THE HIGH COURT

2018 No. 921 JR

Between:

Roderick Jones

Applicant

– and –

Minister for Justice and Equality

Respondents

JUDGMENT of Mr Justice Max Barrett delivered on 11th July, 2019.

1. Mr Jones is an Australian national who has applied to become a naturalised Irish citizen. Section 15(1) of the Irish Nationality and Citizenship Act 1956, as amended, provides, *inter alia*, that "*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 – …(c) has had a period of one year's continuous residence in the State immediately before the date of the application*". The applicable one-year period here runs from 01.09.2016-31.08.2017. During that period, Mr Jones was out of Ireland for 100 days, 97 on holiday, three for work reasons.

2. In the impugned decision-letter of 11.10.2018, the Minister concludes by reference to the aforementioned "*continuous residence*" requirement that Mr Jones is ineligible to be considered for naturalisation by virtue of s.15(1). This is because Mr Jones was absent for a period in excess of what might be described as the 'discretionary absence period of 6 weeks + possibly more in exceptional or unavoidable circumstances' that the Minister has hitherto been prepared to tolerate when deciding whether a person "*has had a period of one year's continuous residence*" for the purposes of s.15(1)(c) (and which he brought to bear in the case of Mr Jones). However, the Minister, when assessing whether an applicant "*has had a period of one year's continuous residence*", is not acting in the realm of discretion. Either an applicant "has had a period of one year's continuous residence" or he has not. Although the Minister has manifested very real humanity in (i) trying to nuance the clear wording and effect of s.15(1)(c), by (ii) applying a 'discretionary absence period of 6 weeks + possibly more in exceptional or unavoidable circumstances', so as (iii) to allow for the realities of modern life in which multiple work/holiday absences may be possible in any one year, unfortunately (iv) the Minister has gone beyond what is legally permissible in this regard, because (v) the Act of 1956 does not confer any discretionary power on the Minister in this regard; an applicant either "*has had a period of one year's continuous residence*" or he has not; there is no basis in the just-quoted wording for introducing a 'discretionary absence period of 6 weeks + possibly more in exceptional or unavoidable circumstances'.

3. The word "*continuous*" in s.15(1)(c) bears its ordinary English-language meaning, being, per *The Concise Oxford Dictionary of Current English* (12th ed., 2011), "*unbroken, uninterrupted, connected throughout in space or time*". The effect of this definition is clear when it comes to s.15(1)(c): for the last year prior to a naturalisation application an applicant must show a one-year period of residence in Ireland that is "*unbroken, uninterrupted, connected throughout in space or time*". No matter how one comes at Mr Jones' residence history for the period of 01.09.2016-31.08.2017, one cannot properly say that a one-year period of residence that is punctuated by 97 days of holiday absences and three days of work absences is "*unbroken, uninterrupted, connected throughout in space or time*". Nor does the court, respectfully, see that to engage in this literal reading of the word "*continuous*" yields an absurdity that would bring s.5(1)(b) of the Interpretation Act 2005 into play. There is no evidence before the court as to why such a one-year period was imposed by the Oireachtas in the Act of 1956. However, it is not difficult to imagine reasons why such an obligation might have made sense to lawmakers, *e.g.*, it may have been to ensure that citizens-to-be enjoy a concrete connection with the State, or to ensure that citizens-to-be are attuned to the way of life in Ireland at the time of naturalisation, or for some other reason. But, whatever the intention of the Oireachtas may have been, the court does not see that a literal reading of the word "*continuous*" yields an absurdity that requires the court to move on to an alternative reading of the s.15(1)(c).

4. The result of all of the foregoing is that although the court respectfully (a) does not agree with how the Minister came to his conclusion that Mr Jones is ineligible at this time to be granted a certificate of naturalisation by virtue of s.15(1), it (b) considers that the Minister's conclusion is nonetheless correct. The Minister, it will be recalled, arrives at his conclusion because Mr Jones has gone beyond the 'discretionary absence period of 6 weeks + possibly more in exceptional or unavoidable circumstances' that the Minister has hitherto applied in the context of s.15(1)(c). By contrast, the court says (i) there is no basis in s.15(1)(c) for the application of such a discretion, (ii) the word "*continuous*" in s.15(1)(c) bears its ordinary English meaning, (iii) no matter how one comes at Mr Jones' residence history for the period of 01.09.2016-31.08.2017, one cannot say that a one-year period of residence that is punctuated by 97 days of holiday absences and three days of work absences is "*unbroken, uninterrupted, connected throughout in space or time*", (iv) the court does not see that a literal reading of s.15(1)(c) yields an absurdity that requires the court to move on to an alternative reading of same, with (v) the result of (i)-(iv) being that Mr Jones is ineligible to be granted a certificate of naturalisation by virtue of s.15(1).

5. Turning to the grounds on which relief has been sought by Mr Jones, the following grounds are raised:

> *"(i) The Minister erred in law by applying the requirement in s.15(1)(c) of the 1956 Act (as amended) that an applicant for a certificate of naturalisation have had 'one year's continuous residence in the State immediately before the date of his application' in an overly literal manner, and by failing to make any reasonable allowance for temporary absences from the State for valid reasons such as reasonable holidays."*
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> Court Response: Rather than being "*overly literal*", the Minister has, with respect, been excessively generous in his approach to s.15(1)(c), bringing an approach to bear that is inconsistent with a (proper) literal reading of that provision; the Minister, in his application of the 'discretionary absence period of 6 weeks + possibly more in exceptional or unavoidable circumstances', has sought to exercise a discretion that he does not possess under s.15(1)(c). The absence of such discretion combined with the dictionary definition of "*continuous*" has the result that it is not open to the Minister to make allowance for the referenced *"temporary absences".*
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> *"(ii) The Minister erred in law by having a policy that the s.15(1)(c) requirement of 'one year's continuous residence in the State immediately before the date of his application' cannot be satisfied where the applicant is absent from the State for over six weeks during the relevant year, absent wholly exceptional circumstances, and by failing to approach consideration of this requirement as a question of fact rather than discretion."*

Court Response: The Minister, in his application of the 'discretionary absence period of 6 weeks + possibly more in exceptional or unavoidable circumstances', has sought to exercise a discretion that he does not possess under s.15(1)(c).

"(iii) The Minister's finding that, due to absences from the State, the applicant has not had a period of one year's continuous residence in the State immediately before the date of his application is materially wrong in fact and irrational in the legal sense."

Court Response: The Minister's "*finding*" is neither materially wrong nor irrational. However, his means of getting to that "*finding*" rests on legal error. The Minister, it will be recalled, arrives at his conclusion because Mr Jones has gone beyond the 'discretionary absence period of 6 weeks + possibly more in exceptional or unavoidable circumstances' that the Minister has hitherto applied in the context of s.15(1)(c). By contrast, the court says (i) there is no basis in s.15(1)(c) for the application of such a discretion, (ii) the word "*continuous*" in s.15(1)(c) bears its ordinary English meaning, (iii) no matter how one comes at Mr Jones' residence history for the period of 01.09.2016-31.08.2017, one cannot say that a one-year period of residence that is punctuated by 97 days of holiday absences and three days of work absences is "*unbroken, uninterrupted, connected throughout in space or time*", (iv) the court does not see that a literal reading of s.15(1)(c) yields an absurdity that requires the court to move on to an alternative reading of same, with (v) the result of (i)-(iv) being that Mr Jones is ineligible to be granted a certificate of naturalisation by virtue of s.15(1).

6. Lest it be contested that the phrase in s.15(1)(c) is "*continuous residence*", not just the word "*continuous*", the court does not see that this makes any difference as regards the conclusions that it reaches in this judgment. The court accepts the contention for Mr Jones that circumstances can present in which it is possible to retain one's residence in Ireland despite travelling abroad. So, for example, it is possible for a person, the true focus of whose life is in Ireland, to spend a couple of nights in Belfast, go on a business trip to London, enjoy a couple of weeks in Spain in the summer, spend a month in Australia in the winter, and yet still properly be considered to be ordinarily resident in Ireland. But the problem for Mr Jones is that in none of those instances could a person who goes on any one of those trips in any one year be said to be in "*continuous residence"* in Ireland during that year. Why? Because that person's period of residence in Ireland during that year has been punctuated by absences abroad and thus is not "*unbroken, uninterrupted, connected throughout in space or time*", *i.e*. it is not "continuous *residence*" [emphasis added].

7. Although the Minister, in the impugned decision-letter, has come to the right conclusion by the wrong route there is no point in the court exercising its discretion to grant any of the reliefs sought. This is because (i) the basic facts at play are undisputed, (ii) this judgment offers the only judicial interpretation to this time of the meaning of the word "*continuous*" (and indeed of the phrase "*continuous residence*") in s.15(1)(c), which interpretation would therefore fall to be applied by the Minister following any remittal, with (iii) the outcome of (i)-(ii) combined being that Mr Jones' application, by law, just has to fail. All the reliefs sought are, therefore, respectfully refused.

8. It may seem unfair in a world where (i) many people regularly travel abroad for work, (ii) thanks to lower air-fares, many people take foreign breaks more than once a year, and (iii) there are walks of life, *e.g.*, the university sector, in which Mr Jones works, where (ostensibly at least) academic staff enjoy longer vacation periods (albeit that in reality they will carry work through such periods) and/or may have a higher-than-average international travel dimension to their labours, that s.15(1)(c) should require "*a period of one year's continuous residence in the State immediately before the date of the application*", which period, thanks to the dictionary definition of "*continuous*" must be "*unbroken, uninterrupted, connected throughout in space or time*". However, that is what s.15(1)(c) requires. If that is perceived to yield unfairness in practice – and again there may be perfectly legitimate reasons why the Oireachtas has used the word "*continuous*" (and the phrase "*continuous residence*") with all the consequences that flow therefrom – the cure for any (if any) such unfairness as is resulting is not to be found in the law-courts; it lies in the gift of the legislature.