THE HIGH COURT

JUDICIAL REVIEW

[2017 No. 143 JR]

BETWEEN

MIHAELA IURESCU (A MINOR SUING BY HER MOTHER AND NEXT FRIEND PARASCOVIA BIVOL)

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

AND

IRISH HUMAN RIGHTS AND EQUALITY COMMISSION

NOTICE PARTY

JUDGMENT of Mr Justice David Keane delivered on 19th July 2019

Introduction

1. The applicant ('the child') seeks, primarily, an order of certiorari quashing the decision of the first respondent ('the Minister'), dated 7 December 2016, to refuse her a certificate of naturalisation under s. 15 of the Irish Nationality and Citizenship Act 1956, as amended ('the Act of 1956') because the Minister was not satisfied that the child's father was a person of good character.

2. The child also seeks a declaration that s. 15 of the Act of 1956, properly interpreted, does not require the Minister to be satisfied of the good character of the parent, guardian or person *in loco parentis* applying on behalf of the minor, rather than of the good character of the minor concerned, as a condition precedent to the exercise of the Minister's absolute discretion to grant a certificate of naturalisation.

3. If s. 15 of the Act of 1956, properly interpreted, makes the good character of the parent, guardian or person *in loco parentis* applying on a minor's behalf a condition precedent to the exercise of the discretion to naturalise that minor, then the child seeks a declaration that the section is unconstitutional.

4. If the section is not found to be unconstitutional on that basis, the child seeks a declaration, under s. 5 of the European Convention on Human Rights Act 2003, that it is incompatible with Article 8 of the European Convention on Human Rights, either alone or in conjunction with Article 14 of that Convention.

5. The child was represented by Siobhan Phelan S.C. with Patricia Brazil B.L., instructed by the Independent Law Centre of the Immigrant Council of Ireland. The Minister was represented by Siobhán Stack S.C. with Alexander Caffrey B.L., instructed by the Office of the Chief State Solicitor. I am very grateful to counsel for the deftness and thoroughness of their submissions.

Background

6. The child is a girl who was born in the State on 3 September 2010. The child's mother is a citizen of Moldova, born on 13 February 1989, who came to Ireland to seek employment in October 2007. The mother met the child's father in 2009 and later married him in 2011.

7. The father entered the State in 2002 and was residing here at the material time on what are known as 'Stamp 4' conditions. 'Stamp 4' is not a defined legal term, but one used by the Department of Justice and Equality ('the department') as part of an administrative scheme that it operates, involving different categories of permission to reside in the State. According to the department's website, the type of residence permission denoted by a 'Stamp 4' on a person's passport includes permission to take up employment; to engage in the practice of a profession; and to operate a business, as well as permission to access State funds when otherwise eligible to do so.

8. The mother was, in her words, undocumented when she arrived in Ireland in 2007. In October 2012, she applied for humanitarian leave to remain in the State. The mother avers that, during their relationship, the father prevented her from obtaining the legal advice necessary to seek to regularise her immigration status.

9. The mother alleges that the father was violent towards her on several occasions and that, on 17 July 2013, he physically assaulted her, forcing her to flee to a women's refuge with the child. The mother subsequently obtained a barring order against the father. The father now has court-ordered access to the child and pays court-ordered maintenance for the child's support on terms agreed with the mother.

10. On 30 September 2013, the Minister granted the mother permission to remain in the State on a Stamp 4 basis for a period of 3 years.

11. The father applied for naturalisation as an Irish citizen on 26 September 2014.

The father's application for the naturalisation of the child

12. On 11 February 2016, while his own application for naturalisation was still pending, the father electronically submitted a completed application form for the naturalisation of the child as a minor. On 23 February 2016, the father made the necessary statutory declaration in support of that application. As directed by the Irish Naturalisation and Immigration Service, the father used Form 11, scheduled to the Irish Nationality and Citizenship Regulations 2011 (S.I. 569 of 2011) and headed 'APPLICATION BY A PARENT OR GUARDIAN OF, OR PERSON WHO IS *IN LOCO PARENTIS* TO, A MINOR BORN IN THE STATE WHO DID NOT AT BIRTH HAVE AN ENTITLEMENT TO IRISH CITIZENSHIP UNDER SECTION 6A (AS INSERTED BY SECTION 4 OF THE ACT OF 2004) OF THE ACT OF 1956'.

13. The details that the father provided in the application form included the following. In the sections for the provision of the present

address and any previous addresses of both parent and minor, he gave his own current and prior addresses. He gave his date of arrival in the State as 6 February 2002. He provided the names and addresses of his own parents (the child's paternal grandparents), stating that each had been born in Moldova but had since become an Irish citizen. He confirmed that he had previously applied for naturalisation in his own right on 26 September 2014. He answered 'yes' to each of the questions; 'Have you ever committed any offences against the laws of Ireland or any overseas country?', and 'Do you have any convictions in the State or any other country (including traffic offences) or any civil judgments made against you?'. Finally, the father provided the following 'additional details':

> 'I do have traffic offences and public order offences but I have paid all the fines that have been imposed upon me, and also I have been convicted for assault, this information can be obtain (sic) from my application for Irish citizenship….
>
> I have also stated the address where I am staying but my daughter is not all the time at this address as she is staying with mother at […] but I don't know the exact address.'

The decision under challenge

14. The INIS wrote to the father on 7 December 2016, informing him of the Minister's decision, in the exercise of the absolute discretion conferred by the Act of 1956, to refuse both his own application for a certificate of naturalisation and his separate application for a certificate of naturalisation on behalf of the child. A copy of the submission prepared for the Minister, with the Minister's refusal decision annotated upon it was enclosed. That submission is headed 'Adult application for a certificate of naturalisation'. It recites in material part:

> 'Comments: [the father] has come to the attention of An Garda Síochána for (sic) respondent to a barring order, various motoring offences, intoxication in a public place and assault causing harm. He received his most recent conviction on 10/02/15, please see attached copy of Garda report, court orders and explanation from the applicant. All receipts of the fines paid have been submitted other than the €200 and €75 fines imposed on him at District Court 53 on 17/05/2004. The applicant advised that the fines were paid but he cannot obtain receipts, see explanation attached. He arrived in the State on 07/02/2002 and registered with [the Garda National Immigration Bureau ('GNIB')] on 06/03/2002. He has been employed by various employers since entering the State. He is currently undergoing a FETAC Office Administration course. Prior to this he was in receipt of a Jobseekers Allowance payment from the Department of Social Protection from 28/05/2012 to 06/12/2014. He has one Irish born child who resides with her mother. Access arrangements are in place and the applicant supports his daughter financially.
>
> Recommendation: Given the nature and recency of the 2015 offence and the number of previous motoring offences, I am not satisfied that the applicant is of good character and I would not recommend that the Minister grant a certificate of naturalisation in this case.
>
> The applicant's Irish born child Mihaela Iurescu (DOB: 03/09/2010) also has an application for citizenship […] submitted under Section 15(1)(a)(ii) of the 1956 Act. As the conditions pertaining to the parent of the minor applicant are not satisfied I would also not recommend this child's application […] for a certificate of naturalisation.'
>
> (emphasis in original)

Procedural history and grounds of challenge

15. By Order made on 6 March 2017, O'Regan J granted the child leave to seek judicial review of the Minister's decision. While the Order was not produced at the hearing, I understand that Humphreys J subsequently permitted the amendment of the child's statement of grounds, after some confusion about whether Ireland and the Attorney General had been properly named as respondents to defend the challenge to the constitutionality of s. 15 of the Act of 1956. Hence, the child's application is now based on an amended statement of grounds, filed on 27 November 2017, supported by an affidavit of the mother, sworn on 15 February 2017.

16. In seeking the reliefs already described, the child relies upon the following five broad grounds of challenge to the lawfulness of the Minister's decision. First, by basing that decision on the father's failure to satisfy the Minister of his own good character, the Minister acted in breach of the child's entitlement to natural and constitutional justice and fair procedures and unlawfully discriminated against the child. Second, the Minister's decision took account of an irrelevant consideration, namely the father's bad character. Third, the decision failed to take account of a relevant consideration, namely the child's unblemished character. Fourth, the decision was unreasonable, irrational, disproportionate, or a combination of some or all of those things. And fifth, if s. 15(1)(a)(ii) of the Act of 1956 requires or permits a decision on the naturalisation of a minor to be taken on the basis of the character of the parent, guardian or person *in loco parentis* by whom the application is made, and not that of the minor concerned, then the section is unconstitutional.

17. The Minister delivered an amended statement of opposition dated 5 March 2018, joining issue on each of the grounds raised, and denying the child's entitlement to each of the reliefs sought. That statement is supported by an affidavit, sworn on 13 July 2017 by Ray Murray, an assistant principal officer in the Department of Justice and Equality.

18. While I note from the Order of O'Regan J that the Irish Human Rights and Equality Commission was made a notice party to the proceedings, it was not represented at, and did not participate in, the hearing of the application.

The law

19. Section 15(1) of the Act of 1956 sets out what s. 15(2) describes as the 'conditions for naturalisation' in the following terms:

> '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–
>
> (a) (i) is of full age, or
>
> (ii) is a minor born in the State;
>
> (b) is of good character;
>
> (c) has had a period of one year's continuous residence in the State immediately before the date of the application and, during the eight years immediately preceding that period, has had a total residence in the State amounting to four years;

(d) intends in good faith to continue to reside in the State after naturalisation; and

(e) has, before a judge of the District Court in open court, in a citizenship ceremony or in such manner as the Minister, for special reasons, allows–

(i) made a declaration in the prescribed manner, of fidelity to the nation and loyalty to the State, and

(ii) undertaken to faithfully observe the laws of the State and to respect its democratic values.'

20. This case turns on the proper interpretation of s. 15(3) of the Act of 1956, which states:

'In this section "applicant" means, in relation to an application for a certificate of naturalisation by a minor, the parent or guardian of, or person who is *in loco parentis* to, the minor.'

Argument and analysis

i. legislative history

21. Article 9.2.1° of the Constitution of Ireland, as inserted by the Twenty Seventh Amendment of the Constitution Act 2004, qualifies the application in Ireland of the *ius soli* ('right of the soil') citizenship principle, whereby citizenship is acquired by birth within state territory. It provides that a person born on the island of Ireland, including its islands and seas, who does not have at least one parent who is an Irish citizen or is entitled to be an Irish citizen, is not entitled to Irish citizenship or nationality, unless provided by law.

22. Section 6A of the Act of 1956, as inserted by s. 4 of the Irish Nationality and Citizenship Act 2004 ('the Act of 2004') now provides for the circumstances in which a person without at least one parent who is either an Irish citizen or entitled to be an Irish citizen can avail of the *ius soli* principle. Essentially, those circumstances are that a parent of the person must have been lawfully resident in the island of Ireland for a prescribed period immediately preceding the person's birth or must have been, at the time of the person's birth, entitled to reside in the island of Ireland without restriction (whether by entitlement through citizenship or by unrestricted immigration permission).

23. For present purposes, the significance of those developments is that, from 1 January 2005 (the commencement date of the Act of 2004), a significant number of persons have been unable to acquire Irish citizenship directly by birth in the island of Ireland and the child falls within that category.

24. The Act of 2004 also made significant changes to the law on naturalisation in two key respects.

25. First, it gives a specific and, hence, narrower definition to the term 'Irish associations'. Being of Irish associations provides one of the grounds on which, under s. 16 of the Act of 1956, the Minister may waive the conditions for naturalisation under s. 15. Because it had always previously been a condition of naturalisation under s. 15 that an applicant be 'of full age' and satisfy a four-year prior residence requirement, the power of the Minister, under s. 16(b), to grant a waiver of naturalisation conditions where the applicant is a parent or guardian acting on behalf of a minor of Irish descent or Irish associations, might arguably have provided an alternative route to immediate Irish citizenship for persons born in the island of Ireland, such as the child as this case, who could no longer acquire it directly under the *ius soli* principle. Presumably, the argument would have been that birth on the island of Ireland is an Irish association, allowing the waiver of both the 'full age' and 'four-year prior residence' conditions for the naturalisation of such persons.

26. That route, in so far as it may have been available, was closed off by s. 16(2) of the Act of 1956, as inserted by s. 10 of the Act of 2004, which limits the definition of Irish associations to a relationship by blood, affinity (apparently, connoting marriage or civil partnership), or adoption to a person who is, or was at the time of his or her death, an Irish citizen or a person entitled to be one.

27. Second, the Act of 2004 amends s. 15 of the Act of 1956 in the following two respects; first, by the insertion of a new sub-s. (1)(a) , whereby being 'a minor born in the State' is introduced as an alternative naturalisation condition to being 'of full age'; and second, by the insertion of the new sub-s. (3) that is at the heart of these proceedings.

28. In summary, having taken away with one hand from persons in the position of the child in this case both the right to citizenship by birth in the island of Ireland and the opportunity to argue in the alternative that birth here is an Irish association that allows the conditions for naturalisation to be waived, the Act of 2004 gives back with the other an entitlement for minors born in the State to seek naturalisation before attaining full age.

ii. the interpretation of s. 15(3) of the Act of 1956 for which the Minister contends

29. The Minister is forthright in arguing that, in defining 'applicant' in s. 15 to mean, in relation to an application for a certificate of naturalisation by a minor, 'the parent or guardian of, or person who is *in loco parentis* to, the minor', sub-s. (3) expressly and unambiguously requires the applicant parent, guardian or person *in loco parentis*, and not the minor, to be treated as the applicant for the purposes of the minor's naturalisation application and, hence, to meet each of the five naturalisation conditions from (a) to (e) in sub-s. (1), including the condition at (b) to be of good character.

30. Indeed, that interpretation of the effect of sub-s. (3) is reflected – to some extent, at least – in the terms of Form 11, scheduled to the Irish Nationality and Citizenship Regulations 2011. While that form does seek details of the prior residency in the State and intended future residence of both applicant parent, guardian or person *in loco parentis* and minor child, it only seeks background information (relevant to good character) in respect of the former.

iii. Section 5 of the Interpretation Act 2005

31. Section 5 of the Interpretation Act 2005 provides, in material part:

'(1) In construing a provision of any Act (other than a provision that relates to the imposition of a penal or other sanction)–

(a) that is obscure or ambiguous, or

(b) that on a literal interpretation would be absurd or would fail to reflect the plain intention of–

(i) in the case of an Act [of the Oireachtas], the Oireachtas…,

the provision shall be given a construction that reflects the plain intention of the Oireachtas…, where that intention can be ascertained from the Act as a whole.'

iv. obscurity or ambiguity

32. The Minister contends that sub-s. (3) is neither obscure nor ambiguous. It plainly and unambiguously means that, in relation to an application for a certificate of naturalisation by a minor, the Minister is required to be satisfied that 'the parent or guardian of, or person *in loco parentis* to, the minor' meets the conditions for naturalisation set out in sub-s. (1) and, by necessary implication, is not required to be satisfied that the minor does so.

33. To accept the Minister's submission on this point it would be necessary to conclude that there is no scope to interpret sub-s. (3) as simply providing that an application for the naturalisation of a minor born in the State must be made by a parent or guardian of, or person who is *in loco parentis* to, the minor, rather than by the minor directly, but that it is the minor, and not the parent, guardian or person *in loco parentis*, who must satisfy the conditions of naturalisation. Admitting the reasonable plausibility of that competing interpretation entails acknowledging that the provision is ambiguous.

v. a literal interpretation of sub-s. (3)

34. The Minister further submits that, on the literal interpretation for which he contends, s. 15 of the Act of 1956 would not be absurd in its meaning or effect and would not fail to reflect the plain intention of the Oireachtas. In weighing that argument, it is useful to consider the implications of that interpretation for the construction and operation of the conditions for naturalisation under s. 15(1).

35. First, as the Minister acknowledges, that interpretation creates an obvious absurdity in the meaning and effect of sub-s. (1)(a). Substituting the phrase 'the parent or guardian of, or person who is *in loco parentis* to, the minor' for the word 'applicant' in that provision results in a requirement to satisfy the Minister that 'the parent or guardian of, or person who is *in loco parentis* to the minor is of full age or is a minor born in the State.' While, Counsel for the Minister points out that the first alternative requirement – *i.e*. that the applicant parent of guardian of the minor born in the State must be of full age – is a workable and sensible one, the second alternative requirement makes no obvious sense; *i.e*. that an application may be brought on behalf of minor born in the State by a parent or guardian who is also a minor born in the State. Could that possibly reflect the plain intention of the Oireachtas?

36. Second, the interpretation of sub-s. (3) contended for by the Minister has the effect that led to the decision at issue in these proceedings. Under sub-s. 1(b), on that interpretation, it is a condition of the naturalisation of a minor born in the State that the Minister is satisfied of the good character of the parent, guardian or person *in loco parentis* making the application on behalf of that minor, but not that the Minister is satisfied of the good character of the minor concerned.

37. In submitting that such an interpretation is not absurd and instead reflects the plain intention of the Oireachtas, the Minister points to the recognition by Charleton J in P*.O. v. Minister for Justice and Equality* [2015] 3 IR 164 (at 215-6) of the acceptance by the European Court of Human Rights in *Butt v. Norway* (Application no. 47017/09, European Court of Human Rights, 4 December 2012) (at paras. 34 and 79) that strong immigration policy considerations militate in favour of identifying children with the conduct of their parents, failing which parents could exploit the situation of their children to secure residence permission for both children and parents through the invocation of family rights.

38. However, in *P.O*. and in *Butt*, the parental conduct with which the children were identified was the abuse of the immigration or asylum process to gain entry to, and residence in, the state concerned, followed by the invocation of the family rights of the blameless children as the basis for seeking residence permission for the whole family there.

39. As the facts of the present case strikingly illustrate, a statutory provision that operates to identify a minor with the character of a parent or guardian for the purpose of the naturalisation requirement to demonstrate good character is not linked to any such policy consideration. For example, the conduct that prevents the father from establishing good character in this case – *i.e*. the commission of an offence against the person (specifically, I understand, an assault on the mother), motoring offences and public order offences - has nothing to do with the circumstance that gave rise to the application under s. 15 of the Act of 1956 *i.e*. the birth of the minor within the State. Hence, there is no evident policy reason to identify the child with that conduct for the purposes of that application. The relevant provision, on the literal interpretation of sub-s. (3) contended for by the Minister, would simply visit the iniquity of the father upon the child, as though that were a desirable policy aim. Could that have been the plain intention of the Oireachtas?

40. In arguing that it could not, Counsel for the child prays in aid the trenchant words of Edwards J in *L.G.H. v Minister for Justice, Equality and Law Reform & Ors* [2009] IEHC 78, (Unreported, High Court, 30th January, 2009) in quashing a decision to refuse a certificate of naturalisation to a woman of good character, two of whose sons had criminal convictions in the State:

> 'I consider that it is offensive to all notions of justice that a person can be prejudiced on account of his family associations, in circumstances where the person concerned is of acknowledged good character. We cannot help the families we are born into, any more than a child can help it who his parents are.'

41. Even if such a literal interpretation did reflect the plain intention of the Oireachtas, it is difficult to see how it would not result in absurdity. The present case perfectly illustrates the problem. Had the application been made by the mother, there is every reason to believe that the Minister would have been satisfied of her good character. Where a minor born in the State has more than one parent, guardian or person *in loco parentis*, why should that minor's eligibility for naturalisation turn on the happenstance of which of those persons completes the application form?

42. A further resulting absurdity would arise from the position of a minor born in the State with an established bad character – say, a 17-year-old minor with a number of serious criminal convictions – on whose behalf an application for naturalisation is made by a parent, guardian or person *in loco parentis* of unblemished good character. Can it have been the intention of the Oireachtas that such an application would meet the 'good character' condition for naturalisation?

43. While not directly relevant, it is interesting to note that the British Nationality Act 1981, which introduced the terms 'British citizen' and 'British citizenship' into the law of the United Kingdom, also introduced a restriction or qualification upon the operation of the *ius soli* principle there, broadly equivalent to the one later introduced here under s. 6A of the Act of 1956, as inserted by the Act

of 2004. While naturalisation under the UK Act is only available to a person of 'full age', s. 1(4) provides that a person born in the United Kingdom who fails to qualify under the 'birth' provisions is entitled to register as a British citizen after ten years lawful residence there. Section 58 of the UK Immigration, Asylum and Nationality Act 2006 introduced a condition whereby, if an application for registration is made by a young person (meaning a person aged ten or over on the date of the application) or adult, where the application is made after 4 December 2006, the Secretary of State must be satisfied that the applicant is of good character. I have been unable to find any provision in the law of that, or any other jurisdiction, that conditions the eligibility of a child to apply for naturalisation upon the good character of the parent, guardian or person *in loco parentis* through whom the application is made.

44. Returning to the conditions for naturalisation under s. 15 of the Act of 1956, on the interpretation of sub-s. (3) for which the Minister contends, it is necessary for a minor born in the State to satisfy the Minister, under sub-s. (1)(c), that the parent, guardian or person *in loco parentis* who makes the application has had the necessary periods of continuous and aggregate residence in the State prior to the application, but not that the minor has. Similarly, under sub-s. (1)(d), the Minister must be satisfied that the parent, guardian or person *in loco parentis* who makes the application intends in good faith to continue to reside in the State after the naturalisation of the minor, but not that the minor does. While it may be correct to suggest that, in most cases, the minor will have previously resided with the person concerned and, if naturalised, will continue to do so for some time into the future, there must surely be cases in which the focus on the prior and intended place of residence of the parent, guardian or person *in loco parentis* of the minor concerned, rather than on that of the minor, will lead to consequences that are anomalous and, hence, absurd. Once again, it is appropriate to ask whether that can have been the plain intention of the Oireachtas.

45. Finally, sub-s. (1)(e) would, if governed by the literal interpretation of sub-s. (3) for which the Minister contends, lead to an obvious absurdity whereby it would be a condition of the naturalisation of the minor born in the State, that the parent, guardian or person *in loco parentis* who made the application had made a declaration of fidelity to the nation and loyalty to the State, and had undertaken to faithfully observe the laws of the State and to respect its democratic values but not that the minor had done so, whether directly or through the parent, guardian or person *in loco parentis*, acting on the minor's behalf

46. As against all of that, the Minister submits that the consequences of the interpretation of sub-s. (3) for which the child contends are not immune from claims of absurdity either. Can a minor born in the State, particularly a minor still of tender years, have formed a character, good or bad? Can such a minor express a meaningful intention in good faith to reside in the State after naturalisation? Or can such a minor make a meaningful declaration, in the prescribed manner, of fidelity to the nation and loyalty to the State, or meaningfully undertake to faithfully observe the laws of the State and to respect its democratic values?

47. In my judgment, that submission is not without some force. It seems fair to say that the amendments effected to s. 15 of the Act of 1956 by s. 8 of the Act of 2004 do not sit entirely comfortably within that section, however the resulting provisions are construed. But there are two factors that weaken the impact of the absurdity argument on the Minister's side. The first is that whether a minor born in the State has acquired a discernible character, good or bad, or has acquired the ability to make a meaningful declaration or to provide a meaningful undertaking are issues of fact upon which, on the interpretation of s. 15 contended for by the child, the Minister must be satisfied in the case of each applicant. The second is that the imputation of the intention of a parent, guardian or person *in loco parentis* to a child or minor in his or her care is commonplace and generally unproblematic, whereas the same cannot be said for the imputation to a child of a parent or guardian's good or bad character.

vi. a purposive construction of sub-s. (3)

48. On behalf of the child, I was urged to have regard to the relevant portion of the Explanatory Memorandum on the Irish Nationality and Citizenship Bill 2004 as an aid to the interpretation of s.15(3) of the Act of 1956, as inserted by s. 10 of the Act of 2004. Counsel for the child pointed to the reliance placed on an explanatory memorandum published with the Road Traffic Act 1968 by Fitzgerald CJ for the Supreme Court in *Maher v Attorney General* [1973] IR 140 (at 148) and, similarly, to the reliance placed upon an explanatory memorandum published on the introduction as a Bill in the Dáil of the Garda Síochána (Compensation) Act 1941 by Henchy J for the Supreme Court in *McLoughlin v Minister for Public Service* [1985] IR 631 (at 634). However, each of those authorities, while venerable, predates the decision of the Supreme Court in *Crilly v T & J Farrington* [2001] 3 IR 351, reaffirming the old common law exclusionary rule preventing the use of parliamentary history as an aid to interpretation. While the author of Dodd, *Statutory Interpretation in Ireland* (2008), expresses the view (at para. 9.19) that, following the decision in *Crilly*, whether reference to explanatory memoranda is permissible is unclear, it seems to me that the safer course is to abjure any such reference or reliance.

49. Nonetheless, I find that sub-s. (3) of s. 15 of the Act of 1956 is ambiguous in that it is capable of being read in two ways: first, as providing that where a minor born in the State seeks a certificate of naturalisation under that section, the applicant in the procedural sense will be the parent, guardian, or person *in loco parentis* who completes and submits the application form rather than the minor, but that the applicant in the substantive sense – *i.e.* the person seeking to satisfy the conditions for naturalisation –will remain the minor; and second, on a more literal or - as might be strongly argued - over-literal reading, as providing that the parent, guardian or person *in loco parentis* is to be the applicant in that section for all purposes rather than merely for procedural purposes. Hence, borrowing the words of Davitt P in *Carlisle Trust Ltd v Dublin Corporation* [1965] IR 456 (at 460), I conclude that:

> 'Consideration of the language alone does not enable me to say that it clearly means either one thing or the other. It is capable of being understood in either sense and is therefore ambiguous and obscure. I believe I am acting well within the accepted canons of construction in preferring an interpretation which I believe to be at once more consistent with justice and with the purpose of the enactment in question.'

50. The interpretation of s. 15(3) that I believe to be at once more consistent with justice and with the purpose of the Act of 1956 is that whereby the 'applicant' in that section in relation to an application for a certificate of naturalisation by a minor born in the State is the parent or guardian of, or person *in loco parentis* to, the minor, whereas the applicant who must meet the conditions of naturalisation to the satisfaction of the Minister is the minor born in the State.

51. It follows that, in concluding that it was a condition of the naturalisation of the child that the father satisfy the Minister of the father's good character, the Minister erred in law in the decision, dated 7 December 2016, to refuse the child a certificate of naturalisation under s. 15 of the Act of 1956 on the basis that the Minister was not satisfied of the father's good character.

Conclusion

52. I will make an order of certiorari quashing the decision of the Minister, dated 7 December 2016.

53. It is unnecessary to consider whether it would be appropriate to grant any of the declarations sought and I do not propose to do so.