THE COURT OF APPEAL

Court of Appeal Record No. 2024/106
High Court Record NO: 2023/56/JR

Whelan J. **Neutral Citation Number [2025] IECA 1**
Binchy J.
Hyland J.

BETWEEN

M

APPELLANT

And

THE MINISTER FOR JUSTICE

RESPONDENT

JUDGMENT of Ms. Justice Hyland delivered on 7th day of January, 2025

Introduction

1. This case concerns a challenge to a High Court decision refusing to quash a decision of the Minister for Justice, Equality and Law Reform whereby the Minister decided not to grant a certificate of naturalisation. The appellant Ms. M (the "appellant") focuses on a number of themes – that there was an inappropriate reliance upon "*old*" road traffic convictions by the Minister; that the Minister failed to give adequate reasons; that the decision was disproportionate; that the Minister ought not to have delegated the decision making function to one of her officials; and that there was an inconsistency between the way the appellant had been treated in relation to long term residency on the one hand, and her citizenship application on the other. For the

reasons set out in the judgment, I find that the High Court judge was correct in refusing the relief sought.

Relevant Legislation

2. Applications for naturalisation are governed by Part III of the Irish Nationality and Citizenship Act 1956 as amended (the "1956 Act"). Section 14 provides that Irish citizenship may be conferred on a non-national by means of a certificate of naturalisation granted by the Minister. Section 15(1) provides in relevant part:

> "*Upon receipt of an application for a certificate of naturalisation, the Minister may, in his absolute discretion, grant the application, if satisfied that the applicant - ...*
>
> *(b) is of good character*."

Summary of Facts

3. The appellant is a South African national who came to the State in 2001 and has resided in Ireland since then. She has worked continuously in Ireland as a carer with the Irish Wheelchair Association since early 2001.

4. This application is concerned with her application for a certificate of naturalisation made on 1 August 2017, decided upon on 28 October 2022. The Minister decided not to grant her a certificate, indicating in the recommendation document that accompanied the letter of refusal that she did not satisfy the criteria in section 15(1)(b) of the Irish Nationality and Citizenship Act 1956 "*on the basis of not satisfying the good character criterion due to her disregard for the Road Traffic Act in 2007, 2012 and 2021, in particular her offence of Careless Driving which resulted in a conviction and fine of €300 on the 8/4/2021*".

5. The appellant had made a number of other applications prior to 2017. Her application for refugee status was refused in March 2009. That refusal was upheld in October

2009. She applied for long term residency on 24 May 2009 and was unsuccessful. A second application for long term residency was made on 8 December 2012, and this was also refused. On 21 February 2019, she made a further application for long term residency. She was granted same for a period of five years from 21 July 2022.

6. The appellant made an initial application for a certificate for naturalisation on 24 August 2006. On 15 February 2007, the appellant was convicted of an offence under s. 49(4) and s. 6(a) of the Road Traffic Act 1961 i.e. for driving under the influence of alcohol and refusal/ failure to sign certificate of analysis. She was fined €100 and a disqualification from driving order was made for four years, reduced on appeal to two years. The Probation Act was applied in respect of the certificate of analysis charge. She was refused a certificate of naturalisation in 2009 on the grounds of good character. In the letter of refusal, she was informed that she could reapply for the grant of a certificate of naturalisation at any time and when considering making such a reapplication she should give due regard to the reasons for refusal in the submission attached to the refusal.

7. On 6 July 2012, the appellant was convicted of an offence under s. 42 and s. 102 of the Road Traffic Act 1961 (driving without an L plate and without an accompanied full licensed driver). She was fined €120 for those offences. She applied again for a certificate of naturalisation on 24 July 2014, which was refused on 20 February 2017. Again, the refusal was based upon the Minister not being satisfied that the appellant was of good character. The recommendation accompanying that letter was dated 2015 and recommended that, given the nature of the offences and the fact that the appellant had come to further adverse Garda attention since the previous application in 2009, the Minister should defer making a decision on granting a certificate of naturalisation for a period of twelve months to allow the appellant to demonstrate a

longer period without any further incidents or offences. That recommendation does not appear to have been acted upon, given the refusal in 2017. In respect of the representations and/or explanations of the appellant, in a letter of 20 October 2017, the appellant's solicitors wrote to the respondent in the following terms: -

> *"Our client has instructed us that she was going through a very challenging period of her life between 2007 and 2012 (and end to her marriage and a divorce) and all the stress she was going through distracted her to become a stranger to even herself since the offences."*

8. There was an assertion at the appeal hearing before this Court by counsel for the respondent to the effect that the appellant was seeking to collaterally attack the decisions in 2009 and 2017, given the criticisms she made of same. It is not proposed to spend any time on this issue since the appellant manifestly did not challenge those decisions at the time, did not challenge them in these proceedings and is not entitled to challenge them either directly or collaterally. Their relevance is that they were considered by the Minister to be part of the factual matrix relevant to the decision not to grant in this instance, and they will be considered exclusively in that context.
9. The application the subject of these proceedings made on 1 August 2017 represents the third refusal of a certificate for naturalisation. Subsequent to the application, but prior to the decision, on 15 June 2019 the appellant was involved in a road traffic accident in Dunboyne, Co. Meath. She was subsequently convicted of careless driving and a fine of €300 was imposed on 8 April 2021. Subsequent to her conviction, she wrote to the respondent explaining that she had travelled to visit her sister in Cavan and, while getting ready for bed, she realised she had left her unspecified medication in Dublin. She decided to drive back to Dublin to take her

medication and she heard a bang and tried to stop the car but was confused about what happened.

10. She obtained leave to judicially review the decision of 28 October 2022 on 6 March 2023 and the matter was heard before O'Regan J. who gave judgment on 23 February 2024 refusing the relief sought. The judgment of the High Court will be considered in the context of each of the arguments made by the appellant, discussed below.

Inappropriate Consideration of Road Traffic Offences

11. The first argument made by the appellant before the High Court was that the respondent, in weighing the evidence before her, had failed to take into account that the road traffic convictions in 2007 and 2012 had occurred some ten years prior to the application for a certificate of naturalisation, that it was very difficult to see how the old road traffic convictions remained relevant and that their relevance was not explained in the impugned decision. It was argued that the 2017 refusal was wholly unfair given that the recommendation was to defer an assessment and the appellant did not commit an offence during 2016 i.e. the year following the deferment recommendation.

12. As already observed, the substance of prior decisions cannot be considered as part of this appeal. The appellant is permitted to ask the question whether the Minister appropriately referred to the 2017 decision in making the decision the subject of these proceedings, but is not entitled to a substantive adjudication on the fairness or otherwise of that decision.

13. It is further argued that road traffic convictions cannot indefinitely form the basis for refusal of a certificate of naturalisation, and taking them into account constituted a fundamental failure to take account of relevant considerations and circumstances in respect of the appellant's prior convictions, including mitigating factors. The

appellant refers to the fact that the 1956 Act implements Article 9 of the Constitution and in particular Article 9.1.2, which provides as follows:

> "*The future acquisition and loss of Irish nationality and citizenship shall be determined in accordance with law*".

14. She observes that any law must satisfy constitutional norms and any procedures for determining acquisition of citizenship must be fair and not irrational or disproportionate. The appellant makes reference to well established case law on the meaning of "*good character*" in the context of citizenship. This issue is explored in some detail by Hogan, J in *Hussain v. Minister for Justice* [2013] 3 I.R. 257, where he observed that, viewed in the statutory context, good character must mean that the appellant's character and conduct must measure up to reasonable standards of civic responsibility as gauged by reference to contemporary values.

15. In the High Court, the trial judge summarised the case law on the question of good character in the context on an application for naturalisation, including *Hussain*, *G.K.N. v. Minister for Justice and Equality* [2014] IEHC 478, *Hiri v. Secretary of State for the Home Department* [2014] ETHIC 256, *Kareem v. Minister for Justice and Equality* [2018] IEHC 200, *AA v. Minister for Justice and Equality* [2019] IECA 272, *Talla v. Minister for Justice* [2020] IECA 135 and *M.N.N. v. Minister for Justice and Equality* [2020] IECA 187. She indicated the jurisprudence recited supports the proposition that even "*old*" road traffic offences might be considered in the context of an assessment of good character, and noted there was no authority to suggest that after a given period, "*old*" road traffic offences are not to be considered. Indeed, as observed by Haughton, J in the case of *Talla*, an applicant for naturalisation cannot avoid disclosing previous convictions, even those that would otherwise be "spent" convictions in the context of an application for Irish citizenship (see s. 8(1) of

Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016) such that the Minister is entitled to have regard to spent convictions in considering good character for the purposes of assessing an application for a naturalisation certificate.

16. The trial judge recorded the argument made that the decision did not flow from the evidence before the Minister, but was satisfied that the finding that the appellant had disregard for the Road Traffic Act in 2007, 2012 and 2021, and the singling out of the conviction of 8 April 2021, did indeed flow from the evidence. She observed that the identification of the dates of the convictions in the decision was ample evidence that the Minister was aware of the date of the offences at the date of making the decision. She noted that the appellant's general disregard for the Road Traffic Acts informed the Minister's decision. She was satisfied the appellant was aware from the two prior refusals of naturalisation that prior convictions were likely to have an impact on the decision, together with her explanations or excuses in respect of those two earlier convictions.

17. I am satisfied that the trial judge was correct in her assessment. No case law was cited by the appellant to the effect that prior or "*old*" convictions cannot be considered; indeed, the effect of the Spent Convictions Act is to the opposite effect and its interpretation by Haughton J. in *Talla* confirms that. Moreover, it is clear that the Minister was aware of the dates of the convictions and therefore by implication must have known that they were of some antiquity, certainly insofar as the first two were concerned. On the other hand, the 2021 conviction must be considered recent in the context of a decision made in 2022. Counsel for the appellant argued that in fact it is the date of the offence that should be taken into account i.e. 2019, thus bringing it within the definition of an "*old*" conviction. This debate is somewhat redundant given that there is no established principle that convictions must be given

an assigned weight based on their proximity in time to the date of the decision. Each situation must be considered on its own facts.

18. To the extent that this argument is in any way relevant (and I think it is not), I consider that a conviction three years prior to the date of a decision on naturalisation is sufficiently proximate so as not to fall into the category of an "*old*" conviction. In any case, irrespective of the date of the convictions, the Minister was entitled to take into account the three separate convictions of the appellant for road traffic offences over the span of a number of years in considering whether or not she was of good character, Moreover, the Minister makes it clear that she is placing particular emphasis on the most recent offence of careless driving resulting in a conviction in 2021. It is difficult to see how the Minister cannot be entitled to take into account previous road traffic convictions where there is a recent conviction the year prior to the decision, and where she is considering the question of disregard for the Road Traffic Acts as an aspect of character.

19. Separately, I am equally satisfied that the trial judge was correct in noting that the appellant was fully aware that those convictions would be a relevant factor. She had been refused on two previous occasions because of those convictions and indeed she had specifically written to the Minister in 2021 following her conviction, as described above, explaining how the circumstances in which the offence and subsequent conviction took place. She was therefore obviously aware of the concern in this regard. Equally, as noted above in 2017, her solicitor wrote explaining the circumstances in which she was convicted of drunk driving. That letter of explanation was explicitly referred to in the recommendation document. Further, in 2015 she put in an affidavit explaining the circumstances whereby she was convicted for failing to display L plates and being unaccompanied. The evidence therefore makes it clear

that the appellant was well aware of the potential relevance of all of her convictions to her application and for that reason made submissions in respect of these issues.

Inadequate Reasons/Failure to comprehensively assess the appellant's character

20. Next, the appellant challenges the adequacy of the reasons given for decision, citing the dicta of Lang, J in *Hiri*, approved in *G.K.N*., whereby Lang, J observed that:

> "*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 …. There has to be a comprehensive assessment of each appellant's character, as an individual, which involves an exercise of judgment, not just ticking boxes on a form."*

21. In a linked argument, the appellant argues that there was no comprehensive assessment of her character as an individual and identifies this as part of the reasons ground.

22. Here the reasons are set out clearly, if not at length. A consideration of the recommendation document demonstrates that the Minister did in fact comprehensively assess the appellant's character and took into account relevant considerations. It recites the history of her applications for naturalisation and long-term residency. It accurately sets out the details of the convictions and the penalties. It summarises the explanation given by the appellant for the conviction for careless driving. It refers to the letter from her solicitor in respect of the reasons for the conduct when she was convicted of drunk driving. It refers to her employment since 2001. It confirms that the case is being considered in its entirety, including the report provided by An Garda Síochana and the explanations provided by the appellant and

her solicitor. It refers to the fact that the appellant has been residing in the State since 2001 and is in full time employment. There is an identification of why she is not considered to be of good character i.e. her disregard for the Road Traffic Acts and in particular her conviction for careless driving. It is difficult to see how the document falls short from a reasons perspective.

23. Although not pleaded, the appellant's counsel sought to argue that other facts included in her solicitor's letter, such as her conversion to Islam in 2015 and her abstention from alcohol and/or the reduction in her period of disqualification from four years to two years, ought to have been mentioned. This is to misunderstand the nature of the reasons obligation in this context. An identification of each and every single piece of information that has been provided is not required.

24. In *M.N.N.*, Power, J observed that it can be inferred from the Court's judgment in *Talla* that something more than a mere reference to the existence of traffic offences is required if the Minister is to reply upon their commission as evidence that goes to character. She summarised the principles emerging from the case law in relevant part as follows:

> *"(v) 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 the crime;*
>
> *(vi) Information that is presented to the Minister in a submission or recommendation must be accurately recorded, <u>complete</u> and seen in context and considered in full by the decision maker before reaching a determination* (emphasis added)*; and*
>
> *(vii) In deciding whether an appellant fulfils the 'good character' requirement of the Act, the Minister must undertake a comprehensive*

assessment of an appellant as an individual and must consider all aspects of character."

25. Counsel for the appellant argued that this meant that each and every piece of information provided to the Minister by the appellant or on their behalf must be present in the recommendation. However, that would be to place an extraordinary burden on the Minister substantially beyond what is required in any other area of administrative law. No case was cited either in the area of naturalisation, or indeed in any other area of administrative law, where an obligation is placed on the Minister to include every single piece of information provided to him or her in the decision making process. What then does the reference to "*complete*" mean in the decision in *M.N.N*?

26. In my view, it is intended to encompass two different concerns. First, the recommendation must contain the core information relevant to the decision, including the fact of any exculpatory material. Second, it precludes partial information that paints an inaccurate picture.

27. Three examples of incomplete reasoning that were caught by the second concern may be found in the cases of *G.K.N.*, *Talla and A.J.A v. Minister for Justice and Equality* [2022] IEHC 624. In *G.K.N.*, the appellant was convicted under s. 106 of the Road Traffic Act for a "*hit and run*" and leaving the scene of the accident, for which he was fined €300. In fact, the explanation from the appellant's solicitors was that their client grazed a parked jeep, he stopped and tried to locate the owner of the jeep but there was no one in the vicinity, and after a while he drove off. He paid the fine and paid compensation to effect repairs to the damaged vehicle. In those circumstances, MacEochaidh J held that the recommendation ought to have drawn the attention of the Minister to the circumstances surrounding the incident on the night, in particular

because the respondent's agent had specifically sought information about the conviction of the appellant but had failed to bring the exculpatory information received to the attention of the Minister. Rather, the Minister had merely been provided with documents saying that an offence of a serious nature had been committed, i.e. a hit and run. MacEochaidh J held it was a denial of the appellant's constitutional rights not to place all relevant information before the Minister, and the decision was quashed.

28. In *Talla* the applicant was convicted of speeding and driving without insurance. In completing the application form for naturalisation, he failed to disclose these two convictions. His solicitor explained the convictions on the basis that he believed he was insured because he was driving his brother's car and he had always been insured on other cars that his brother owned and which he drove. It transpired he was not insured on that particular car. Haughton, J observed that where there are road traffic offences, the nature of the offences and the circumstances in which they were committed will demand more attention. He referred to *G.K.N.* and *Hiri* and noted that in *G.K.N.* the decision was quashed because the judge was not satisfied that the Minister had been given all the relevant information. At paragraph 46 he noted that a decision maker was not obliged to consider the entire file but that all relevant material and information should fairly be brought to the decision makers attention. He noted the convictions were relevant matters that the Minister was entitled to take into account, but so too were the circumstances that gave rise to those charges, together with any facts tending to explain the outcome. It was only in that context that the Minister could identify and assess the connection between character and criminality. He held that on the facts, it could not be concluded that the decision maker had considered all the relevant material on file. In particular, there was no

mention of any of the explanations given by the appellant or his solicitors, and the submission to the Minister made no reference to the exculpatory or mitigatory information supplied.

29. Finally, in *A.J.A.*, a Somalian national seeking citizenship had submitted a Somalian passport as part of her application. She indicated her concerns about the genuine nature of her passport to the Minister on two occasions given the impossibility of obtaining a Somalian passport because of the war and explaining that she had tried but could not obtain a passport from Somalia or an embassy abroad. The recommendation identified the issue of the false passport but failed to record the explanations offered by the appellant through her solicitors for the submission of the false passport, the practical difficulties asserted in obtaining a passport for Somalia given the absence of a functioning government, or the efforts made to travel to the Somali embassy in Belgium for the purpose of obtaining a passport. Nor did the fact that she had raised a concern unprompted feature in the material. In the circumstances Simons, J quashed the decision of the Minister as he considered the omission from the submission of an accurate record of the explanation and exculpatory factors was fatal to the validity of the decision made.

30. In my view, the nature of those cases contextualises the reference to "*complete*" information by Power J. Whether the information is "*complete*" must be read in the context of the material provided to the Minister. It does not mean that every single iota of information provided must be provided to the Minister (as indeed was confirmed by Haughton J in *Talla*). However, there may be a failure to give adequate reasons and/or put all adequate material before the Minister where one part of the story is disclosed but not the other part, thus leading to a failure to fully understand the position and/or a misapprehension of the part of the Minister because context was

necessary to properly understand the nature of the conviction and therefore its relevance to an application for a certificate of naturalisation.

31. Applying those principles to the instant case, I am satisfied that "*complete*" information was provided in the recommendation within the meaning of the decision in *M.N.N.* and that the reasons given for the Minister's decision were sufficient. The core material necessary for the decision was provided to the Minister, including exculpatory material such as the length of residence in the state, the unbroken work record with the Irish Wheelchair Association, the explanation for the offences and the grant of long-term residency. There was no omission of a fact that was required to make sense of her three convictions or to contextualise them so the initial negative impression of an applicant with such a history could be revised or altered in some way. No such case is, or could be, made on these facts by the appellant. In the circumstances, I consider the finding of the trial judge (paragraph 28) that the reasons were sufficient, intelligible, capable of being understood by the applicant and flowed from the facts to be correct.

Proportionality

32. The appellant argued that the Minister acted disproportionately at the hearing before this Court but no significant time was spent on advancing this argument at the appeal hearing. That is perhaps unsurprising in circumstances where the case law makes it clear that the concept of proportionality does not sit easily with absolute discretion, even where that discretion is trammelled by fairness considerations, as in the instant case. In the decision of *A.P. v. The Minister of Justice* [2019] 3 IR 317 it was held that the principle of proportionality did not directly apply where what was at issue was a refusal of an application for a certificate of naturalisation , with Clarke, C.J observing:

> "*I accept that this principle does not directly apply in the circumstances of this case, for it is not sought to interfere, as such, with any right which Mr. P. might enjoy. The conferring of a certificate of naturalisation is a benefit or privilege to which Mr. P. is not entitled as of right. Rather, the extent of his rights is confined to the entitlement to make representations as to why such a certificate should be granted to him.*"

33. On the other hand, the principle of proportionality did apply in respect of the decision-making process where there was a wholescale refusal to disclose the reason for the refusal because of State interests and it was incumbent on the Minister to put in place measures which only impair the entitlement of Mr. P to be informed of the reasons of any adverse decision to the minimum extent necessary to protect legitimate State interests.

34. Counsel for the respondent observed in his oral submissions that in the immigration field, proportionality usually means a weighing up of an applicant's rights on one hand, with the State's interests being taken into account on the other hand. A more traditional approach to proportionality is that a decision maker must make a decision that interferes to the least extent possible with a subject's rights, having regard to the aims sought to be achieved. It is hard to see how that exercise can be carried out in the context of the grant of a privilege that is at the absolute discretion of the Minister. The applicant cannot invoke any substantive rights. The decision as to whether an appellant is of good character or not is a binary question that does not admit of proportionality considerations. Counsel for the respondent further observes that no rights are impacted here because the appellant is entitled to work and to stay in the country, given she has long term residency. I accept that a person's situation would be vastly improved by obtaining a grant of citizenship but, given that she has no right

to citizenship, it cannot be said her rights are adversely affected by a refusal. In the circumstances, the conclusion of the trial judge at paragraph 24 that the appellant cannot succeed under the heading because there was no identification of any right of the appellant allegedly been interfered with is one that I do not consider ought to be disturbed.

Unlawful delegation

35. The next argument of the appellant is that the Minister acted unlawfully in delegating the decision not to grant citizenship under s.15 to her officials. Delegation by a Minister is governed by what is known as the "*Carltona"* doctrine, considered in useful detail by MacMenamin J in *W.T. v Minister for Justice* [2015] IESC 73 in the context of a challenge to a deportation order. Under the doctrine, where a Minister entrusts functions to Department officials, those officials may take decisions in the Minister's name that will be treated as decisions of the Minister, acting effectively as the *alter ego* of the Minister. The decision maker is vested with the Minister's devolved power. No express act of delegation is necessary. The doctrine is seen as a judicial recognition of the complexity of the administration of modern states, where it would be impracticable for a Minister, as political head of a department, to take every decision.

36. However, the Carltona principle is capable of being negatived or confined by express statutory provision to the contrary or by necessary implication. In *W.T.*, MacMenamin J observed that if the Oireachtas requires the Minister to exercise such decision-making power in person "*this will require very clear statutory terminology … it follows that a court will be very slow to read into a statute any such implicit limitation*" (paragraph 5). He characterised the Carltona principle as having "*near canonical status*". To succeed in setting aside the deportation order challenged in

W.T. on the basis that it ought to have been taken personally by the Minister, MacMenamin J noted that the applicants were required to show that the Carltona principle has been negatived or confined, such that it must be the Minister who alone makes the decision to deport. He noted the strongly practical dimension of the Carltona doctrine by reference to the annual number of deportation orders made each year - in 2012, 1619 orders were made; in 2013, 1726 orders were made, and in 2014, 739 orders were made) - observing that the idea of a Minister signing, still less considering, each order was impractical.

37. *W.T.* is not the only case where the Supreme Court have considered the Carltona doctrine in a context analogous to the present one. In *Tang v Minister for Justice* [1996] 2 ILRM 46, the Supreme Court considered the question of delegation in respect of a refusal to give permission to remain in the State to non-nationals. It held that it could not be assumed from the Aliens Act 1935 that the legislature had intended that the Minister should personally exercise powers to make decisions concerning non-nationals, such as refusing permission to remain.

38. Here, the foundational basis of the appellant's argument is that the Minister is exercising an absolute discretion when deciding upon naturalisation, and, *ergo*, it must be made exclusively by her. The fact that acquisition of naturalisation is a privilege and not a right tends to show, it is said, that it is for the Minister personally to make the decision. It is argued that the nature of the power itself negatives the Carltona doctrine without the necessity for express words. Because a decision as to citizenship concerns a key aspect of the exercise of sovereignty on the behalf of the State, by necessary implication the Minister is expected to make the decision personally. The appellant also invoked the lack of any appeal against the decision of the Minister, pointing out it was the only and final decision.

39. Expanding the argument, the appellant refers to the fact that at one stage citizenship was determined by a private act of Parliament and that the grant of citizenship is an exercise in sovereignty. She notes that the grant of naturalisation is carried through via s. 14 by means of a certificate of naturalisation signed by the Minister personally. Moreover, a notice is published in *Iris Óifigiúil* stating that each appellant has been granted a certificate of naturalisation. Because every positive decision is made by the Minister, it is said that every negative decision must equally be made personally by the Minister. In support of the argument, the appellant refers to the fact that there is evidence that the Minister sometimes makes the decision herself, citing in this respect *A.P. v. Minister of Justice* [2019] 3 IR 317 where O'Donnell, J , in the context of applications for permission to remain in the State, noted that the Minister had signed the letter in question signifying her approval.

40. The respondent observed that no words restricting the application of the Carltona doctrine may be found, either implicitly or explicitly, in s.15. She noted that deportation orders (*W.T.*) and leave to remain decisions (*Tang*) also involve the exercise of sovereign authority without a right of appeal (as in the instant case) and that in both cases, the Supreme Court held that the Carltona doctrine was applicable and delegation was permissible. It was observed that the court should be very slow to read into a statute an implicit limitation of the principle. The respondent highlighted the observation in the decision of *A.S.A.* that such decisions are highly significant to the people concerned, but that the seriousness of a decision does not determine whether or not a decision can be devolved to officials, provided they are sufficiently qualified to make a decision of the type under consideration. The respondents note the absence of authority to suggest Carltona is disapplied where the decision-making process involves discretion on the part of the Minister.

41. In relation to the Minister's involvement where there is a decision to grant an application for naturalisation, the respondent notes that this only arises where the Minister is satisfied an appellant is of good character and the appellant did not get that far. There was no exercise of absolute ministerial discretion so that appellant cannot invoke a *jus tertii* to complain the decision ought to have been made by the Minister personally. The respondent notes that both *W.T.* and *A.S.A* involved the exercise of ministerial discretion. Further, it was argued that the nature of the power does not dictate whether Carltona applies. Rather, it is a question of statutory interpretation. Merely because a Minister sometimes makes the decision herself does not indicate that the Carltona doctrine has been disapplied. Indeed, in *W.T.*, the Minister had personally signed deportation orders as a matter of past practice. The respondent argues that the court can take into account the numbers of applications each year and that the practical dimension attaching to the devolution of decision-making powers of naturalisation can and should inform the statutory interpretation exercise.

42. The Minister provided relevant evidence from Mr. Brennan, Principal Officer of the Citizenship Division, Immigration Service Delivery, Department of Justice, who averred that he was head of the Citizenship Division within Immigration Service Delivery. He identified that the decision-making process in relation to the decision in the instant case involved four decision makers within the Citizenship Division considering the application, reviewing the file and preparing a decision which was ultimately made by him. He identified that, according to established procedures, decisions refusing applications for naturalisation are ultimately decided upon by an officer within the Department of Justice of Principal Officer rank. At paragraph 80 he confirmed that approximately 7,180 applications for certificate of naturalisation

were received by the Department in 2022, in 2021 the number was 11,977 and in 2020 the figure was 10,785. By my calculations, this makes a total of 39,942 in the last three years. All this, it was said, strongly indicates that the Carltona doctrine applies such that the Minister is not required to take decisions in respect of naturalisation applications personally.

43. In her judgment, the trial judge noted the lack of a right of appeal from the Minister's decision was not dispositive, given that the same situation prevailed in relation to applications for leave to remain and deportation orders and both of those remained covered by the Carltona principle. She held that referring to discretion as "*absolute*" did not incorporate the clear and precise wording identified by MacMenamin J. in *W.T.* required to disapply the doctrine. She considered the history of citizenship was not relevant as it was not within the legislation itself. Finally, she noted that deportation orders and leave to remain also engaged fundamental features of democracy i.e. the entitlement of the State to control its borders. She concluded there was neither a clearly express nor clearly implied restriction or prohibition on the application of the Carltona principle in the 2015 Act.

44. There is no doubt that the right to confer citizenship on a citizen is an important part of the State's powers. O'Donnell, J in *A.P.* (referred to above in the context of proportionality) observed as follows: "*A decision in relation to the conferral of citizenship not only confers the entire range of constitutional rights upon such a person, but also imposes obligations on the State, both internally in relation to the citizen, and externally in its relations with other States*" (paragraph 86). He observed in the same paragraph that the origin and the extremely broad discretion conferred upon the Minister lies in some fundamental conceptions of sovereignty, noting that

it is a basic attribute of an independent nation that it determines the persons entitled to its citizenship.

45. It is important to distinguish between the conferral of citizenship and the satisfaction of the conditions for naturalisation. To address the core argument made by the appellant i.e. that the very nature of the decision, in particular the absolute discretion conferred on the Minister, warrants a departure from the Carltona doctrine, it is necessary to revisit with some precision the statutory scheme. Section 15 of the 1956 Act is entitled "*Conditions for issues of certificate*" and provides that the Minister may in his absolute discretion grant the application if satisfied that the applicant is of good character. The good character requirement is just one of a number of other conditions, namely that the appellant is of full age, has had a period of one year's continuous residence in the State and total residence in the State amounting to four years of the previous eight, intends in good faith to continue to reside in the State after naturalisation, and has made a declaration in respect of fidelity and observing the laws of the Sate. Section 15(2) identifies these as "*conditions for naturalisation.*" What is within the absolute discretion of the Minister under s.15 is whether to grant the application for a certificate of naturalisation. On the other hand, the evaluation of whether the good character condition has been met is a matter of which the Minister shall be "*satisfied*".

46. Indeed, that distinction was drawn by O'Donnell J in *A.P.*, where he observed at paragraph 85 that the Minister may in his or her absolute discretion grant a certificate of naturalisation to a person if satisfied that the appellant complies with certain statutory conditions, any of which may be waived by the Minister in circumstances set out in the statute, and noted:

> "*The satisfaction of the statutory conditions (or satisfaction subject to waiver of some or all of the conditions) does not give rise to an obligation on the Minister to grant any application. Rather, satisfaction of the conditions or permitted waiver allows the Minister to exercise the absolute discretion conferred by statute as to whether or not to grant the certificate of naturalisation*."

47. Thus, naturalisation is a two-step process. The first step is the question of whether the Minister is satisfied that the applicant has met the conditions for naturalisation. The second is the grant of the application – a decision in respect of which the Minister has absolute discretion.

48. This undermines the basic premise of the appellant's argument i.e. that the absolute discretion of the Minister in and of itself must necessarily infer a departure from the Carltona doctrine. Construed correctly, the statute does not give the Minister absolute discretion to decide on good character; rather the Minister must be satisfied of good character. That is a very common form of words in a statute and the applicant has put forward no argument as to why the decision as to whether the Minister is "*satisfied*" as to good character cannot be taken by an official acting as the *alter ego* of the Minister.

49. It is certainly true that the letter to the appellant of 28 October 2022 referred to the Minister's decision not to grant a certificate of naturalisation, and that, in reaching her decision, the Minister has exercised her absolute discretion under the Act. However, the submission identifies that on the basis of not satisfying the good character criterion, it is not recommended that the Minister grant a certificate of naturalisation. Therefore, the decision was clearly referable to the failure to satisfy an identified criterion under the Act, and should not be treated entirely as the exercise

of absolute discretion without any consideration of the role of good character in the decision.

50. The appellant has also relied upon the magnitude of a grant or refusal of citizenship as suggesting that the Carltona doctrine must be implicitly displaced. But a decision not to grant citizenship because of a failure to satisfy the good character condition does not have the magnitude ascribed to it by the appellant. It does not, for example, mean that the person cannot continue residing in the State. The appellant has pointed to no adverse consequences arising from the decision, save that it precludes her from being considered for naturalisation. Indeed, it has far less devastating consequences than a refusal for leave to remain following an unsuccessful application for international protection, or a deportation order, considered in *W.T.* and *Tang* respectively. Those decisions could not be revisited. On the other hand, a decision as to character is explicitly one that can be revisited. Indeed, the appellant in this case was explicitly told on all three occasions that she could reapply in future, and demonstrably availed of this opportunity on two occasions.

51. Moreover, the decision as to whether or not an official is satisfied that an appellant has met the good character requirement is highly circumscribed as identified by the jurisprudence of these courts and no suggestion is made, nor could be, that it is unsuitable for decision by the Minister's officials. I have already discussed above the jurisprudence in that respect, and in particular the decision of Power, J in the case of *M.N.N.* where she identifies the parameters within which any such decision must be made.

52. In my view that disposes of the principled argument of the appellant in this respect. Turning to the subsidiary arguments, the fact that the appellant's legal team have identified one case in which the Minister personally signed a decision as to character

is quite irrelevant. Equally, the fact that the Minister apparently signs grants of citizenship is not of assistance to the appellants: as explained above, the decision to grant citizenship is not the same as a decision that the Minister is not satisfied as to good character. Moreover, the mere fact of signing by a Minister does not mean that an official cannot sign as her *alter ego*; it simply means that she has decided to sign in a given case.

53. Next, the lack of an appeal against the Minister's decision is raised by the appellant. In neither *Tang* nor *W.T.* was there an appeal: but this did not stop the Supreme Court from concluding the Carltona doctrine had not been displaced. The appellant has made no argument as to why this situation is so different in principle that I should depart from the approach of the Supreme Court in this regard.

54. Finally, the respondent argued that the sheer number of applications for naturalisation render it improbable that this was an area where the Carltona doctrine has been displaced. However, because the appellant has not raised a *prima facie* argument that the Carltona doctrine has been displaced, it is unnecessary to consider this argument any further.

Inconsistent treatment

55. Prior to the impugned decision, the appellant had twice been refused long term residency. However, on 21 July 2022, three months prior to the decision impugned, the appellant was granted long term residency. The issue was dealt with by the trial judge, where she rejected the argument that the appellant's treatment in relation to good character in the context of long-term residency was inconsistent with her treatment in the context of a naturalisation application. However, no ground of appeal in this respect was included in the notice of appeal. It was ultimately agreed that the notice of appeal could be amended on the basis that the respondent could put in

supplemental legal submissions on this point, and would exhibit the decision granting the appellant long term residency. An Order was made to this effect by this Court on the day of the appeal hearing on 4 November 2024.

56. Long term residency is not governed by statute. No case law was cited by the appellant as to how the criteria of good character is to be interpreted in the context of long-term residency. There does not appear to be any case law on the point. The nub of the appellant's argument is that it is inconsistent to find good character in one context but not the other. The appellant argues that the Minister cannot now argue there was some difference in standard that she was in fact applying in considering the application for naturalisation, and that, if there was a difference in the meaning of good character as between long-term residency and the citizenship process, that should be made clear in advance and properly reasoned in the decision. She argues that if there is a difference in standard, the appellant was entitled to know that and to make submissions on same in both processes, and adds that it is difficult to see why coming to the adverse attention of the Garda Síochana did not disentitle her from long-term residence, but precluded citizenship.

57. It is important to understand that the appellant did not exhibit her application for long term residence, the conditions she understood were required to be satisfied, or the decision granting her long term residence. If an applicant wishes to make an argument based on a set of facts, they have an obligation to discharge the evidential burden in respect of those facts. It was quite unsatisfactory that it was in fact the respondent who ended up exhibiting the decision to grant long term residency of finite duration.

58. The respondent argues that there is no basis in authority for the appellant's assumption that the outcome of a character assessment for both purposes must be the

same and that the appellant has failed to cite any authority. She points out the High Court correctly applied *Hussain.* Moreover, the respondent points out that the Minister expressly referred to the long-term residency status of the appellant in the decision and therefore this was considered.

59. In the additional written submissions provided by the respondent, it is argued that the appellant is incorrect to say that the "*question posed*" in each case is intended to establish the same issue. In fact, the Minister points out that the Supreme Court has very recently confirmed in clear terms that, although the concept of "*good character*" can arise in different contexts in the area of immigration and citizenship law, it is lawful for a different meaning or standard to be applied to that concept, which is to be gauged according to the context in which it falls to be applied.

60. In *Rana & Ali v Minister for Justice* [2024] IESC 46, the respondents contended that the Minister had not properly assessed the issue of "*good character*" in refusing their applications for permission to reside in the State under the terms of a particular administrative scheme, the "*Special Scheme*" for non-EEA nationals who had held a student permission between 1 January 2005 and 31 December 2010. The Minister had refused the applications on the basis of a finding that Ms Rana and Mr Ali were not of sufficiently good character and conduct. This conclusion was drawn on the basis that, following expiry of their student permissions, Ms Rana and Mr Ali had subsequently obtained residence permissions which were revoked by the Minister after it was found that Ms Rana had entered into a marriage of convenience and Mr Ali had submitted misleading documentation in order to obtain those permissions. The High Court had noted that Irish case-law on "*good character*" principally arose in the context of citizenship by naturalisation. Phelan J considered that the authorities on naturalisation, while "*helpful*", were "*not directly applicable*" and rejected the

applicants' challenges. The Court of Appeal was not unanimous as to the relevance of case-law regarding "*good character*" in the naturalisation context to an assessment of "*good character and good conduct*" under the Special Scheme. By a majority, the Court of Appeal reversed the High Court.

61. In the Supreme Court, Ms Rana and Mr Ali submitted that an application of that nature was analogous to a naturalisation application and that therefore the principles set out in *Talla* and the other authorities on naturalisation were applicable. They also argued that they had subsequently acquired permission to remain under the Regularisation of Long Term Undocumented Migrants Scheme, which contained a good character requirement. The Minister countered that this later Scheme was quite different in purpose. O'Malley J (for a unanimous Supreme Court), reversing the Court of Appeal, stated that:

> "*The words good character and conduct do not convey anv particular meaning but must I think be assessed in the context in which they are utilised. For example, it seems clear that, as deployed in the Special Scheme, the concept was intended to be more strictly applied than in the scheme for the long-term undocumented migrants ... I do not, therefore, see any inconsistency in finding that an individual could fail a good conduct requirement for one purpose but pass it for another.*

62. In the High Court, the trial judge referred to paragraph 14 and 15 of *Hussain* where Hogan, J found that there was no settled or fixed interpretation of "*good character*" and the words would take their meaning according to the relevant statutory context and general objects of the legislation. She observed that depending on the context in which the words might appear and the objects of the particular legislation involved, the meaning of good character might vary. She referred to the referral by Hogan, J

of the necessity to take a declaration of fidelity in loyalty to the State in the context of an application for citizenship and she noted that, because of that, a person must be prepared to make a public commitment that they will discharge ordinary civic duties and responsibilities. The trial judge concluded that it was not irrational of the Minister to review repeat offending albeit over a protracted period of time as not being a discharge of ordinary civic duties and responsibilities. Accordingly, she held it was open to the Minister to decide the appellant was not of good character within the meaning of s.15, despite the grant of a long-term residence card.

63. There are a number of problems with the appellant's argument. First, the argument that the Minister was obliged to explain the differences in the concept of good character in the differing contexts, explain same in advance and justify the different approaches, is premised on the assumption that good character is the same in both contexts, and therefore differing approaches require flagging in advance and justification. The appellant provides no support for her assertion in that regard. There is no exploration of the meaning of good character in the long-term residency context, simply an assumption that it must be the same despite the entirely different context. The appellant blithely ignores the observation of Hogan, J relied upon by the trial judge at paragraph14 where he observed that there is "*no settled or fixed interpretation of the words 'good character'. Applying the standard principle of noscitur a sociis, these words accordingly take their meaning according to the relevant statutory context and general objects of the legislation*." Having referred to the constitutional context and the requirements of s.15, Hogan, J explicitly states that it is against this background that the term good character must be understood and measured.

64. Obviously, this appeal is not concerned with whether the Minister was correct to decide that the appellant was of good character in relation to the grant of long-term residency. Rather, the exercise is to consider whether the trial judge was correct in upholding the Minister's decision that she was not satisfied that the appellant was of good character for the purposes of s.15. I have already explained why I consider the trial judge was right in upholding the Minister in that respect.

65. For the appellant to succeed in her inconsistency argument, as a starting point she would have to establish that the term good character has the same meaning in both contexts. She has fallen far short of so doing. She has failed to put before the court any information in relation to the meaning of the concept in the context of long-term residency and indeed has failed to explain to the court how the grant of long-term residency works, and the criteria upon which it is based. She is asking the court to assume the contexts are the same. She has exhibited no documentation in relation to her application. The respondent has helpfully set out the very different contexts and for the sake of completeness I will include them in this judgment. But I would observe that it is for persons raising a point to do more than simply identify it in an inchoate form: they have an obligation to establish the constituent parts by evidence and make legal submissions that reflect that evidence. Only then can the argument be appropriately responded to by the other party and adjudicated upon by the court.

66. *Rani* clearly demonstrates that the standard to be applied to "*good character*" is necessarily context dependent, including by reference to the benefits available to be bestowed on an applicant who contends they are in fact of good character and worthy of whatever status is being governed by the legal framework governing the application. Therefore, there is no necessary inconsistency simply because an applicant is considered of sufficiently good character to warrant a grant of long term

residency, but not citizenship. As noted by the respondent in her submissions, there are several fundamental distinctions to be drawn between the two statutes, all of which support a conclusion that a higher bar should be applied in the naturalisation context:

a. The status of citizenship finds its legal provenance in Article 9 of the Constitution, and is a privilege governed by the 1956 Act. Long Term Residence is a non-statutory administrative framework applied by the Minister, in the exercise of the executive power.

b. An applicant for citizenship is required by s. 15(1) to make a declaration of fidelity to the nation and loyalty to the State. This is not a requirement of a long-term resident.

c. The broader considerations applicable to the conferral of citizenship remain relevant even though the appellant is only at the first stage of satisfying the Minister of character as identified in *A.P.* , discussed above.

d. In the EU law context, conferral of citizenship is a competence of the individual Member States, giving rise to free movement rights under the EU Treaties for the citizen to reside in other EU (and EEA) Member States. Irish (and other EU) citizens acquire by dint of their citizenship the rights identified by Part Two of the Treaty on the Functioning of the European Union.

e. Irish citizenship affords the facility to travel to third countries without an entry visa pursuant to visa waiver schemes applicable to Irish passport-holders.

f. Citizenship affords immunity from adverse contingencies such as deportation.

g. Citizenship by naturalisation, in theory, endures for the life of the citizen subject to the possibility of revocation. Revocation of citizenship is, rightly, a procedure to which very significant procedural safeguards are attached, for the protection

of the citizen's interests. By contrast, a Stamp 4 long-term residence permit expires naturally at the end of five years (if not renewed). Furthermore, as appears from the letter exhibited on affidavit contemporaneously with the filing of these submissions, Long-Term Residency is expressly stated to be "*subject to a number of conditions, most important of which is that you remain in compliance with Irish law in every respect*…"

h. If it transpires that a long-term resident is not of good character, that is much more readily capable of being addressed in the public interest as compared with the situation of a naturalised citizen.

67. In summary, I agree with the respondent's submission that all of this supports the proposition that the Minister is entitled to demand a different standard of "*good character*" to satisfy s. (1)(b) of the 1956 Act, and that there is no inconsistency arising where someone is of sufficiently good character to be a long-term resident, but not a citizen. The fact that somebody is considered of sufficiently good character to warrant long-term residency does not require a result whereby that person must also automatically be deemed of sufficiently good character to warrant being conferred with Irish citizenship. In the circumstances I consider that the trial judge was entirely correct in concluding the appellant should not succeed on this argument.

Conclusion

68. In summary, for the reasons explained in this judgment, I reject the appeal of the appellant on all grounds.

69. The respondent having been entirely successful on the appeal is presumptively entitled to her costs. With the usual caveat that this might increase the burden of costs, if the appellant wishes to contend for any other order, I will allow until 27 January 2025 for her to file and serve a short written submission – limited to 1,500

words; in which event the respondent will have fourteen days within which to respond.

70. As this judgment is being delivered electronically, Whelan J and Binchy J have authorised me to say that they agree with it and with the orders proposed.