letter to the Garda on the 02/05/2014. He was fined €100.00 and €120.00. The applicant accepts that he was not legally authorised to drive his car without a valid insurance or valid NCT. He offers his profound apology in respect of the motoring offence in which he engaged and convicted. He wishes to comply with the laws of this Country in every respect and is extremely embarrassed of his motoring offence. He undertakes not to commit any motoring or any other offences in the future".

In his application for naturalisation, dated 14/05/2020, Mr Ahmed states that he "could not present Irish driving licence as I had an international driving licence".

It is acknowledged that not all road traffic offences should debar an application for naturalisation. Minor offences do not necessarily reflect on a person's good character, particularly where balanced against other matters in their favour. It is the nature of a road traffic offence and the circumstances in which it was committed, rather than the simple fact of a road traffic offence itself which demands particular attention in this case.

This is the second incident of road traffic offences having been committed by the applicant in the State. The mitigating reasons Mr Ahmed has outlined relating to his Driving without Driving Licence is fully considered. However, it is noted that the Garda Member prosecuting and Ennis Court had reason to determine that Mr Ahmed was driving without licence and not legally entitled to drive in the State on the date in question. Ensuring compliance with all road traffic regulations in the State was fully in the applicant's control. The Applicant received a conviction for this offence and as such, reflects negatively on his character and will accordingly be weighed in coming to a decision on whether the Applicant is "of good character".

(b) Current or ongoing proceedings;

The vetting disclosure of the 13/04/2023 lists a case pending with a court date 'to be assigned' for an offence of Dangerous Driving.

On the 24/07/2023. Mr Ahmed's legal representative issued correspondence to Citizenship Division informing the Minister that the alleged traffic offence of dangerous driving was committed in 2011. They further assert that no proceedings were assigned for this particular offence and that it would be highly unlikely that this case would be prosecuted considering its occurrence of over 12 years.

On 25/07/2023, Citizenship Division notified the Disputes Section of the National Vetting Bureau, to address the matters raised regarding the alleged traffic violation of Dangerous Driving. This office is advised that Disputes Section are addressing the matter and will respond in due course.

The offence of Dangerous Driving is a matter which is considered to lie at the more serious end of the spectrum of road traffic offences. However, the submission of the 24/07/2023 from Mr Ahmed's legal representative states the belief that the alleged offence occurred in 2011 without prosecution to date. Therefore, this issue is considered to be a neutral factor, and will not be considered further in assessing the Applicant's character.

(c) Other matter relevant to an assessment of the Applicant's character:

As previously stated, the applicant overstayed this permission and on 10/09/2008 submitted an application for asylum protection under the assumed identity of Mr Muhammad Bilal Ali lniyat…During the course of the asylum process the applicant disclosed that he was utilising a false identity and alleged thar he had been advised to do so by a friend as he had no means of supporting himself….Correspondence supporting Mr Ahmed's application dated 24/07/2023 states:- "..... Our client does not deny that he had in fact relied on a false identity in the context of his interactions with the IPO office. He apologises for his misconduct causing the inconvenience to relevant authorities. Details of what happened back in his home country was provided during his IPO interview. Our client submits that through his journey to the State, he had to conceal his real identity to protect himself, out of fear. He was mentally distressed and could not think of other better options to do so due to the language barrier. He does not wish to defend himself as it is a fact that he was using a false name. However, we submit that such act of him, though wrong, was adopted for self-protection purpose and should be given kind consideration. He hopes that the

deciding officer could deliberate this dearly and to accept it as a mitigating factor in this matter.

The applicant has a steady history of employment since his arrival into the State. Mr Ahmed is in stable, active and continued employment since 2014 and has never relied on State subventions. He was also engaged in self-employment. Mr Ahmed is employed as a security guard by MCR group since 2017. These matters are to the applicant's good character and constitute evidence in favour· of the Applicant's good character and his application for naturalisation and reflects positively on the Applicant's character."

Under the heading "*Recommendation*", the Decision letter continued:

"Section l5(1) INCA 1956 provides that "Upon receipt of an application for a ce1tificate of naturalisation, the Minister may, in his absolute discretion, grant the application, if satisfied that the applicant –
"(b) is of good character".

In order for the Applicant's application for naturalisation to be successful, therefore, the Minister must be satisfied that the applicant fulfils the statutory conditions set out in Section 15(1) INCA 1956, including the criterion that the Applicant is "of good character".

I have considered the entirety of the file including the vetting disclosure received from An Garda Siochana, the extensive submissions from the applicant's legal representatives in relation to the offences, the applicant's immigration history in the State and his employment record. In the normal course of events the Minister would defer a decision on naturalisation of an applicant while that person was awaiting a court date for an alleged offence. However, the terms of the settlement negotiation stipulate that the Minister must issue decision on Mr. Ahmed's application for

naturalisation by 22/08/2023.

Weighing in the balance all the relevant factors identified above - both positive and negative - I am not satisfied that the Applicant meets the criterion in s.15(1)(b) INCA, 1956 that he be of "good character". The applicant has on occasion failed to respect the laws of the state as outlined above. While it is acknowledged the offences are of some antiquity, taken cumulatively. the evidence demonstrates that the Applicant does not have a sufficiently responsible attitude to the civil responsibilities of Irish society.

In addition, the use of false and misleading information in the course of the Applicant's asylum application process shows disregard for States immigration regulations. The use of a false identity, for this purpose, is a very serious matter as it has a direct impact on genuine asylum seekers.

The matters which reflect adversely on the applicant's character are serious and significant in nature. Weighing the negative factors against the positive evidence of good character of the applicant, it is considered that the overall balance favours a conclusion that the Applicant is not of good character.

By reason of all the forgoing, I would not recommend the Minister grant a certificate of naturalisation in the Applicant's case."

These are the terms of the decision which is the subject of challenge in the within proceedings.

PROCEEDINGS

28. Leave to proceed by way of judicial review was granted by order made on the 13th of November, 2023 (Hyland J.) grounded on affidavits sworn by the Applicant and his solicitor in which the record of the decision-making process since the refusal of the

first application in 2018 was exhibited.

29. Legal grounds of challenge identified on the Statement of Grounds may be summarised to include:

(a) improper regard to irrelevant considerations and a failure to alert the Applicant that the Minister intended to consider a false identity given in 2007 in an asylum application despite factors such as the length of time which had passed and the fact that it had not been considered relevant to his EU Treaty Rights lawful residence, thereby rendering the decision unfair, irrational and unreasonable;
(b) a failure to have proper regard to the fact that the offences referred to had occurred over nine years before the decision of 21st August 2023 was made and were of some antiquity;
(c) imposing too high a standard in assessing "*good character*";
(d) a failure to adequately reason the decision to refuse in the balancing of positive and negative aspects;
(e) considering the alleged dangerous driving issue, described same as being neutral, and not deferring the decision and awaiting clarification on same insofar as it was considered negatively;
(f) insofar as it was held against the Applicant that by the time of making the decision he was not in lawful residence in the State, same was unlawful as that matter was under active consideration by the Minister at the time and the Applicant has been granted lawful residence again in September 2023;
(g) improper delegation of the Minister's decision-making authority as a decision under s.15 of the 1956 Act must be made by the Minister or with her express authorisation.

30. Opposition papers were delivered in February, 2024. All grounds advanced were opposed on the basis summarised as including, *inter alia*,

(a) the Minister was not required to alert the Applicant that consideration of the good character criterion would include his use of a false identity given for the purpose of his application for asylum and, in any event, the Applicant had been afforded an opportunity to furnish an explanation for his use of the false identity which he availed of;

(b) a full and comprehensive assessment of the Applicant's character was undertaken, and the Minister was entitled to consider a range of matters in doing so, including the use of a false identity and previous offences,

(c) the decision fairly and accurately sets out the Applicant's representations in relation to issues of concern;

(d) having considered the matter in the round, the Minister was entitled to conclude that the use of a false identity was a serious matter, and one which reflected adversely on the Applicant's character;

(e) the fact that the Applicant was subsequently granted a residence permission under Directive 2004/38/EC and the European Communities (Free of Movement of Persons) Regulations 2015 (S.I. 548/2015) did not preclude the Respondent from considering the use of the false identity for the purpose of an application for naturalisation under section 15 of the 1956 Act, as amended because once the Applicant met the conditions under the 2015 Regulations as a qualifying family member (being the spouse of an EU national), the Minister was required to grant him a residence permission. The EU Treaty Rights process and the legal framework which underpins the EU Treaty Process, is quite distinct from the process for naturalisation under the 1956 Act;

(f) the Minister set out an accurate and fair account of the Applicant's convictions and they were appropriately considered and weighed with the weight to be given to the evidence a matter for the Minister;

(g) the Minister assessed the Applicant's character against reasonable standards of civic responsibility gauged by reference to contemporary values and did not impose too high a standard in that regard nor is the decision unreasonable or harsh;

(h) the reasons and rationale for the decision dated the 17th of August 2023 are sufficiently patent from it;

(i) the Minister did not act unlawfully or contradictorily in relation to the outstanding dangerous driving offence but fairly found it to be a neutral factor in assessing his character and it was not considered any further;

(j) the decision noted that the Applicant's application for permission to remain on the basis of *Chenchooliah* (Case C-94/18) was pending, and that was correct as of the date of the decision issuing;

(k) the decision is covered by the *Carltona* principle, and such decision was lawfully made by the Minister, her servants or agents;

(l) the grant of a certificate of naturalisation confers a privilege and the Applicant was not

entitled to such a grant as a matter of right.

31. The Affidavit evidence adduced on behalf of the Minister was largely directed to the *Carltona* principle argument advanced by outlining the decision-making process followed and pointing out that the Minister received approximately 17,180 naturalisation applications in 2022, each giving rise to a significant volume of work including the requirement for Garda vetting and other checks and a comprehensive assessment on an individual basis. Insofar as the basis for the refusal in this case, the Minister relies squarely on the record of decision making as exhibited by the Applicant. Evidence confirming refund of the fee paid by the Applicant in respect of the application was adduced by supplemental affidavit.

DISCUSSION AND DECISION

32. Assessing good character for the purpose of an application for a certificate of naturalisation under s.15 of the 1956 Act has been subject to consideration in a series of cases including *M.N.N. v. Minister for Justice and Equality* [2020] IECA 185; *A.J.A. v. Minister for Justice and Equality* [2022] IEHC 624; *Hussain v. Minister for Justice* [2011] IEHC 171, [2013] 3 IR 257; *G.K.N v Minister for Justice* [2014] IEHC 478; *Mallak v. Minister for Justice, Equality and Law Reform* [2012] IESC 59, [2012] 3 IR 297; *A.A. v. Minister for Justice* [2019] IECA 272; *A.S.A v. MJE* [2022] IESC 49; *AP v. Minister for Justice* [2019] IESC 47, [2019] 3 IR 317; *Talla v. Minister for Justice and Equality* [2020] IECA 135; *M v. Minister for Justice* [2024] IEHC 105 and *Rana & Ali v. Minister for Justice* [2024] IESC 46.

33. Comprehensively reviewing the Irish case-law in *M.N.N. v. Minister for Justice and Equality* [2020] IECA 185 (from para. 44), Power J. helpfully extrapolated the following principles to guide the Minister's exercise of the power (at para. 52):

(a) in describing the Minister's discretion as 'absolute', the Oireachtas intended to emphasise that the grant of a certificate of naturalisation involves the conferring of a privilege;

(b) the fact that naturalisation is the grant of a privilege does not mean that an applicant enjoys inferior legal protection when pursuing such an application;

(c) the Minister's absolute discretion to grant naturalisation only arises if satisfied that an applicant is of "*good character*" and, extensive as that competence may appear, it does not release the Minister of the obligation to operate within the rule of law and his determination is amenable to judicial review;

(d) in determining the criteria to be considered when assessing "*good character*" an applicant's character and conduct must be assessed against reasonable standards of civic responsibility gauged by reference to contemporary values;

(e) the connection between character and criminality can only be established when the Minister has all relevant information, including, context and mitigating factors, in connection with a crime;

(f) information that is presented to the Minister in a submission or recommendation must be accurately recorded, complete and seen in context and considered in full by the decision maker before reaching a determination; and

(g) in deciding whether an applicant fulfils the '*good character'* requirement of the Act, the Minister must undertake a comprehensive assessment of an applicant as an individual and must consider all aspects of character.

34. A further principle guiding the exercise of the s. 15(1)(b) decision making power (i.e. in circumstances where no legal entitlement exists and a broad discretion is given to the Minister in relation to the conferral of a benefit) is the acknowledgment in the case-law that there may, in some circumstances, be an entitlement to be told of any information, evidence or materials which might adversely affect the exercise of the discretion in question, so as to afford the person concerned an opportunity to comment on those matters (para. 25, *A.P. v. Minister for Justice* [2019] 3 IR 317).

35. Further, in her judgment in *M.N.N. v. Minister for Justice and Equality,* Power J. approves and reflects the test to be applied in a challenge to a decision to refuse a certificate of naturalisation in judicial review proceedings as identified in the decision of Hogan J. in *Hussain v Minister for Justice,* namely, whether the Minister's opinion as to an applicant's character is one which is bona fide, factually sustainable and not unreasonable. The Minister must direct herself properly in law by reference to the question of what "*good character*" means and the decision cannot stand if predicated, for example, on irrelevant considerations (reaffirmed by Baker J. in *A.A. v. Minister for*

Justice).

36. In terms of proper direction in law as to what "*good character*" means, several of the cases relied on before me cited with approval the test articulated by Lang J. in *Hiri v. Secretary of State for the Home Department* [2014] EWHC 254 as applicable when determining, in the context of an application for naturalisation, whether the requirement of "*good character*" had been fulfilled, has been cited with approval. At para. 35 of his judgment in *Hiri*, Lang J. stated as follows: -

> "*In my judgment, in deciding whether an applicant for naturalisation meets the requirement that "he is of good character", for the purposes of the British Nationality Act I 981, 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 I981 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. The dicta of Lang J. in *Hiri* demonstrates the breadth of the test to be applied and the wide range of matters which may inform the Minister's decision. In exercise of this broad discretion the Minister may have regard to a range of considerations including the presence or absence of previous convictions, the nature of any convictions, when they occurred and any mitigating circumstances, in deciding in exercise of judgment to which deference is due whether a person is of "*good character*", provided that judgment is based on a comprehensive and individual assessment of character rather than a mechanistic or tick box approach.

38. The proper approach to previous offences, such as those in this case, was comprehensively addressed in the Court of Appeal in *Talla v Minister for Justice and Equality.* As here the Minister was concerned with road traffic offences. In his judgment for the Court of Appeal, Haughton J. noted that there is ample authority for the proposition that it is open to the Minister to determine whether a person is not of "*good character*" by reference to the commission of road traffic offences, particularly, where the offences are at the more serious end of the spectrum (see, for example, *Kareem v. Minister for Justice* [2018] IEHC 200, where the applicant was convicted for driving without insurance and *Zaigham v. Minister for Justice* [20 I 7] IEHC 630, where the applicant was convicted of driving without tax or a driving licence). Crucially, however, he added that something more than mere reference to the existence of offences is required, if reliance is to be placed on it as a basis for finding a person is not of good character, not least because within the same category of offences there can be *'a wide spectrum of possibilities*' ranging from the serious and repeated, to the once off and inadvertent. In consequence, it should be clear from the analysis underpinning the decision why the nature of the offence, albeit perhaps committed a long time ago, leads to a conclusion that an applicant is not of "*good character*."

39. In *M.N.N.* (at para. 50), Power J. noted that in several cases that have come before the courts, the refusal to grant naturalisation was not based on the commission of the offences themselves, but rather on the failure of the person seeking naturalisation to disclose them. The number of offences may also have a role to play in the Minister's determination. Criminal convictions are relevant to the assessment of character, but they are not determinative thereof (para. 83 *M.N.N.).*

Approach to the Use of False Name

40. In turning then to the particular complaints advanced on behalf of the Applicant in this case, the Applicant submits that the Minister took irrelevant considerations into account and failed to consider relevant considerations in finding that the Applicant was not a person of good character based on his use of a false identity in the asylum process. Reliance is placed on the fact that the Minister had been made aware of the Applicant's true identity in 2008 at an early stage of the refugee process and that a significant period of time had passed such that it should no longer be held against him. In passing, I observe that in the submissions made on behalf of the Applicant during the decision-making process, reliance had been placed on the circumstances which led the Applicant to use the false name and the fact that he had disclosed the true position during the process, but not on the length of time since the wrongdoing occurred. The dates involved are, however, self-evident, were noted in the submission and were before the Minister.

41. The assertion on the part of the Applicant that the prior use of a false identity in the asylum process, albeit many years ago, is irrelevant in the naturalisation process, is in my view wholly untenable. The use of a false name in the asylum process reflects badly on the Applicant's honesty and integrity, both of which are central to the question of good character which the Minister is obliged to consider when making a determination relating to a certificate for naturalisation. It is undeniable that the submission of an application in a false name in an application for refugee status is properly relevant to the issue of good character under s. 15(1)(b) of the 1956 Act, although the significance to be attached to this negative factor may vary from case to case depending on the explanation offered and other circumstances including counter-

balancing positive evidence.

42. Accordingly, the Minister did not err in considering the fact that a protection application had been made in a false name when deciding whether the Applicant satisfied the good character criterion mandated under s. 15(1)(b) of the 1956 Act. That does not mean that past wrongdoing will be forever relied upon in refusing an application for a certificate of naturalisation. Certainly, the weight to be attached to prior bad behaviour becomes less with the passage of time, particularly where there is no further evidence of bad character in the ensuing period but while potentially of diminishing significance, it is not rendered irrelevant.

43. Clearly the more egregious the act of wrongdoing is in advancing a false identity as determined in light of the factual context and mitigation or exculpatory factors advanced, the more will be required on the positive side of the scales to persuade the Minister that "*good character*" within the meaning of s. 15(1)(b) of the 1956 Act has been established. The fact that the weight to be attached to prior bad conduct becomes less does not mean that previous evidence of bad character should not be considered and may not be weighed negatively as a factor against the grant of a certificate of naturalisation on character grounds.

44. The submission of a protection application in a false name is a matter which reflects very poorly on a person's character in an application under s. 15 of the 1956 Act. Undoubtedly, the fact that a false name was used in advancing a claim for refugee status continues to reflect poorly on the Applicant's character, albeit the weight to be attached to this evidence may be attenuated with the passage of time depending on the overall facts and circumstances of the case, including evidence of any repeat wrongdoing and the nature of same. Just as it was found in *M v. Minister for Justice* (see para. 25) that previous decisions cited by O'Regan J. in her judgment supported the proposition that even old road traffic offences might be considered under the heading of an assessment of good character and there was no authority to suggest after a given period old road traffic offences are not to be considered, I similarly find that previous evidence of bad conduct, even if not resulting in a conviction, may be considered. No authority to the contrary has been identified.

45. I do not accept that in having regard to the submission of an asylum application in a false name in 2007, the Minister considered irrelevant matter notwithstanding the passage of time and the explanation tendered, both of which were considered by the Minister, who was clearly on notice of the dates in relation to the use of the false name and was referred to the explanation tendered in the submission document. Notwithstanding the date in question (2007) and the explanation tendered, the Minister considered the use of false and misleading information in the course of the Applicant's asylum application process to show disregard for the State's immigration regulations, as she was entitled to do, and treated the use of a false identity, for this purpose, as "*a very serious matter as it has a direct impact on genuine asylum seekers,*" as it undoubtedly is. This was a view she was entitled to take. This view, on its own, would not necessarily determine the application depending on other matters, negative and positive, placed in the balance.

46. The Applicant's complaints in relation to findings of bad character based on his use of a false name in the asylum process are without substance and are unmeritorious.

Prior Notice of Intention to Rely on False Name

47. As for the question of notice of an intention to rely on the fact that a false name had been previously used, it is well established that what fairness demands is dependent on the factual context. In *A.P. v. Minister for Justice* [2019] 3 IR 317, it was confirmed that there may, in some circumstances, be an entitlement to be told of any information, evidence or materials which might adversely affect the exercise of the discretion in question, so as to afford the person concerned an opportunity to comment on those matters although the extent of the entitlement is dependent on all of the circumstances of the case. Indeed, ever before the decision of the Supreme Court in *A.P.*, in his earlier decision in *Hussain*, Hogan J. found that if the Minister wished to reach a conclusion adverse to the applicant, he was obliged as a matter of fair procedures to put matters not involving a criminal record or pending civil or criminal proceedings (which the applicant was bound to disclose in any event and had the opportunity to address) to the applicant for his comments.

48. In this case, the factual context includes that the Applicant had been subject to a previous refusal where significance had been attached to the use of the false name. Accordingly, the Applicant had full knowledge that this was an issue. Furthermore, a challenge by way of judicial review on fairness grounds requires demonstration of genuine and real prejudice by reason of the procedural failure complained of. It is recalled that the purpose of providing notice is to afford the Applicant an opportunity to make submissions as to why this should not be relied upon to refuse a certificate of naturalisation by providing an explanation and offering such considerations in mitigation as may be available.

49. Clearly situations may arise where advance disclosure of an issue considered relevant would be just and appropriate, notably where a document or information sourced late in the procedure has the capacity to radically alter the entire basis of the case or where a decision maker had access to a stream of information which was not otherwise known to the Applicant as in *Hussain*. These are not the circumstances in the present case. While the letter of the 19th of May, 2023 and subsequent correspondence, omitted to formally invite submissions from the Applicant on this issue, it is clear that the Applicant was on notice of the issue from the previous refusal, which had been withdrawn on foot of earlier judicial review proceedings.

50. Indeed, not only was the Applicant on actual notice of the issue, but he availed of the opportunity afforded to him to make submissions in respect of his use of a false identity. Furthermore, his explanation was considered by the Minister in the decision-making process and was expressly referenced in the submissions recommending refusal. Therefore, there is no merit to the complaint made that the decision was legally flawed by reason of a failure to expressly advert to the fact that reliance would be placed on the use of the false name in advance.

51. A suggestion in the case as pleaded that the Applicant was not reasonably on notice of an obligation to disclose to the Minister the fact that on a previous application for refugee status he used a false name, appears to have found its way into these proceedings in error, perhaps from the earlier challenge brought on behalf of the Applicant. It appears to be pleaded in error in this case as he was clearly on notice that

the issue was considered relevant and therefore disclosable in advance of the decision under challenge in these proceedings. The plea as formulated makes no sense on the current facts and circumstances. Indeed, the Applicant squarely addressed the concerns flagged by the Minister in her previous decision (subsequently withdrawn by agreement in compromise of proceedings) in a written submission through his solicitors.

52. Accordingly, even though the issue of reasonable notice as to a concern arising from a failure to disclose the previous use of a false name does not therefore require to be determined by me as it does not arise on the facts as presented in these proceedings, it seems to me that the manner in which it is suggested that the use of the false name has no continuing relevance such that the Applicant was surprised by reliance being placed on it suggests to me an unhappy failure to appreciate the significance of using a false name in the refugee process and a lack of insight into the seriousness of this wrongdoing. It is difficult to comprehend on what basis the Applicant might have thought it was not relevant.

53. Had the Applicant squarely addressed the issue of a false name before it was raised against him, this would have tended to support a view that the Applicant understood and truly regretted the consequences of his actions, was fully accountable for same and would not engage in similar behaviour in the future. The converse is true of a failure to disclose an issue of this kind and address it as part of the naturalisation process. It is not a factor in the decision under challenge, however, but arises from an incongruous plea which appears to have been made in error.

Previous Road Traffic Matters

54. It is accepted on behalf of the Applicant, as it must be in view of the weight of authority on this point (most recently *M v. Minister for Justice* referred to above), that the Minister was entitled to consider the Applicant's prior criminal convictions within the State dating to May, 2014, and September, 2011. It is contended, however, that inadequate weight was attached to the fact that nine years had passed without reoffending by the time the application came before the Minister for consideration.

55. It is clear from the submission to the Minister, however, that the Minister was

fully aware that it had been nine years since the previous road traffic offence when making her decision. The offending behaviour was considered fully, and it was noted that a conviction of No Insurance (User) is considered to lie at the more serious end of the spectrum of road traffic offences and constitutes a relatively serious matter which reflect adversely on the Applicant and that no proper explanation, or mitigating factors had been identified on the Applicant's behalf, other than an expression of remorse.

56. As apparent from the submission document, the approach taken to the road traffic offences was a considered and balanced one. It was reasonably noted that on the Applicant's decision to drive without insurance on a public road "*highlights a disregard for other road users*". It was observed that "*this action is considered to fall far short of the normal standard of civic responsibility*", an observation which cannot be disputed. The fact that further road traffic matters dating to 2014 were self-disclosed by the Applicant was treated as being "*to the applicant's credit*" and the evidence furnished of the fines paid was referred to as was his claim to hold an international driving licence.

57. It was properly acknowledged in the submission that not all road traffic offences should debar an application for naturalisation. It was accepted that minor offences do not necessarily reflect on a person's good character, particularly where balanced against other matters in their favour, but regard was had to the fact that there had been two separate incidents of road traffic offences having been committed by the Applicant in the State, which despite their acknowledged antiquity, was considered to weigh negatively on the consideration of the Applicant's character, "*taken cumulatively*" because the evidence demonstrated that the Applicant did not have a "*a sufficiently responsible attitude to the civil responsibilities of Irish society*."

58. I accept, of course, that the good character criterion under s. 15(1) of the 1956 Act is a legal precondition to the grant of a certificate of naturalisation and must be decided in accordance with the ordinary standards of reasonableness, fair procedures and natural and constitutional justice as found by Power J. in *M.N.N. v. Minister for Justice*. Against the detail of the consideration reflected in the submission document, however, I consider the Applicant's challenge as to the weight attached by the Minister to the nature and dates of the offending to be tantamount to a contention that this Court should intervene by way of judicial review in an area of preserved Ministerial discretion, because the Applicant does not like the decision and is of the view that a

different decision might have been open on the facts. Judicial review is not a form of appeal on the merits against the Minister's decision.

59. It is further contended that these convictions cannot indefinitely form the basis for refusing any future application for naturalisation by the Applicant. It seems to me, however, that any future application for naturalisation by the Applicant will fall to be considered having regard to the facts and circumstances prevailing at that time as relevant to the grant of a certificate and following a further comprehensive assessment of the character of the individual applicant in accordance with guidance offered in *Talla v. Minister for Justice and Equality*. Without suggesting that it might be so in this case, as a matter of principle the fact that the weight attaching to prior misconduct may diminish with time does not mean that the misconduct in question may not be so serious on the particular facts of a case that the Minister considers that it continues to justify the refusal of citizenship. Any future decision will be required to be made in accordance with ordinary standards of reasonableness, fair procedures and natural and constitutional justice in the light of all factors prevailing at that time – good and bad.

Adequacy of Reasons

60. There is no ambiguity as to the basis for the decision to refuse a certificate of naturalisation on character grounds in this case. The submission supporting the Minister's decision sets out relevant considerations including factors urged in mitigation or exculpation in a fair manner. The manner in which competing considerations are weighed is clearly set out. On the basis of the record of the decision, it is plain what matters were considered and weighed in the decision on character.

61. It is further clearly set out that when all the relevant factors identified are weighed, the opinion was that the requirement to be of good character in s.15(1)(b) of the 1956 Act was not met because the Applicant has on occasion failed to respect the laws of the State. While it is expressly acknowledged the offences are of some antiquity, it is explained that taken "*cumulatively*", the evidence demonstrates that the Applicant has not demonstrated a sufficiently responsible attitude to the civil responsibilities of Irish society.

62. In addition, the use of false and misleading information in the course of the Applicant's asylum application process was considered to show disregard for the State's immigration regulations and was treated as a very serious matter as it has a direct impact on genuine asylum seekers. The matters which reflect adversely on the Applicant's character were said to be serious and significant in nature, and on weighing the negative factors against the positive evidence of good character of the Applicant, the conclusion arrived at was that the overall balance favours a conclusion that the Applicant is not of good character. The basis for this conclusion is crystal clear and there is no ambiguity as to why the refusal recommendation, upon which the decision was based, was made.

63. For completeness, I note that reference was made in oral submissions to the fact that no explanation had ever been given for the retraction of an intention to grant a certificate of naturalisation communicated by letter in June, 2022, other than that it had issued in error. While this retraction in July, 2022, of a notified intention to grant a certificate of naturalisation in June, 2022, is not properly the subject of challenge in these proceedings as it occurred at an earlier stage of the process and well before the decision challenged in these proceedings commenced in October, 2023, I do not accept that there is any want of reasoning in this regard. The letter issuing on the 10th of June, 2022, in its terms is entirely inconsistent with the submission and recommendation to the Minister just the day before on the 9th of June, 2022. There was clearly never any actual intention formed on the part of the Minister to grant a certificate of naturalisation.

64. This much should be clear to the Applicant and his advisors from documents which have been disclosed to them in the decision-making process. Whilst it may not be clear how the error occurred, it is manifest that the reason why the intention communicated in the letter was retracted, was that which has been given; the letter was issued in error. Although the Applicant's counsel did not press the position this far while complaining about the level of reasoning, I am satisfied that the Applicant is not entitled to know how that error occurred, or whose fault it may be as an aspect of the duty to provide reasons as a component of the right to constitutional justice. It is enough to know that no intention was ever formed to grant a certificate of naturalisation and the letter suggesting otherwise issued in error and was retracted not because there was a change of mind on the part of the Minister which required to be explained but because

the letter issued in error in the first place.

Irrationality or Inconsistency

65. The case made that the decision is irrational and inconsistent is premised on the fact that it had been determined by the same Minister, that the false identity issue was not relevant to the EU Treaty Rights basis for his residence in the State. Want of good character was not relied upon to refuse him residency rights under Directive 2004/38/EC and the European Communities (Free of Movement of Persons) Regulations 2015 (S.I. 548/2015) or more recently in reliance on *Chenchooliah* (Case C-94/18). It was suggested on behalf of the Applicant that the different approach of the same Minister to issues of character under the different regimes demonstrated an inconsistency or irrationality on the part of the Minister, which rendered her decision to refuse a certificate of naturalisation unsustainable. This submission only makes sense at all if the legal test governing eligibility under these separate regimes had the same condition as to good character. As this is not the case, the submission is fundamentally flawed as a necessary premise for the sustainability argument is absent.

66. While the use of a false identity in 2007 did not preclude the grant of residence under EU law and has not when combined with subsequent road traffic offences been relied upon to justify the grant of permission under *Chenchooliah*, this does not mean these factors can be discounted as irrelevant considerations in a naturalisation application or that the differing approach of the Minister in respect of these different decisions is irrational or inconsistent.

67. A different legal test applies under EU law in respect of the exercise of Treaty rights deriving from marriage to an EU citizen under Directive 2004/38/EC and the European Communities (Free of Movement of Persons) Regulations 2015 (S.I. 548/2015). Specifically, an application for residency as a spouse of an EU citizen exercising free movement rights in the State could not be refused on grounds of lack of "*good character*" because EU law does not allow for refusal on this basis and a good character condition of the kind provided for in s. 15(1)(b) has not been prescribed in relation to eligibility for a right of residence in the State under European Communities (Free of Movement of Persons) Regulations 2015 (S.I. 548/2015).

68. Conversely, on an application for a certification of naturalisation under s. 15 of the 1956 Act, s. 15(1)(b) expressly conditions the grant of a certificate of naturalisation on a finding by the Minister that the Applicant is of "*good character*". The Minister has no discretion to grant a certificate of naturalisation unless she is first satisfied that the "*good character*" criterion is met. Accordingly, there is no inconsistency or illogicality on the part of the Minister in treating the use of a false name as irrelevant to the question of whether the Applicant has derived rights under EU law arising from his marriage to an EU citizen but attaching weight to this as a basis for refusing a certificate of naturalisation.

69. My conclusions in this regard are supported by the recent decision in *M v. Minister for Justice*, where O'Regan J. did not consider any inconsistency to arise as between a decision to grant long-term residency which was predicated on a finding of good character and a refusal of a certificate of naturalisation on good character grounds (see para. 29). She referred to the dicta of Hogan J. in *Hussain* (paras. 14 and 15) where it was found that there is no settled or fixed interpretation of "*good character*" but that the words would take their meaning according to the relevant statutory context and general objects of the legislation. Hogan J further noted that because of the necessity to take a declaration of fidelity and loyalty to the State a prospective citizen must be prepared to make a public commitment, drawing from the words of Article 9.2 of the Constitution, that they will discharge ordinary civic duties and responsibilities.

70. In *M v. Minister for Justice*, O'Regan J. relied on *Hussain* in concluding that, depending upon the context in which the words appear, and the objects of the legislation involved, the meaning of "*good character*" might vary. She duly found that in the context of the 1956 Act and notwithstanding the grant to the applicant of a long-term residence card in July 2022 in that case, it was open to the Minister to conclude that the applicant was not of "*good character*" within the meaning and application of s.15.

71. Furthermore, in my view, the complaint that the decision to refuse a certificate of naturalisation is unlawful because regard was had to the fact that the Applicant was not lawfully in the State at the time of making the application is entirely without merit. contrary to the contention made on behalf of the Applicant. Firstly, I am satisfied that the Minister was entitled to have regard to whether the Applicant was lawfully resident

in the State at material times as relevant to his character when deciding on the application. The fact that an application for residence was under active consideration did not render his residence pending a decision on that application lawful.

72. In the normal course, the Minister may have regard to factors such as the reason for a gap in lawful residence, the length of the period(s) of unlawful residence and whether the residency position is regularised with due expedition (or where there is delay where the fault for delay rests) in deciding how much weight to attach to the fact of unlawful residence. As with other relevant factors, the weight to be attached may vary from case to case just as the circumstances of unlawful residence vary.

73. In this case, the factual position as regards residence permission is correctly outlined on the submission before the Minister. The fact that an application was under consideration and had not been determined did not bear on character findings. As the decision to refuse a certificate was not grounded on a failure to respect the Applicant's rights of residence under EU law or an incorrect conclusion that the Applicant was not entitled to be in the State, the decision to refuse is not open to challenge on this basis. The question mark attaching to the Applicant permission to be in the State at the time of the decision does not provide an adequate basis for a challenge to a refusal on character grounds on the basis of a contention that the Applicant was, at all material times, entitled to be in the State because the refusal on good character grounds was not premised on whether the Applicant was lawfully resident in the State.

74. There is nothing irrational on the part of the Minister on the facts and circumstances of this case viewing repeat offending, albeit many years ago, when coupled with the use of a false identity in the refugee process as not being a discharge of ordinary civic duties and responsibilities.

The Antiquity of the Offending Behaviour

75. It is established that the Minister should consider the period of time which has elapsed since the last offence together with all other relevant considerations. In *Talla v. Minister for Justice*, Haughton J. made reference in this regard to the Criminal Justice (Spent Convictions and Certain Disclosures) Act, 2016, which applies to road traffic

offences but which, by reason of s.8(1)(b)(ii), does not excuse a person from disclosing previous convictions which would otherwise be spent convictions in an application for naturalisation. Haughton J. acknowledged that it followed from the terms of s. 8(1)(b)(ii) of the 2016 Act that the Minister was entitled to have regard to aged convictions in considering "*good character*" for the purposes of assessing an application for naturalisation certificate (para. 43). He also pointed out, however, that the scheme of the 2016 Act shows that the Oireachtas recognises different levels of opprobrium for different types of offence depending on the seriousness and/or 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.

76. I do not read the dicta in *Talla* as authority for the proposition that historic road traffic offences have no relevance to the consideration of good character under s. 15(1)(b) of the 1956 Act. Such a construction clearly runs contrary to the statutory intention in s. 8(1)(b)(ii) of the 2016 Act and a host of authority, most recently the decision of O'Regan J. in *M v. Minister for Justice* cited above. I readily accept, however, that a diminishing weight attaches to old offences as time passes without repeat offending. Length of time or antiquity is a factor which may lessen the weight to be attached, depending on all of the circumstances of the case. In this case, the Minister noted the age of the road traffic offences, but considered the fact that there was repeat offending (2011 and again in 2014) cumulatively together with the assertion of a false identity to weigh against a finding of good character in a manner which I am satisfied it was open to her to do.

Standard in assessing "good character"

77. I do not accept as well grounded the complaint that the Minister applied too high a standard in assessing good character. Driving without insurance is a serious disregard of the laws of the State. While this occurred in 2011, the fact that repeat road traffic offences occurred in 2014, is a relevant consideration as it shows that the offending behaviour was not a "*one off*". When these offences are combined with reliance on a false identity in the asylum process, the Minister is entitled to take the view that she cannot be satisfied as to the Applicant's good character. This view is not arrived at on

the basis of an exalted standard which does not reflect reasonable standards of civic responsibility as gauged by reference to contemporary values. Nor does it constitute a case of the Minister imposing her own private standard of morality which is isolated from contemporary values. On the contrary, as reasonably noted in the submission supporting the refusal decision, the evidence (regarding road traffic matters) demonstrates that the Applicant does not have "*a sufficiently responsible attitude to the civil responsibilities of Irish society*" while the use of a false identity for the purpose of seeking asylum *"is a very serious matter as it has a direct impact on genuine asylum seekers."*

78. In my view it cannot properly be maintained that in arriving at these conclusions the Minister has attached a standard of behaviour which is higher than that which ought to be required of prospective citizens under s. 15(1)(b) of the 1956 Act or would be expected of others in line with reasonable standards of civic responsibility on the basis of contemporary values. While Irish citizens may be guilty of like wrongdoing whilst being entitled to participate fully in Irish society, nonetheless the Minister is entitled to concluded that failures of this kind are not in line with reasonable standards of civic responsibility. Granted the consequences for the prospective Irish citizen may be greater because they can be refused a grant of a certificate of naturalisation, but this is a feature of their status as a non-citizen seeking naturalisation and does not result from a different or higher standard of behaviour being expected of the non-national prospective citizen.

Prejudicial Reliance on Dangerous Driving Charge

79. It is clear from the submission to the Minister that the decision to refuse a certificate of naturalisation was not affected by the fact that the vetting disclosure of the 13/04/2023 listed a case pending with a court date '*to be assigned*' for an offence of dangerous driving. Regard was had to the submission made on behalf of the Applicant to the fact that this alleged offence had occurred in 2011 and had not been the subject of prosecution, despite the passage of 12 years. Given the agreed timeframe for the reconsideration of the application, the Minister did not defer making a decision pending receipt of confirmation that this was also the position from An Garda Siochána. Instead, she adopted the very fair approach of treating the disclosed potential offence as a neutral factor and confirmed in clear terms that it would not be considered further in assessing the Applicant's character. No basis for challenging the Minister's decision is

substantiated in the circumstances disclosed on the papers.

Carltona Principles

80. As noted above a challenge on the basis that the process does not benefit from *Carltona* principle is maintained but is not being pursued before me in the light of the decision in *M v. Minister for Justice* which it is accepted is binding on me in line with *Worldport* principles.

81. Noting that the *Carltona* principle is a judicial recognition of the complexity of the administration of modern states and the impracticability of the Minister, as political head of a department, personally taking every decision, in *M v. Minister for Justice*, O'Regan J. found that there is neither a clearly expressed nor a clearly implied restriction or prohibition on the application of the common law constitutional power embodied in the *Carltona* principle, under the statutory regime governing the grant of certificates of naturalisation.

82. Accordingly, based on the decision in *M v. Minister for Justice*, the Applicant cannot succeed in any case made that officials in the Department of Justice may not be considered the *alter ego* of the Minister and may not exercise devolved power on the part of the Minister.

83. For the reasons given by O'Regan J. in *M v. Minister for Justice*, which decision is binding on me, this aspect of the Applicant's complaint must fail. As no arguments were advanced to suggest that the decision was not binding upon me and determinative of the issue, I do not propose to consider this issue further.

CONCLUSION

84. In this case, I am satisfied that appropriate opportunity was afforded to the Applicant to advance contextual and exculpatory evidence. Such contextual and exculpatory evidence as was advanced is properly summarised in the submission to the Minister and was considered in the decision-making process. The conclusion reached by the Minister as to the Applicant's character flowed from the evidence before her and the view taken in respect of this evidence is clear from the submission. The Minister's

rationale in looking at the road traffic offences cumulatively coupled with the use of a false identity in the asylum process is both comprehensible and rational.

85. Furthermore, before reaching her decision, the Minister weighed positive factors such as the Applicant's history of employment in the State and engaged in a proper assessment of the Applicant's character by balancing both positive and negative factors. She did not hold the Applicant to "*some exalted standard of behaviour that would not realistically be expected*" of his Irish counterparts and the Minister has not imposed a private standard of morality. The decision she arrived at was factually sustainable, not unreasonable, and was not made in reliance on irrelevant considerations in circumstances. The weight to be attached to the competing positive and negative factors in conducting a balancing exercise is quintessentially a matter for the Minister. The decision arrived at following a properly conducted balancing exercise ought not properly be disturbed by a Court in judicial review proceedings absent a procedural error which undermines the fairness of the process, an error of law or other significant error of a nature which would result in the Minister misdirecting herself as to the proper exercise of her power. No such procedural infirmity or error has been established in this case.

86. In view of the number of these types of challenges coming before the courts, it seems necessary to repeat that the conferral of citizenship is a privilege provided for in accordance with the provisions of the 1956 Act (as amended) and not a right vesting as a matter of law in any individual applicant. While applicants are entitled to require that their applications are processed in accordance with law, they have no vested right to the grant of a certificate at the end of the process.

87. I am satisfied that I would be quite wrong to intervene by way of judicial review in a case such as this where the Minister has applied the correct legal test in deciding on an application, the evidence shows that the Minister has conducted a comprehensive assessment of the facts and circumstances relevant to good character, the reasons for the decision identified are sufficient, intelligible, capable of being understood by the Applicant, flow from the facts and the underlying rationale is clear.

88. For all of the reasons set out above, I dismiss these proceedings.