



Ireland - U.M. v. The Minister for Foreign Affairs and Trade & others

This appeal arose from decisions of first and second respondents to refuse the appellant's application for an Irish passport on the basis that he is not an Irish citizen. The appellant's passport application was on grounds of automatic birth right citizenship derived through the residence of his father, an Afghan national, who gave false information on his initial refugee application in the State. The Court of Appeal had decided in favour of the Minister, holding that a declaration of refugee status which is revoked on the basis that the applicant had provided false and misleading information leads to the declaration being void *ab initio*.

The Supreme Court allowing the appeal, held that while a refugee declaration is "in force" and until such time as it is revoked, it must be regarded as being valid. This was based on the fact that the Minister for Justice has a discretion as to whether or not to revoke and is only required to do so when it is considered appropriate. This discretion would have enabled the Minister for Justice in an appropriate case to consider the effect of a decision to revoke on those who obtained derivative rights prior to revocation. The Court held that residence status conferred by the State on a parent based on false or misleading information could be included for the calculation of the period required to confer an entitlement of citizenship on the appellant.

Case name (in original language) : U.M. (A minor suing by his father and Next Friend M.M.) v. The Minister for Foreign Affairs and Trade, Passport Appeals Officer David Barry and the Irish Human Rights and Equality Commission

Case status: Decided

Case number: [2022] IESC 25

Citation: M -v- The Minister for Foreign Affairs & anor [2022] IESC 25

Date of decision: 02/06/2022

State: Ireland

Court / UN Treaty Body: Supreme Court

Language(s) the decision is available in: English

Applicant's country of birth: Ireland {Republic}

Applicant's country of residence: Ireland {Republic}

Legal instruments: Other international law

Key aspects: Acquisition of nationality, Childhood statelessness, Deprivation of nationality

Relevant Legislative Provisions:

- Irish Nationality and Citizenship Act 1956
- Refugee Act 1996
- Immigration Act 2004
- Irish Nationality and Citizenship Act 2004
- Passport Act 2008
- International Protection Act 2015
- Arts. 9, 40.1 of the Constitution

Facts

The applicant (UM) was born in Ireland in 2013 to MM and MJ. MM, the father of the applicant, is an Afghan national who was granted refugee status in Ireland in 2006. MJ, the mother of the applicant entered the State in 2012 following a successful family reunification application. In 2012, it was discovered that MM failed to disclose in his application for asylum in Ireland that he had previously sought and been refused refugee status in the UK. MM's refugee status was revoked effective from 13th August 2013 in accordance with s. 21(1)(h) of the 1996 Refugee Act (since repealed but applicable in this case) as MM's status was based on false or misleading information.

Under ss. 6A and 6B of the Nationality and Citizenship Act, 1956, children born to non-Irish parents are entitled to citizenship if one of their parents has been resident in the island of Ireland for an aggregate of three of the previous four years. Reckonable residence under the 1956 Act excludes from calculation any residence contravening s. 5(1) of the Immigration Act, 2004, where an individual's residence in the State is contrary to the terms of their permission.

UM applied for a passport in 2014 on the basis that he was an Irish citizen, based on his father's residence in the State. The application was refused by the Minister of Foreign affairs and Trade. Having regard to the fact that his father's refugee status was revoked, the Minister was not satisfied that UM was an Irish citizen.

UM sought to quash the decision of the Minister and sought a declaration that he was an Irish citizen based on the fact that his father's refugee status was "in force" for reckonable period. The High Court and the Court of Appeal found in favour of the Minister and refused to quash the decision to refuse the passport application. In the Court of Appeal, it was held that the revocation of MM's refugee status rendered the declaration void *ab initio* and concluded that no benefit could flow from the permission procured through false or misleading representations. The applicant appealed to the Supreme Court.

Decision & Reasoning

Dunne J delivered the main judgement of the Supreme Court, rejecting the Court of Appeal's approach and allowed the appeal. Dunne J held that the revocation did not render MM's status void *ab initio* having regard to the Minister's discretion to refuse to revoke, if he or she considers it appropriate to do so. This discretion to revoke on the basis of false or misleading information furnished to the Commissioner is contained in section 21(1) of the Refugee Act 1996.

Dunne J noted that neither the statutory, framework for the revocation of citizenship nor the statutory framework for the revocation of refugee status provided for retrospective revocation.

Dunne J had regard to the meaning of "in force" as it appears in Section 5 of the Immigration Act 2004. The Court had regard to the phrase in determining that while the declaration is in force, it is valid and remains so unless and until revoked. This was also reflected in the acknowledgement by the respondents that while the declaration remained unrevoked, it could not be treated as being of no effect. The Court had regard to the relativity of the concept of invalidity in Irish law as outlined by O'Donnell J in the *Cullen* case. For all intents and purposes, the declaration of status, it was held 'was valid and effective for all purposes while it remained unrevoked' (para. 125).

Decision documents

[M -v- The Minister for Foreign Affairs & anor \[2022\] IESC 25.pdf](#)

Outcome

Appeal allowed.

Caselaw cited

Roberston v. The Governor of the Dochas Centre [2011] IEHC 24

G.O. & Ors. v. Minister for Justice, Equality and Law Reform [2008] IEHC 190

A.G.A.O. v. Minister for Justice [2007] 2 IR 492

Adegbuyi and Abramov v. Minister for Justice Equality and Law Reform [2012]

Rodis v. Minister for Justice, Equality and Law Reform [2016] IEHC 360

Sulaimon v. Minister for Justice, Equality and Law Reform [2012] IESC 63

B.K. v. Minister for Justice [2011] IEHC 526

Damache v. Minister for Justice and Equality [2021] 1 ILRM 121

A v. The Governor of Arbour Hill Prison [2006] 4 IR 88

Rottmann v. Freistaat Bayern (Case C-135/08), EU:C:2010:104, [2010] E.C.R. I-1449

Tjebbes and Others v Minister van Buitenlandse Zaken (Case C-227/17)

Kaur (Case C-192/99), EU:C:2001:106, [2001] E.C.R. I-1237

AP v. Minister for Justice [2019] 3 IR 317

The State (Goertz) v. Minister for Justice [1948] IR 45

Rodis v. Minister for Justice, Equality and Law Reform [2016] IEHC 360

Dunnes Stores v. Revenue Commissioners [2020] 3 IR 480

Walsh v. Minister for Justice & Others [2019] IESC 54

M.K.F.S v. The Minister for Justice and Equality [2018] IEHC 103

R v. Home Secretary ex parte Zamir [1980] AC 930

R (Kaziu, Bakijasi and Hysaj) v. Home Secretary [2018] 1 WLR 221

Cullen v. Wicklow County Manager [2010] IESC 49, at para. 19, [2011] 1 IR 152

Third party interventions

[The Irish Human Rights and Equality Commission Amicus Curiae](#)