



Cúirt Uachtarach na hÉireann Supreme Court of Ireland

U.M. (A minor suing by his father and Next Friend M.M.) v. The Minister for Foreign Affairs and Trade, Passport Appeals Officer David Barry and the Irish Human Rights and Equality Commission

On appeal from: [2019] IECA 154 / [2017] IEHC 741

Headline

The Supreme Court today held that a residence status conferred by the State on a parent based on false or misleading information could, under the terms of the relevant legislation, be included for the calculation of the period required to confer an entitlement of citizenship on the appellant.

Composition of Court

O'Donnell C.J., Dunne, Charleton, O'Malley, Baker JJ.

Judgments

Dunne J. (with whom Charleton, O'Malley and Baker JJ. agree; O'Donnell C.J. concurring).

Background to the Appeal

The entitlement to citizenship of children born to non-Irish parents is regulated by ss. 6A and 6B of the Nationality and Citizenship Act, 1956. Under the statutory scheme, those children are entitled to citizenship if one of their parents has been resident in the island of Ireland for an aggregate of three of the previous four years. Reckonable residence under the 1956 Act excludes from calculation for a grant of citizenship any residence contravening s. 5(1) of the Immigration Act, 2004, where an individual's residence in the State is contrary to the terms of their permission.

UM was born on the 1st June, 2013 in Ireland to MM and MJ. MM was granted refugee status in 2006. MM's permission to reside was renewed periodically between 2006 and 2012. MJ entered the State in 2012 following a successful application for family reunification. Later in 2012, it transpired that MM had failed to disclose that he had sought and been refused refugee status in the United Kingdom in his initial application for asylum in this State. On 10th June, 2013, the Department of Justice wrote to MM informing him that the Minister intended to revoke his refugee status with effect from 13th August, 2013 in accordance with s. 21(1)(h) of the Refugee Act, 1996 as MM's refugee status was based on false or misleading information.

UM applied for a passport on the basis that he was an Irish citizen, based on his father's residence in the State. This was refused in a decision made by the Minister for Foreign Affairs and Trade, who was not satisfied that UM was an Irish citizen having regard to the fact that his father's refugee status was revoked, having been procured through fraudulent or misleading information. It was suggested that MM did not have a declaration of refugee status that was "in force" as it was based on fraud and was void *ab initio*.

UM commenced proceedings against the respondents seeking an order of *certiorari* quashing the decision of the Minister and seeking a declaration that he was an Irish citizen and entitled to an Irish passport by reason of s. 6A, arguing that MM's refugee status was "in force" for the reckonable period, even though it was subsequently revoked, and could be relied upon by UM for a grant of citizenship.

In the Court of Appeal, Murray J. (with whom Donnelly and Ní Raifeartaigh JJ. agreed) found that permission procured through false or misleading representations was not a declaration that was "in force", and therefore was not reckonable for the purposes of s. 6A of the 1956 Act, as the revocation of MM's refugee status rendered the declaration void *ab initio*. In so concluding, Murray J. relied on the principle that "fraud unravels everything" and held that no benefit could flow from the permission to reside based on MM's refugee status, which he should never have been granted.

Leave to appeal to this Court was granted on whether the Court of Appeal was correct in their conclusion that MM's declaration of refugee status was not "in force" during the period prior to its revocation, and therefore reckonable under the 1956 Act for granting UM Irish citizenship.

Judgment

The Supreme Court allowed the appeal.

Reasons for the Judgment

Dunne J. rejected the Court of Appeal's approach. Dunne J. was persuaded in her view by reference to three overarching principles. First, Dunne J. examined the meaning of the phrase "in force" as it appears in Section 5 of the 2004 Act, and in that context, discussed the operation of revocation of refugee status under the 1996 Act. Dunne J. noted that, on an ordinary construction of the section, the grounds under s. 21(1)(a) to 21(1)(h) could operate only from the date of the formal revocation of the declaration of refugee status. This conclusion was reinforced by the fact that the provision provides the Minister with a discretion to revoke a declaration of refugee status if he or she considers it appropriate to do so. It followed that revocation did not operate as a matter of law to render MM's status void *ab initio* as the Minister could refuse to revoke, if he or she thought it was unnecessary to do so. **[75-80]**

Secondly, Dunne J. made reference to the current statutory framework for the revocation of citizenship under Section 19 of the 1956 Act and the revocation of refugee status under the International Protection Act, 2015. Dunne J. noted that neither of these schemes provide for retrospective revocation. **[106-111]**

Thirdly, while noting that MM should never have been granted refugee status, Dunne J. held that it did not follow that the declaration, having been made, was a nullity for all purposes. Dunne J. noted that invalidity has previously been recognised as a relative concept in Irish law, and that to take any other position would cause great precarity for a third party who seeks to rely on a fraudulently induced decision of which they have no direct knowledge. **[116-125]**

In a concurring judgment, O'Donnell C.J. dealt with some issues of statutory interpretation arising in the case. In his view, in the absence of clear language to the contrary, statutes could not retrospectively change the legal nature of past conduct. Further, nothing in s. 21(1)(h) indicated that revocation under that subsection was to operate differently to revocation under any other part of s. 21(1) and thus the Chief Justice found that revocation under s. 21(1)(h) took effect at the date of revocation and did not relate back to the facts leading to the revocation. **[15-18]**

Note

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.

Case history

15 FEBRUARY 2022

[2021] IESC DET 120

[2019] IECA 154

[2017] IEHC 741

Oral submissions made before the Court

Supreme Court Determination granting leave

Judgment of the Court of Appeal (**judgment which was the subject of the appeal to the Supreme Court**)

Judgment of the High Court