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NATURALISATION PROCEDURES FOR IMMIGRANTS IRELAND

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European University Institute, Florence
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EUDO Citizenship Observatory

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Naturalisation Procedures for Immigrants

Ireland

Hilkka Becker, Catherine Cosgrave

Introduction

In the past two decades, Ireland has experienced significant inward migration, which has resulted in profound economic, social and demographic changes. Traditionally perceived as one of the most homogenous countries in the EU, Ireland now has a diverse population base. The 2011 Census figures¹ reveal that the number of non-Irish nationals usually resident and present in Ireland was 544,357², an increase of 29.7% since 2006. However, with the total number of EU nationals resident in Ireland now standing at 386,764, they constitute just over 70% of the non-Irish nationals resident in the State.

Article 9(1) of the Irish Constitution provides that any person who enjoyed citizenship of the Irish Free State before the coming into operation of the Constitution in 1937 shall become and be a citizen of Ireland. The acquisition of Irish citizenship is now regulated by the Irish Nationality and Citizenship Act 1956 as last amended following the Citizenship Referendum in June 2004. The constitutional amendment passed at that time had the effect that persons born on the island of Ireland no longer have a constitutional right to be Irish citizens simply by virtue of their birth on the island of Ireland. There are three main ways that Irish citizenship may be acquired – automatically at birth, by descent or by naturalisation, if particular conditions are fulfilled.³ The focus of this report is on adults acquiring citizenship by way of naturalisation only.

In 2009, the Irish Government signalled that a review of current citizenship and naturalisation provisions would be undertaken by the Office of the Minister for Integration (now the Office for Promotion of Migrant Integration). In 2011, the Programme for Government signalled an undertaking to provide for the efficient processing and determination of citizenship applications within a reasonable period of time. Whilst no comprehensive formal proposals for reform of the existing legislative framework have yet been published, a number of statutory and administrative changes have been introduced since 2011 in respect of application fees, forms and the processing of applications. These are examined below.

¹ <http://www.cso.ie/en/census/census2011reports/>

² 12% of the population.

³ For further information see: Handoll, J., *Country Report: Ireland*, EUDO Citizenship Observatory, September 2009 – Revised June 2010 on <http://eudo-citizenship.eu/> and Becker, H., *Immigration and Citizenship Law*, in B. Moriarty & E. Massa (eds.), *Human Rights Law* (4th ed.), Oxford: Oxford University Press (2012).

1 – Promotion: how much do authorities encourage eligible applicants to apply?

“Naturalisation is a process whereby a foreign national can apply to become an Irish citizen. The granting of Irish citizenship through naturalisation is a privilege and an honour and not an entitlement.” **Irish Naturalisation and Immigration Service (INIS)**

To date, there has not been any State-run or State-funded naturalisation campaign. However, in March 2011, the New Communities Partnership (NCP), a national network of 126 ethnic minority led organisations with offices located in Dublin, Limerick and Cork, was awarded funding by the Office for the Promotion of Migrant Integration to provide a service specifically for migrants intending to apply for naturalisation. It is understood that the setting up of the Citizenship Application Support Service (CASS)⁴ was motivated by the discovery of the current Minister for Justice and Equality that “*approximately 55% of all citizenship applications (...) had to be returned to applicants due to their being incorrectly completed*”⁵. The NCP now offers “*a free information and support service (...) in recognition of the need to promote greater understanding of the citizenship application process amongst immigrants*” which includes (a) specific information service/sessions and (b) individual counselling/ application checking. The service is provided by a team of trained volunteers and overseen by a national project co-ordinator.

There is no official promotional webpage on the acquisition of citizenship by foreign nationals resident in Ireland and while limited information regarding citizenship applications is provided on the website of the Irish Naturalisation and Immigration Service (INIS)⁶, including ‘Frequently Asked Questions’ and an application guide accompanying the relevant application form, many of the criteria to be fulfilled remain unclear. Furthermore, the actual procedure by which the application is processed once it has been submitted is unclear and no information is provided by the Government regarding any benefits of being granted Irish citizenship.

Citizenship ceremonies, which were initially introduced on a non-statutory basis in June 2011 and, in August 2011, were put on a statutory footing through an amendment of the Irish Nationality and Citizenship Act 1956,⁷ have had a certain promotional effect in that they have raised public awareness of the naturalisation process and have included the extension of a public welcome by the State of its new citizens. The ceremonies are for the purpose of successful applicants swearing the ‘*oath of allegiance*’ before a judge, which was previously done in a District Court. To date, these events have been officiated by a retired High Court judge and have been attended by various public dignitaries, including An Taoiseach (Prime Minister) and

⁴ <http://www.newcommunities.ie/cass/>

⁵ Department of Justice and Equality, Minister Shatter introduces major changes to citizenship application processing regime, 16 June 2011 (see: <http://justice.ie/en/JELR/Pages/PR11000088>).

⁶ See: <http://www.inis.gov.ie/en/INIS/Pages/Citizenship>

⁷ See Part 10 of the Civil Law (Miscellaneous Provisions) Act 2011

the Minister for Justice and Equality. The ceremonies have also attracted significant media coverage.⁸

On the other hand, the high application fee and the additional fee payable on approval of an application for naturalisation may act as a deterrent for certain applicants. Currently, the standard application fee payable by all applicants is €175. And a further €950 is payable by successful adult applicants for naturalisation. This naturalisation fee is €200 in the case of minors and widows or widowers of Irish citizens. There is no possibility to have the fee waived on economic or hardship grounds. However, persons granted refugee status and those recognised as stateless persons are exempt from payment of the naturalisation fee.⁹

2 – Documentation: how easy is it for applicants to prove that they meet the legal conditions?

Foreign nationals are not entitled to be granted Irish citizenship by way of naturalisation on fulfilment of particular conditions. Legally resident foreign nationals may *apply* for citizenship in Ireland if they fulfil a number of statutory eligibility criteria but the granting of citizenship remains at the absolute discretion of the Minister for Justice and Equality.

The statutory requirements for the granting of naturalisation are set out in Section 15(1) of the Irish Nationality and Citizenship Act 1956, as amended. Accordingly, an applicant must be over 18 years old or a minor born in the State, be of *'good character'* and have resided lawfully in Ireland for at least five years of the previous nine years, including at least one year continuously immediately prior to the application. Furthermore, the applicant must intend to continue living in Ireland after naturalisation and is required to make a *'declaration of fidelity to the nation and loyalty to the State'*.

In order to support an application for naturalisation, applicants must provide documents from both their country of origin, namely passport and birth certificate and the country of residence, namely their residence permit. Refugees and stateless persons are not required to provide evidence of identity by way of a passport from their country of origin and may be permitted to provide an affidavit in lieu of a birth certificate, if original civil registration documentation is not available. In addition to proofs of identity, certified translations of documents are required and these must also be certified by a notary/solicitor.

What is deemed to constitute *'good character'* or for what reasons an application may be refused remains unclear and no statutory or administrative guidance is provided in this regard. This presents a significant hurdle for applicants who are unsure, for example, if minor traffic offences may lead to their applications being refused. According to the former Minister for Justice, Equality and Law

⁸ See for example: Ronan McGreevy, *Ireland's new citizens: 4,000 people receive certificates*, Irish Times, 2 April 2012, <http://www.irishtimes.com/newspaper/ireland/2012/0402/1224314231159.html> and RTÉ News, *2,200 receive citizenship in Dublin ceremonies*, 2 February 2012, <http://www.rte.ie/news/2012/0202/citizenship.html>.

⁹ Section 13 of the Irish Nationality and Citizenship Regulations 2011 (S.I. No. 569 of 2011).

Reform, Dermot Ahern, TD, “(W)ith regard to people being refused citizenship (...). By and large, any refusal due to a criminal record is because the person has committed reasonably serious criminal offences, such as serious road traffic accidents and upwards”.¹⁰ However, it is clear from research carried out by the ICI in 2011, that the Minister has refused applications for citizenship where the applicant has come to the ‘adverse attention’ of An Garda Síochána, even if there have been no criminal charges brought against the person and no conviction in respect of any offence. For example, of 28 participants who participated in the ICI survey, one had his application refused as a result of a parking offence six years previously and another was refused because he had received a summons in relation to a traffic offence although he was never actually convicted of that or any other offence.¹¹ However, as the current Minister for Justice and Equality, Mr Alan Shatter TD, has recently clarified that “normally a very minor motoring offence of itself would not lead to a refusal on character grounds”¹² the refusal on such grounds may well be a past phenomenon.

Certain residency statuses are not considered reckonable for the purpose of making an application for naturalisation, for example periods of residence in the State are not reckonable if the person’s permission to reside was for the purpose of study (even where the student was permitted to enter part-time employment during this period) or for the examination of an application for refugee status or subsidiary protection. The High Court has held in this regard in the case of *Robert v Minister for Justice, Equality and Law Reform* that the exclusion of time spent in the State as an asylum seeker was “completely logical and fair”.¹³

Furthermore, gaps between residence permits are considered periods of unlawful residence – even where these are caused through administrative delay – and are not reckonable for the purpose of an application for citizenship. However, in its recent decision, in the case of *Sulaimon v Minister for Justice, Equality and Law Reform*,¹⁴ the Supreme Court dealt with the matter of reckonable residency in relation to an entitlement to birthright citizenship of a child born in the State to a legally resident father. Mr Justice O’Donnell, for the five-judge court, concluded in relation to the question whether the father had been in the State with ‘permission’, that “the registration [with the Garda National Immigration Bureau (GNIB)] does not constitute permission: it evidences a permission previously given [by the Minister]”. Consequently, the relevant date in relation to the reckonable residence of the father in this case was the date given in the letter granting him permission to remain in the State on not the date on which he attended at the GNIB for the purpose of registration.

A *Naturalisation Residency Calculator* is now available on the website of the INIS¹⁵ and applicants are invited to submit a print-out of the results of the on-line calculation of their periods of reckonable residency together with their application for naturalisation. However, the residency calculator is only a general guide to assist

¹⁰ Select Committee on Justice, Defence and Women’s Rights Debate, 12th November 2010.

¹¹ Cosgrave, C. *Living in Limbo: Migrants’ Experiences of Applying for Naturalisation in Ireland* (ICI, 2011).

¹² Dáil Éireann Debate, Vol. 773 No. 2, Written Answer No. 168, 19th September 2012.

¹³ Quinn, E. *Handbook on Immigration and Asylum in Ireland 2007*, (2008) ESRI, 238–9.

¹⁴ [2012] IESC 542, 21st December 2012

¹⁵ http://www.inis.gov.ie/en/INIS/Pages/Naturalisation_Residency_Calculator

applicants in checking if the statutory conditions relating to residency are satisfied and is provided without any express or implied warranty as to its accuracy or completeness. Additional proof of residence to be submitted together with applications for naturalisation include evidence of the applicant's current residence permit, as well as certified copies of all passports with relevant immigration endorsements for the periods of required residence. Applicants must provide details of all addresses within and outside of the State over the relevant nine year period for assessing '*reckonable residence*', although supporting documentation regarding those addresses does not have to be provided.

On condition that these eligibility criteria are fulfilled, the Minister for Justice may grant citizenship at his absolute discretion and applicants therefore do not know when applying if they will in fact be granted Irish citizenship. Furthermore, there is no obligation on the Minister to provide reasons for refusing an application.

There are no statutory requirements regarding financial resources as a precondition for the granting of naturalisation. However, in administrative practice, there is a general requirement that applicants demonstrate that they have been supporting themselves (as well as any dependants) without recourse to public funds and are in a position to continue to do so into the future. Applicants are required to submit proof of economic resources and must provide documentation regarding their employment history in the state during the required residence period, as well as evidence of tax compliance from the previous financial year, information regarding their current employment status, payslips and recent bank statements.

Additionally, details of any state assistance received in the three years prior to the making of the application must be provided. Applications are determined on a discretionary basis and there is no formal provision for exemptions from the financial requirements on humanitarian or particular vulnerability grounds. In practice, refugees are exempt from any income requirements. However, aside from refugees, applicants have been refused citizenship for being in receipt of any state funds, even very temporarily, including access to unemployment benefits following a long history of full-time employment prior to involuntary redundancy or receipt of disability payments. The former Minister for Justice, Equality and Law Reform indicated in reply to a Dáil question in February 2009 that "*people must accept that citizenship is not something that can be given out willy-nilly. The giving of citizenship of our country to somebody is a privilege. We must ensure that these people have loyalty and fidelity to, and are not a burden on, the State when they become naturalised. It is only fair. (...)*".¹⁶ However, the new application form introduced in November 2011, now gives applicants the opportunity to set out not only the details of any social welfare payments that they have received in the past three years but also the reason why they obtained that payment and it must be presumed that certain payments will no longer lead to an automatic refusal of naturalisation.

There is currently no language or citizenship assessment as part of the Irish citizenship requirements. However, the Minister for Justice and Equality announced in January 2012 that work is underway on the development of an English language/civics test for naturalisation applicants. The Minister stated that "*(S)uch*

¹⁶ Dáil Éireann Debate, Vol. 675 No. 5, 25 February 2009.

*tests are a standard part of the naturalisation process in many countries worldwide; the ability to speak the language – even at a most basic level - together with some knowledge of the way business is conducted in Ireland is an essential part of the integration process for immigrants and must form an integral part of eligibility for naturalisation”.*¹⁷

In all cases, applications for naturalisation must be made by completing the relevant application form, which is submitted together with the required documentation, to the Citizenship Division of the Irish Naturalisation and Immigration Service (INIS). On recognising that “*citizenship application forms were unnecessarily complex and obtuse*”, the current Minister “*took immediate steps to remedy this*” and new forms were introduced in June 2011, and revised several times since then, in the hope that this would “*dramatically reduce the numbers [of application forms] incorrectly completed and substantially contribute to more efficient and streamlined processing times*”.¹⁸

The required documentation to be included is not specified in the relevant legislation but is outlined in the application form.¹⁹ Further information as to the procedures employed to assess applications for naturalisation can be gleaned from a statement made in the Dáil by the former Minister for Justice, Equality and Law Reform: Upon receipt of the application, an initial examination is carried out to determine that the application is completed fully and correctly and that all requested supporting documentation has been submitted. Passports and other documentation are then examined in detail and enquiries with the Garda National Immigration Bureau (GNIB) are also necessary to determine if the application meets the statutory residency criteria. If an application is deemed validly made and accepted for further processing, the applicant is issued with an acknowledgement letter stating that applications are processed chronologically and the current average processing time. Further processing of an application for naturalisation then involves the assessment of an applicant’s financial status in respect of his/her ability to support himself/herself and any dependants in the State. Enquiries with the Revenue Commissioners and the Department of Social Protection may be necessary in this regard. Investigations are also undertaken to determine if the applicant can be considered to be of ‘*good character*’. Once all enquiries are completed, a report is prepared and the file is referred to the Minister for Justice for a decision.²⁰

However, it is not known whether the various background checks undertaken are commenced as soon as the application is deemed valid or at some later stage, or whether checks with different Departments and external agencies are done individually or contemporaneously. The legislation is silent as to whether supporting documents may be requested only once upon submission of application or if multiple requests may be made. In practice, applicants’ experiences of the process can vary considerably, with no further documentation being requested in some cases and

¹⁷ INIS, Immigration in Ireland 2011 – a year-end snapshot – major changes and more to follow, 3rd January 2012.

¹⁸ Department of Justice and Equality, Minister Shatter introduces major changes to citizenship application processing regime, 16 June 2011 (see: <http://justice.ie/en/JELR/Pages/PR11000088>).

¹⁹ See: <http://www.inis.gov.ie/en/INIS/Form%208%20-%20Ver%204.0%20Nov%202011.pdf/Files/Form%208%20-%20Ver%204.0%20Nov%202011.pdf>

²⁰ Dáil Éireann Debate, Vol. 675 No. 5, 25 February 2009.

updated documents or additional documents, not specified at the time of applying, being requested during the later stages of processing.²¹

3 – Discretion: how much room do authorities have to interpret the legal conditions?

As outlined previously, there is no entitlement to be granted naturalisation on fulfilment of the statutory eligibility criteria; the granting of Irish citizenship is at the absolute discretion of the Minister for Justice and Equality and there is no obligation for the Minister to provide reasons for refusing an application.

This has been confirmed through a long line of cases including the case of *Parshuram Mishra v The Minister for Justice, Ireland and The Attorney General* [1996] 1 IR 189 in which Kelly J held that “*it is clear that there is no obligation imposed by the Act on the Minister to give reasons for her decision*”. However, Kelly J did go on to consider that: “*an implicit entitlement to reasons may arise where a right of appeal exists from the decision and the reasons may be required so as to enable the affected individual to exercise that right in an effective way. Indeed, there may well be circumstances where even without a right of appeal natural justice or fairness may require that reasons be given*”. More recently, the High Court held in the case of *Abuissa v MJELR* [2010] IEHC 366 that: “*the Court must accept the plain meaning of the words absolute discretion. There is no ambiguity in the expression. If the legislature had intended that the Minister should provide reasons, it is highly unlikely that he would have been given absolute discretion by the Act of 1956 or that the words absolute discretion would have been retained in the amendment in 1986. The Courts must respect the wording of the Statute*”. However, Clark J stressed in this case that: “*(...) it is equally the case that Pok Sun Shum* [[1986] ILRM 593] *recognised that the Minister’s absolute discretion is fettered by the obligation to act fairly and in accordance with the principles of natural justice*”.

There is no legal obligation for the authorities to take into account specific positive aspects of an individual applicant’s circumstances in cases of a refusal. Neither is there any obligation be informed of the progress of their application or, as confirmed by the High Court in *Pok Sun Shum*, to be heard by the deciding authority during the procedure. And, apart from acknowledging receipt of applications or communicating with the applicant in respect of outstanding documentation or other queries arising, the authority does not communicate with applicants regarding the progress of the application.

Guidelines regarding the assessment of the residence requirement of five years are available on the website of the INIS and applicants may use the Naturalisation Residency Calculator referred to earlier in their self-assessment of their periods of reckonable residence prior to the submission of their application. Additionally, the INIS will cross-check this information with information available on applicants’ immigration files as well as by reviewing the residency stamps in their passports,

²¹ Cosgrave, C. *Living in Limbo: Migrants’ Experiences of Applying for Naturalisation in Ireland* (ICI, 2011).

copies of which have to be provided together with an application for naturalisation by those whose application is based on their residence in Ireland of five years or more.

While evidence of an applicant's identity does not form part of the statutory eligibility criteria, copies of passports or, where applicable, travel documents, as well as birth certificates do have to be provided together with any application for naturalisation. However, exceptionally, applications made by a person granted refugee status under the Refugee Act 1996 may be accompanied by a birth affidavit instead of a birth certificate. Refugee applicants are also required to submit a copy of the letter granting them refugee status in Ireland as further evidence of their entitlement to be exempt from the requirement to provide a birth certificate. Where original passports and/or birth certificates are not available, the establishment of a refugee's identity will be based on the information provided by them as part of their application for refugee status as well as the birth affidavit.

As set out in the previous section, the statutory eligibility requirements do not contain any financial or economic requirements but these do form part of the administrative assessment of applications. Economic requirements are assessed on discretionary grounds and no binding or publicly-available guidelines exist on the interpretation of this requirement. There is no formal provision for exemptions from the financial requirements on humanitarian or particular vulnerability grounds but applicants with refugee status are exempt from the income requirement.

It must be noted that, theoretically, the Minister has the power to amend the administrative practice as he sees fit, for example in relation to applications made by persons in receipt of disability or lone parent allowance and the application form now gives applicants the opportunity to set out details of any social welfare payments that they have received in the past three years and the reason why they obtained that payment or support. However, the fees payable are based on a statutory provision which does not include provisions for the exercise of discretion in relation to fee waivers for certain categories of applicants.

Moreover, the assessment of the requirement that an applicant be of '*good character*' is entirely at the discretion of the Minister for Justice and Equality. In that regard, he is in a position to assess an individual's criminal record and its implications for that person's character on an individual basis for each applicant. While the former Minister for Justice, Equality and Law Reform, Dermot Ahern TD, was reluctant to indicate what might or might not specifically constitute '*good character*', he stated in 2010 that he would be "*concerned to ensure that the threshold of what constitutes good character taking all things into account is maintained at an appropriate level and as such is fair to all applicants having regard to their particular circumstances*".²² In relation to the seriousness of offences that might indicate lack of '*good character*' the then Minister indicated in November 2010 that "*(W)ith regard to people being refused citizenship (...). By and large, any refusal due to a criminal record is because the person has committed reasonably serious criminal offences, such as serious road traffic accidents and upwards*".²³ However, as set out above, it is clear from research carried out by the ICI in 2011, that – at least in the not so recent

²² Dáil Éireann Debate, Vol. 717 No. 2, 5th October 2010.

²³ Select Committee on Justice, Defence and Women's Rights Debate, 12th November 2010.

past – the Minister did refuse applications for citizenship where the applicant had come to the ‘*adverse attention*’ of An Garda Síochána, even if there had been no criminal charges brought against the person and there was no conviction in respect of any offence.²⁴

4 – Bureaucracy: how easy is it for authorities to come to a decision?

“People must accept that citizenship is not something that can be given out willy-nilly. The giving of citizenship of our country to somebody is a privilege. We must ensure that these people have loyalty and fidelity to, and are not a burden on, the State when they become naturalised. It is only fair. Any examination of systems in other countries, I would hazard a guess, would show the process takes even longer than in Ireland.”

Minister for Justice, Equality and Law Reform, Mr Dermot Ahern, TD, Dáil Debate, Wednesday, 25 February 2009.

As set out above, documentation regarding citizenship applications must be submitted together with the relevant application form to the Citizenship Division of the INIS by post. Documentation received by the INIS is checked initially to establish whether the application form is completed fully and correctly and if all requested supporting documentation has been submitted. Passports and other documentation are then examined in detail and enquiries with the Garda National Immigration Bureau (GNIB) are also made to determine whether the applicant meets the statutory residency criteria.²⁵

Further processing takes place at a later stage and, in that context, enquiries are being made with the Revenue Commissioners and the Department of Social Protection in relation to an applicant’s financial status. Additional enquiries are made with the Garda Síochána (Irish police) to verify information provided by the applicant and determine if the applicant can be deemed of ‘good character’.²⁶ At this stage, applicants may be asked to submit further or updated documentation. Furthermore, applicants are required to provide updated information on their situation (e.g. change of address, change of employment etc.) while their applications are pending.

Once all enquiries are completed, the file is referred to the Minister for Justice and Equality for a decision at his absolute discretion.

There is no regulation regarding the maximum length of time permitted for the processing of applications for citizenship and, with the exception of one High Court decision in December 2011, in which the Court held that as “(T)he [Minister] *did not at any time indicate what was causing the delay* [of 3 years and 9 months] *in processing the application and refused to explain why the period of delay extended far past the average time period put forward by the Department*” that the applicant

²⁴ Cosgrave, C. *Living in Limbo: Migrants’ Experiences of Applying for Naturalisation in Ireland* (ICI, 2011).

²⁵ Dermot Ahern TD, Dáil Eireann Debate, Vol. 675 No. 5, 25th February 2009.

²⁶ Frequently Asked Questions on Irish Citizenship and Naturalisation (see: <http://www.inis.gov.ie/en/INIS/Pages/Frequently%20asked%20Questions%20about%20Irish%20Citizenship%20and%20Naturalisation>).

would have been entitled to relief,²⁷ the courts have generally not held in favour of applicants on the issue of delay in naturalisation cases.

New measures were introduced in 2011 with the aim of dealing with almost all new citizenship applications within 6 months. It was anticipated that “*by late spring/early summer 2012, all standard applications, i.e. non-complex cases accounting for 70% of all applications, will be completed within 6 months*”.²⁸ In fact, there has been a significant increase in the number of cases decided, with over 25,000 applications decided in 2012 compared to 16,000 in 2011 and fewer than 8,000 in 2010.²⁹ However, as applicants are not informed whether their application falls within the ‘standard’ category or is a ‘complex’ case, uncertainty and frustration around delay will remain an issue for applicants.

5 – Review: how strong is judicial oversight of the procedure?

As already discussed above, the Minister’s discretion in relation to the granting of a certificate of naturalisation is absolute and the courts have been most reluctant to intervene. While applicants do have a right of access to the High Court by way of application for judicial review, this is a very specific legal remedy and is not an appeal which would reconsider the merits of an application. The court can only review whether the correct procedure was followed and the only types of remedies that are available are an order for mandamus (compelling Minister to do something – e.g. take a decision if there is delay in determining an application) or an order of certiorari (quashing a decision that is unlawful for some reason). However, the court cannot set aside the decision of the Minister and replace it with its own decision - i.e. grant naturalisation.

As set out by Cooke J in the case of *B v Minister for Justice, Equality and Law Reform*,³⁰ “*Section 15 [of the Irish Nationality and Citizenship Act, 1956 as amended] provides that when the Minister is satisfied that an applicant fulfils the naturalisation conditions he may nevertheless refuse to grant the certificate in his absolute discretion*” and that “*(I)n such event the Court cannot act as a court of appeal from the decision and while the Minister’s discretion is not an unfettered one, the Court cannot interfere so long as it has been exercised by the Minister in accordance with the powers granted under the section and has been exercised fairly and in accordance with the principles of natural justice*”. In the words of Cooke J, referring to the case of *Pok Sun Shun v Ireland* [1986] ILRM 593: “*(i)t is only where it is shown that the Minister has failed in some way to carry out the legal requirements of the section or failed to act fairly that the Court has power to review the decision*”.³¹

²⁷ *Dana Salman v Minister for Justice, Equality and Law Reform* [2011] IEHC 481, 16th December 2011.

²⁸ INIS, Immigration in Ireland 2011 – a year-end snapshot – major changes and more to follow, 3rd January 2012.

²⁹ Immigration in Ireland – 2012 in Review, Minister Shatter outlines priorities for 2013, 2nd January 2013.

³⁰ [2009] IEHC 449, 18th June 2009

³¹ See the judgment at 596.

While applicants will generally be provided with a reason for the refusal of their application, this is not based on a statutory obligation to provide reasons and there is no right of appeal against a refusal to grant citizenship. In the case of *Mallak v MJELR*, the High Court had held, in fact, that “*the Minister does not need to have or to give any reason for refusing an application for a certificate. If he does have a reason he is not obliged to divulge it to a disappointed applicant. In the judgment of this Court, the proposition is well settled in law and, (...), it would clearly fly in the face of the unambiguous intention of the Oireachtas as thus expressed, for this Court to attempt to hold otherwise*”.³² This decision was appealed successfully to the Supreme Court.³³ Mr Justice Fennelly, for the five-judge court, found that while the appellant had been effectively invited to reapply for the grant of a certificate of naturalisation at any time, “*it is impossible for the appellant to address the Minister’s concerns and thus to make an effective application when he is in complete ignorance of the Minister’s concerns*”. He further stated that “*more fundamentally, and for the same reason, it is not possible for the appellant, without knowing the Minister’s reasons for refusal, to ascertain whether he has a ground for applying for judicial review and, by extension, it is not possible for the courts effectively to exercise their power of judicial review*”.

In a subsequent statement to the Dáil, the Minister indicated that the implications of the Mallak judgment “*are being considered in consultation with the Attorney General*”. He further highlighted that “*although the Supreme Court in its judgment quashed the Minister’s decision to refuse the application in this particular case, it went on to say that it is not for the Court to prescribe whether the Minister will give notice of his concerns to the applicant or to disclose information on which they may be based or whether the Minister will continue to refuse to disclose reasons for the refusal but to provide justification for so doing*”.³⁴

The Supreme Court did confirm in the earlier case of *Ezeani & anor v MJELR & anor* that applicants need not be given an opportunity to challenge the assessment regarding their suitability for Irish citizenship in the view of the Minister, in a way which would include cross-examination of members of An Garda Síochána. However, it did state that “*(T)he rules of natural justice require the decision maker to give reasonable notice to the affected person of the substance of any matters being raised which are adverse to his interest*”. Mr Justice Fennelly held in this case that “*(A) purely administrative procedure such as is involved in the present case is not adapted for the intervention of the intrinsically adversarial procedure of cross-examination. It would require the administrator or decision maker to sit in judgment. In order to do so, he would necessarily have to devise procedures approximating to a courtroom. In my view, that would be a drastic step. It would be cumbersome, potentially lengthy and inconvenient and would open up further avenues for judicial review. (...)*”.³⁵

³² [2011] IEHC 306, 22nd July 2011

³³ [2012] IESC 59, 6th December 2012

³⁴ Dáil Éireann Debate, Vol. 786 No. 3, 13th December 2012

³⁵ [2011] IESC 23, 12th July 2011

Conclusions

As well as being a significant event in the life of its recipient, the granting of Irish citizenship through naturalisation as provided for in law is also a major step for the State which confers certain rights and entitlements not only within the State but also at European Union level and it is important that appropriate procedures are in place to preserve the integrity of the process.

**Minister for Justice and Equality, Mr Alan Shatter, TD, Vol. 772 No. 2
Unrevised, Written Answers – Citizenship Applications No. 254, 18th July 2012.**

Changes announced by the current Minister for Justice and Equality in relation to the granting of citizenship in Ireland, in particular the introduction of citizenship ceremonies in June 2011, are largely to be welcomed. Additionally, the volume of applications has now risen from 1,400 in 2005 to 10,700 in 2011 and 12,300 in the period from January to July 2012 alone.³⁶

According to a recent survey based on a single-question poll conducted by Metro Éireann, an overwhelming 76.8% of 142 respondents considered the current conditions for the granting of Irish citizenship fair. Many of the respondents were of the opinion that Minister Shatter should be applauded for speeding up the citizenship process but some 5.6% of the respondents – mainly native Irish – said the conditions are too generous and urged the Minister to introduce more stringent conditions such as compulsory English language examinations, as well as a citizenship test for those seeking to naturalise.³⁷

Others, including the ICI, have argued that there are several ways in which social cohesion could be improved in the context of the naturalisation process and recommendations previously issued by the ICI include:

- a right to naturalisation on fulfilment of statutory eligibility criteria;
- discretionary granting of naturalisation to persons who do not fulfil the eligibility criteria on humanitarian or particular vulnerability grounds;
- definition of the ‘*good character*’ requirement in legislation;
- provision of reasons for the refusal of applications for naturalisation;
- reduction of fees for naturalisation so as not to constitute an obstacle for applicants;
- processing of all applications within a reasonable period of time and provision of information to applicants, including reasons for any delay in the processing of their applications; and
- annual publication of comprehensive disaggregated data of citizenship applications and decisions.

³⁶ Dáil Éireann Debate, Vol. 772 No. 1, Written Answers – Citizenship Applications, 10 July 2012.

³⁷ <http://metroireann.com/article/survey-says-citizenship-rules-fair,3361>

