THE SUPREME COURT

Appeal No. 323/2010

Denham C.J.
Murray J.
Hardiman J.
Fennelly J.
O'Donnell J.

Between:

FAISOL OLUWANIFEMI SULAIMON (AN INFANT, SUING BY HIS FATHER AND NEXT FRIEND FATAI A. AYIMLA SULAIMON)

Respondent/Applicant

AND

MINISTER FOR JUSTICE EQUALITY AND LAW REFORM

Appellant/Respondent

Judgment of Mr. Justice O'Donnell delivered the 21st day of December 2012

1 Fatai Ayimla Sulaimon a Nigerian national and the father and next friend of the infant applicant herein arrived in Ireland in 2001. The following year he and his then wife had a daughter who in accordance with the laws that then stood automatically became an Irish citizen. In consequence Mr. Sulaimon became entitled to remain in Ireland under the provisions of the then applicable Irish Born Child ("IBC") Scheme and in July 2005 was granted permission to remain for a period of two years. In 2007 that period was extended for a further three years. On the 24th of August 2008 his son, the infant applicant herein, was born to Mr. Sulaimon and another partner. In October of 2008 Mr. Sulaimon applied for an Irish passport for his son under the terms of s.6A of the Irish Nationality and Citizenship Act 1956 ("1956 Act") (as inserted by s.4 of the Irish Nationality and Citizenship Act 2004) which provides as follows at s.6A(1):

> "A person born in the island of Ireland shall not be entitled to be an Irish citizen unless a parent of that person has, during the period of 4 years immediately preceding the person's birth, been resident in the island of Ireland for a period of not less than 3 years or periods the aggregate of which is not less than 3 years."

2 Superficially it might have been thought that Mr. Sulaimon clearly satisfied the statutory test since he had been resident in Ireland since 2001 as a matter of fact and had been granted formal permission to remain in July of 2005 more than three years before the birth of the applicant, but on the 31st of October 2008 the application was refused on the grounds that Mr. Sulaimon had only been lawfully resident in the State for a period of 1,092 days prior to the birth of his son and accordingly he was three days short of the requisite 1,095 days. It appears therefore that had the infant applicant been born some three days later or, it appears, if his father's passport had been stamped some three days earlier, in either 2005 when permission was granted or, in 2007 when it was renewed, then the application would have been successful. In a further twist, the Court was informed on the hearing of this appeal that Mr. Sulaimon had now been naturalised as an Irish citizen.

3 It is tempting to dismiss this outcome as an exercise in bureaucratic application of rules to the exclusion of common sense and justice. However, the control of immigration, residence and citizenship is an important State function and increasingly so in the modern world. It is also something that requires clear rules which can be administered efficiently. A person either has a passport or does not. That passport is either in force or it is not. There is no penumbra area. When any question of dates and times arise, it is almost inevitable that circumstances will throw up situations which fall just on either side of the line. One person will be qualified by one day, and another will just miss qualification by the same margin. This in itself however is not a reason to criticise the system or for a court to intervene because sympathy might dictate a different result. Accordingly it is necessary to scrutinise the reasoning of the Departments of State involved in this case with some care lest an immediate resolution of the case should give rise to further unintended confusion in the administration of what is an already complicated immigration and naturalisation system.

4 The first step is that the period of residence required under s.6A of the 1956 Act is not actual residence but rather is a concept of "lawful residence". Thus s.6B(4) of the 1956 Act, (as inserted by s.4 of the Irish Nationality and Citizenship Act 2004) provides:

> "A period of residence in the State shall not be reckonable for the purposes of calculating a period of residence under section 6A if—
>
> (a) it is in contravention of section 5(1) of the Act of 2004."

The "Act of 2004" is defined by s.2 of the Irish Nationality and Citizenship Act 2004 as meaning the Immigration Act of 2004. Section 5(1) of the Immigration Act 2004 provides in turn:

> "No non-national may be in the State other than in accordance with the terms of any permission given to him or her before the passing of this Act, or a permission given under this Act after such passing, by or on behalf of the Minister."

The final step in the argument then is that under the interpretation provision of the Act of 2004 it is provided that "In this Act, except where the context otherwise requires - … 'permission' shall be construed in accordance with section 4." Section 4(1) provides as follows:

> "Subject to the provisions of this Act, an immigration officer may, on behalf of the Minister, give to a non-national a document, or place on his or her passport or other equivalent document an inscription, authorising the non-national to land or be in the State (referred to in this Act as 'a permission')."

By this rather tortuous route it becomes apparent that reckonable residence for the purpose of the three year period required by s.6A of the 1956 Act is residence pursuant to a permission under the Immigration Act 2004. This case raises questions of law and fact: what constitutes a permission for the purposes of the 2004 Act, and when was such permission granted in this case.

5 Turning now to the facts of this case it will be apparent that the relevant period is that between July 2005 and the birth of the

applicant in August 2008. Although the father and next friend was resident in the country since 2001, the period prior to receiving permission to remain was not reckonable because it was residence in contravention of s.5(1) of the Act of 2004. This much is not in dispute. It appears that Mr. Sulaimon's application was made around March 2005 to the Minister for Justice, Equality and law Reform ("the Minister") for permission to remain in the State on the basis of his parentage of an Irish born child under the provisions of the IBC scheme. By letter of the 7th July 2005 a Mr. Patrick J Quinlan from the IBC unit wrote to him referring to the application. The operative provisions of the letter read as follows:

> "As an exceptional measure, I am to inform you that the Minister has decided to grant you permission to remain in the State for two years until 07/07/2007. Your case will be reviewed at the end of this period. The following conditions apply to your permission to remain in the State:
>
> that you will obey the laws of the State and will not become involved in criminal activity,
>
> that you will make every effort to become economically viable in the State by engaging in employment, business or a profession
>
> that you will take steps (such as appropriate participation in training or language courses) to enable you to engage in employment, business or a profession,
>
> that you accept that the granting of permission to remain does not confer any entitlement or legitimate expectation on any other person, whether related to you or not, to enter the State.
>
> Please note that this letter is not in itself evidence of permission to remain in the State and should not be used for any purpose other than to register at your local registration office. If you live in the Dublin Region this is located at the Immigration Registration Office, Garda Síochána, 13/14 Burgh Quay, Dublin 2.
>
> If you live elsewhere, you should register at your local Garda District Headquarter Station. You will be presented with a certificate of registration which shows that you have been given permission to remain and which sets out the conditions on which you have been given permission to remain. That certificate is an important document and care should be taken to ensure that you retain it in your safe keeping.
>
> You may work in the State without the need for a work permit and set up in business without seeking the permission of the Minister.
>
> Yours sincerely".

6 This letter was the subject of a very detailed analysis on the hearing of the appeal. The sentence "I am to inform you that the Minister has decided to grant you permission to remain in the State for two years until 07/07/2007" clearly suggests that:

> (i) a decision has been made;
>
> (ii) by the Minister;
>
> (iii) to grant permission;
>
> (iv) the permission was to remain for two years from the 7th of July 2005 (being coincidentally the date of the letter) since the period expired on the 7th of July 2007.

The State however relied on the sentence which provided that the letter was not itself evidence of permission to remain in the State and could only be used for the purposes of registration. It should perhaps be explained at this point that the Act of 2004 contemplates not simply a process of *permission* for a person to remain within the State, but also that such persons will be *registered* in a register of non-nationals pursuant to s.9 of that Act. That register, it should be noted, is of non-nationals "who have permission to be in the State". Thus the sentence referring to the certificate of registration clearly contemplated a process of registration which is separate and distinct from, and subsequent to, the permission to remain required by section 5. In due course Mr. Sulaimon attended at the Garda Síochána National Immigration Bureau ("GNIB") on the 22nd July 2005 where his passport was stamped with the following entry "permitted to remain in Ireland until 07/ July /07" and a signature "for Minister of Justice, Equality and Law Reform". The words "07/July/07"and the signature were in handwriting. This stamp was accompanied by another stamp of the Garda National Immigration Bureau dated the 22nd of July 2005 being, it appears, the date upon which that stamp was affixed to the passport.

7 While it has become apparent that there is substantial dispute as to the commencement of the date of the permission granted to Mr. Sulaimon to remain in Ireland, there is no doubt about its expiry date – the 7th July 2007. In advance of the expiry of that permission, Mr. Sulaimon applied for renewal of his IBC/05 (Irish Born Child/05 Scheme) permission to remain in the State. On the 7th June 2007 a Ms. Bernie S Maguire from the IBC unit of the Irish Naturalisation and Immigration Service in the Department of Justice, Equality and Law Reform wrote to Mr. Sulaimon returning his passport to tell him that the matter was under consideration. The operative part of that letter read as follows:

> "I am directed by the Minister for Justice, Equality and Law Reform to acknowledge receipt of your Application for renewal of your (IBC/05) permission to remain in the State on the basis of your parentage of an Irish born child.
>
> Please find the following original documents returned herewith.
>
> Applicant's passport No. A1355693.
>
> **Should your current leave to remain within the State expire while your renewal application is under consideration, you are advised to contact your local Garda National Immigration Officer to have your current permission to remain extended. You will require this acknowledgement letter, your passport and your GNIB Card. This applies only to those who require evidence of entitlement to remain in the State for employment, social welfare and travel purposes.**
>
> We will write to you when a decision has been reached in your case and all other original documentation submitted with your IBC/05 renewal application will be returned to you at that stage."

8 Thereafter on the 23rd of July 2007 a Mr. John B Brady from the same unit wrote to Mr. Sulaimon informing him of the success of his application. The operative provision of the letter read as follows:

> "As an exceptional measure, I am to inform you that the Minister has decided to renew your permission to remain in the State for a further three years until the 7th day of July 2010, subject to the results of enquiries as to whether you have obeyed the laws of the State or been convicted of any offence and have not been involved in criminal activity. The following conditions will apply to your permission to remain in the State:-
>
> That you will reside continuously in the State;
>
> - that you will take an active role in the upbringing of your Irish Born Child;
>
> - that you will obey the laws of the State and will not become involved in criminal activity;
>
> - that you will make every effort to become or to remain economically viable in the State by engaging in employment, business or a profession;
>
> - that you will take all steps (such as appropriate participation in training or language courses) to enable you to engage or to remain in employment, business or a profession;
>
> - that you accept that the renewal of your permission to remain does not confer any entitlement or legitimate expectation on any other person, whether related to you or not to enter or remain in the State.
>
> Please note that your permission to remain in the State will only become operative when you have registered at your local Registration Office.
>
> If you live in the Dublin Region this is the Immigration Registration Office, Garda Immigration Bureau, 13/14 Burgh Quay, Dublin 2.
>
> If you live elsewhere, you should register at your local Garda District Headquarters Station.
>
> When you apply to register at the appropriate Registration Office, the Garda National Immigration Bureau will make enquiries to ascertain;
>
> - whether or not you have obeyed the laws of the State;
>
> - whether or not you have been convicted of any offence and
>
> - whether or not you have been involved in criminal activity.
>
> In the event that information comes to light indicating you have not met any of these requirements, the Garda National Immigration Bureau will not register the renewal of your permission to remain in the State and your file be referred back to the IBC Unit in INIS for whatever action is deemed appropriate. This may include the refusal of your application for renewal of your permission to remain in the State. In the event that this occurs you will become illegal in the State and your file will be referred to the Immigration area of INIS for whatever action is deemed appropriate.
>
> Provided that the Garda National Immigration Bureau is satisfied that you have met the above requirements, upon payment of the appropriate fee of **€100**, you will be issued with a Certificate of Registration. This Certificate will show that you have been given permission to remain in the State and will set out the conditions attached to this registration. The Certificate is an important document and you should guard it safely.
>
> The Certificate of Registration will entitle you to work in the State without the need for a Work Permit and will entitle you to set up a business without seeking the permission of the Minister.
>
> You permission to remain in the State may be **revoked** for the following reasons:
>
> - if you do not comply with the conditions set out in this letter or
>
> - if you are found to have provided false or misleading information in the course of you application for renewal of permission to remain in the State or
>
> - if you are found to have provided false or misleading information in the course of your application under the revised arrangements announced on 15 January 2005, under which your prior permission was granted.
>
> This list is not exhaustive. It does not set out all the reasons for which permission to remain may be revoked.
>
> Yours sincerely".

9 These two letters together with the letter of the 23rd of July 2005 were the subject of protracted debate during the course of this appeal. None of them are clear as to the legal situation. Of the letter of the 7th June 2007 it can be said that it seems to imply – although not state explicitly – that on expiry of the permission Mr. Sulaimon would be unlawfully in the State unless that permission was extended, which extension could be effected by a Garda National Immigration Officer. On the other hand the letter seemed to suggest that this applied only to those who required *evidence* of entitlement to remain in the State, suggesting perhaps that it would be lawful to remain pending determination of the application. Mr. Sulaimon has sworn an affidavit stating that he did not require such evidence for any purpose since he had no intention of travelling and his current employer did not require him to obtain a temporary extension of his permission. The position of someone in that situation is accordingly somewhat ambiguous at least under the terms of the letter. This is made more complex by the fact that s.5(2) of the 2004 Act contemplates that a person without a permission will be unlawfully within the state, but does not make that status an offence in itself.

10 The letter of 23rd July 2007 is at the outset, broadly consistent with that of the 7th July 2005. It too implies that:

(i) a decision has been made;

(ii) by the Minister;

(iii) to renew the permission;

(iv) the renewal was for "a further three years until 7th July 2010", and accordingly must have commenced on the expiry of the first permission on the 7th July 2007.

However the letter is somewhat confused and confusing. The sentence "please note that your permission to remain in the State will only become operative when you have registered at your local Registration Office" is a departure from the format in the 2005 letter and implies some conditionality on the coming into force of any permission. This is perhaps also to be inferred from the reference to the decision being "subject to" the results of inquiries as to whether the applicant was involved in any criminality. On the other hand the reference to inquiries by the GNIB is itself instructive. The GNIB is not empowered to refuse or revoke any permission. All it can do is refuse registration and refer the matter back to the IBC unit in the Department of Justice. The Department might then refuse the application for renewal of permission. The next sentence, "In the event that this occurs, you will become illegal in the State …", seems to suggest that it would only be then, however, that the recipient of a letter in these terms would become illegal within the State which implies that a permission of some sort had been given. There is thus a significant ambiguity in the letter as to the precise point at which it can be said that a person becomes lawful within the State. This ambiguity may only rarely become significant in the case of any individual applicant but may become crucial when in a case such as this, the precise period of permitted lawful residence must be identified. In the event, Mr. Sulaimon duly attended at the Immigration Registration Office on the 14th of August 2007 and his passport was then stamped in the following terms: "permitted to remain in Ireland until 07 July 2010, J Sergeant for Minister for Justice, Equality and law Reform. Date 14th August 2007". The words "07 July 2010", "J Sergeant" and "14th August 2007" were in handwriting.

11 Two additional pieces of information should be noted. First, the applicant sought discovery which was exhibited in this case and relied on without objection. That showed a departmental submission from Patrick Quinlan on the 7th July 2005 (who it will be recalled, was the signatory of the letter of the same date issued to Mr. Sulaimon in respect of his permission to remain in Ireland). The submission recommended "that Fatai A. Ayimla Sulaimon should be granted permission to stay in the State for two years". That document does not show that the recommendation was accepted by the Minister, but on the hearing on this appeal it was accepted on behalf of the State that there existed a document to that effect. It seems possible that the acceptance of the recommendation was simply endorsed on another copy of the same submission. Second, when the application in 2007 was made for renewal of the permission to remain in the State, that too received a positive recommendation on the 23rd of July 2007 that "Fatai A. Ayimla Sulaimon should be granted a renewal of his permission to remain in the State for a further three years". That document also contained the following statement: "date of permission to remain under IBC/05 granted: 07/07/2005".

12 The view taken of the application by the Department of Foreign Affairs (in accordance with guidance given by the Department of Justice) was that the reckonable period of permitted residence in accordance with s.5(1) of the 2004 Act, was only that period between the date of endorsement of each permission upon Mr. Sulaimon's passport and the expiry of that permission. This meant that the period ran from the 22nd July 2005 to the 7th July 2007, and the 14th of August 2007 to the 7th of July 2010. The period of reckonable residence prior to the birth of the infant applicant on the 24th of August 2008 totalled 1,092 days, 3 short of the statutory requirement. The reasoning was if not simple at least discernible: the reckonable period could only include those periods of residence not in breach of s.5(1) of the 2004 Act; s.5(1) prohibited presence in the State other than in accordance with "permission"; "permission" had a special definition under the Act; s.1 required the word to be "construed in accordance with s.4"; s.4(1) referred to a "permission" being given by the immigration officer on behalf of the Minister in a document to the non-national concerned, or the inscription on the passport or other equivalent document by the immigration officer; in either case the document given, or the inscription made, had to "authorise the non-national to land or be in the State"; in this case the inscription had been made by an immigration officer on the passport on two occasions, the 22nd July 2005 and the 14th of August 2007; these were "permissions" within the meaning of s.4(1) and accordingly the period covered by that permission and the renewal prior to the birth of the infant applicant was the 1,092 days calculated by the Department of Foreign Affairs. Neither the letter of the 7th July 2005 nor that of the 23rd July 2007 could, by their terms, constitute such a permission nor be evidence of any such permission.

13 This approach places heavy emphasis on the act of the immigration officer placing a stamp on the passport of the applicant. The situation contemplated by s.4 is obviously that of an immigration officer at a frontier post, port or airport, who stamps a passport or other official identity document. However, the Irish Born Child Scheme was administered by the Department of Justice. The procedure for stamping a passport or any similar document is clearly a useful one: it provides certainty and durable evidence on a document designed and intended to carry such proofs in relation to legal residence. Accordingly, it is perhaps understandable from an administrative point of view that it was considered useful and desirable to bring together the two routes to permission and to attempt to make the process of placing a stamp on the passport or other such document, the key moment.

14 Indeed in the High Court, the Minister argued that the Act only contemplated one permission, namely that given in accordance with s.4 by an immigration officer, and accordingly the Minister's decision was not a permission but simply a preliminary step to permission. That claim was repeated in the written submissions to this court. As the High Court judge observed, this argument led to the strange conclusion that although the immigration officer was acting on behalf of the Minister, and therefore his agent, he (the agent) could do something (grant permission) which it was asserted the principal could not. However, in oral submissions to this court, Michael Collins SC on behalf of the Minister took a more nuanced line. He conceded that there were two possible sources of permission. Under s.4 an immigration officer could grant permission on behalf of the Minister. However, the Minister could also grant permission. Nevertheless, he maintained that the Minister had deliberately not exercised that power in this case. He had instead decided that permission should be granted by the immigration officer. On this argument the formal legal, and only, permission in this case occurred (or in the language of the letter of the 23rd July 2007 "became operative") only when permission was inscribed by the immigration officer on the passport Mr. Sulaimon.

15 The Minister's argument in the High Court (that the only permission which could satisfy s.5 was one granted under s.4 by an immigration officer) has at least a perverse logic, since it could be argued that this special definition of "permission" was required by the combined effect of ss. 1 and 4 of the Act, even if the outcome seemed more than a little strange. However, as counsel recognised in this Court, that position could not be maintained. It was clear not only from the theory but also from the text of the Act itself that a minister could separately grant permission and independently of the act of an immigration officer under s.4(1). This was clear from the terms of s.5 itself which spoke of "permission… by or on behalf of the Minister". That was to be contrasted with the formulation to be found in s.4 which referred to permission being granted by an immigration officer "on behalf of the Minister". Therefore the Act clearly contemplated at least two permissions, one granted by the Minister and another granted by or on his or her behalf by an immigration officer. Furthermore s.4(5)(d) dealt with the position of non-nationals entering the State other than by sea

or air, and provided:

> "A non-national to whom this subsection applies shall not remain in the State for longer than one month without the permission of the Minister given in writing by him or her or on his or her behalf by an immigration officer."

Accordingly it follows that the Act contemplates a separate power in the Minister to grant this permission other than through the agency of the immigration officer. It is not necessary here to discuss the interesting question of whether that power is derived directly from the Executive power of the State or is now statutory since it is sufficient for present purposes that the Act at least clearly recognises the existence of a power in the Minister whatever its legal basis.

16 Nevertheless counsel maintained that although the Minister had power to grant permission he had not done so here because, it was argued, permission had to be construed in accordance with s.4 and accordingly, even if not executed by an immigration officer, it had to comply with the other aspects of that section. Therefore a permission granted by the Minister had to be in writing and more importantly given to the non-national involved. Although it was conceded that there was a documentary record of a ministerial decision, no such document had been given to the non-national. Although the letter of the 7th July 2005 had been *given* to the non-national (instead of being sent directly) it was not on its terms either the permission or evidence of it.

17 Even this subtle position has its difficulties. Once it is acknowledged that the permission did not have to be in compliance with all the requirements of s.4 (in particular that it did not have to be given by an immigration officer) then there is no reason why the remaining aspects of s.4 should be read into any ministerial permission, and in particular, a requirement of a document given physically to a non-national. But all that s.5 requires is that a person be in the State with the permission of the Minister. Furthermore, it is clear that the word "permission" in s.5 did not have a special meaning derived from s.4 but rather was used in a more general and ordinary sense. Thus, in s.5 (which for the purposes of this case is the critical section since it is incorporated by reference in the definition of reckonable residence), it is provided that:

> "No non-national may be in a State other than in accordance with the terms of any permission given to him or her before the passing of this Act, or a permission given under this Act after such passing, by or on behalf of the Minister."

Any permission given to the non-national prior to the coming into force of the Act could not comply with s.4 which did not at that time exist. Furthermore, the permission could not lose its status as such because the grantor did not have the prescience to grant it in accordance with the terms of an Act not yet passed. Accordingly counsel was forced to argue that the word permission had two different meanings not only in the same section, but in the same sentence.

18 It seems much simpler to conceive of the word having the same meaning in s.5 and that meaning being the ordinary natural meaning of the word. Section 1 does not require a special and artificial definition of the word. Rather, it merely provides, save where the context otherwise requires, that the word "permission" shall be construed in accordance with s.4. In my view this means no more than that any ministerial permission shall be of the same nature (rather than form) as the permission which is granted under s.4. This indeed is consistent with a broader view of the Act. The Act does not provide any details about the grant of a ministerial permission and does not set out any procedure for either an application for such permission or the manner in which application is to be approached. It seems unlikely therefore that it would require precision as to the manner of the communication of any permission, particularly when that would be achieved only by indirect reference to construction in accordance with s.4. Furthermore even if (contrary to the view expressed above) the word "permission" is to be normally read in the Act as meaning either a permission under s.4(1) or in the same form, I would consider that for the reasons already discussed, in the case of a ministerial permission, the context does otherwise require and it should be given its ordinary and natural meaning.

19 Finally, I consider that this is also consistent with the structure of the Act. It should be remembered that the Act was introduced with some haste in the period between the High Court decision and the subsequent Supreme Court appeal in *Leontjava v. DPP* [2004] 1 I.R. 591. The obvious focus of s.4 is not to set some general template for all permissions granted, but rather to make provision for the decision of immigration officers at point of entry to the State. That is the significance of the reference in s.4(1) to "…authorising the non-national to land or be in the State." Indeed the shoulder note to the section refers to "Permission to land." While s.18(g) of the Interpretation Act 2005 provides that such notes are not normally to be taken as part of the enactment or construed or noticed in relation to the construction or interpretation of the enactment, that provision is itself subject to s.7 which permits a court, notwithstanding s.18(g) to make use of all matters that accompany the text in the case of ambiguity under s.5 of the Interpretation Act 2005. In this case there is more than sufficient ambiguity to permit recourse to be had to the note. Furthermore the structure of the Act conceives of a permission being separate and distinct from the registration required under s.9. Such registration is required of all non-nationals who have permission to be in the State. Taking the simple situation of a person given permission under s.4(1) when at the point of entry, such person must still register under s.9 and indeed an offence is committed if he or she fails to do so. Logically the same distinction should be maintained between the permission granted by the Minister and the subsequent registration. However, if the approach of the Minister is correct, the two positions are conflated and the act of registration also becomes the act of grant of permission. Finally, the approach taken by the Minister would involve an unfortunate and illogical consequence. Section 5(2) provides that a non-national who is in the State in contravention of subsection (1) is for all purposes unlawfully present in the State. It would follow from the Minister's interpretation that on the two occasions that Mr. Sulaimon attended at the GNIB, he was unlawfully in the State (and thus liable to deportation) even though the Minister had decided to grant him permission to remain. In my view therefore the Act, as properly construed, recognises that the Minister may grant permission, and does not prescribe any particular formality for such permission.

20 It remains to consider whether in fact the Minister did grant such permission in 2005 on the 7th of July. I have no doubt that he did. First, that is most clearly shown by the departmental file in relation to the renewal of permission which refers to the 7th July being the date upon which permission to remain under the IBC/05 was granted. Second, the letter dated the 7th of July is only consistent with that interpretation. It refers to the Minister's decision to grant permission (thus implying that it is the Minster who is granting the permission and no other step is necessary) and that such permission is to remain in the State for two years until the 7th July 2007 which, as already noted, necessarily implies that the permission commences on the same date, namely the 7th July 2005. Furthermore the letter refers to a certificate of registration, which "shows" that "you have been given" permission. Thus the registration does not constitute permission: it evidences a permission previously given. Accordingly, I am satisfied that permission was granted irrespective of the date on which registration was effected. When registration is effected (or if it is desired to inscribe on a passport or any other document some evidence of permission) it should in my view, in a case such as this show the date of permission granted and in this case, that of the ministerial permission. This is sufficient for the plaintiff to succeed since if permission was granted on the 7th of July 2005, the period between that date and the date of the letter must be included in the reckonable residence theory for the purposes of s.6(A) and s.6B(4) of the Irish Nationality and Citizenship Act 1956 (as amended) and that period is clearly more than the 1095 days required. Accordingly it is not necessary to address the position on the renewal of the permission in 2007, or attempt to further construe the letter of the 23rd of July of that year.

21 Finally, I should say for the sake of completeness that while it may in theory be possible for the Minister to nominate the date of coming into force of permission to remain within the State (although such a decision itself would be reviewable), this does not seem to me to be a desirable approach (to put it at its lowest) if utilised to attempt to create an entire administrative scheme for execution of documents by immigration officers. The confusion, at a minimum, which this can lead to is illustrated by the letter of the 23rd of July 2007, which seems to suggest on the one hand that a permission has been renewed for three years from the 7th of July 2007 until the 7th July 2010, and on the other hand that the permission only becomes operate on registration. Even then, it suggests that an issue may arise in registration which may involve referral back to the IBC unit. This, it is said, may result in the refusal of the application. But it appears that it is only then that the person will become illegal in the State. However, since s.5(2) provides that any person who is in the State without permission is unlawfully within the State, then it must follow that until the point of refusal, the letter contemplates that Mr. Sulaimon would have been lawfully within the State. This can only have been the case if a permission had been granted. This seems an entirely undesirable state of confusion. It is also in my view doubtful that the immigration officer should, where the Minister has granted permission under the Irish Born Child Scheme, seek to inscribe details of permission on the passport pursuant to s.4(1). The power under s.4(1) is a statutory power granted to an immigration officer and grants him a degree of discretion. It does not appear to me that such a procedure is appropriate where the Minister has made a decision and the role of the immigration officer is merely secretarial in recording that decision. For example, it does not appear possible that where a permission has been granted by the Minister, subject to conditions, an immigration officer would be entitled to exercise the powers under s.4(3) to refuse to give a permission (since the permission has already been granted) or to impose additional conditions on such permission. If it is desired to create a scheme in which the action of the immigration officer becomes the only manner in which permission can be given or recorded, then a comprehensive scheme should be prepared and set out in statute or regulations drafted for that purpose and coordinated with all existing provisions in this field. In the circumstances and for the reasons set out above, I would dismiss the appeal.