THE HIGH COURT

2018 No. 268 JR

Between:

BIBI SHENAZ DOMUN, WAJIH SIDDIQI (A Minor Suing by his Mother and Next Friend BIBI SHENAZ DOMUN), IZHAAK SHAMS SUL HACK MYRAM (A Minor Suing by his Mother and Next Friend BIBI SHENAZ DOMUN), AND SHEEHANE MYRAM (A Minor Suing by her Mother and Next Friend BIBI SHENAZ DOMUN)

Applicants

– AND –

THE MINISTER FOR JUSTICE AND EQUALITY, ATTORNEY GENERAL AND IRELAND

Respondents

JUDGMENT of Mr Justice Max Barrett delivered on 19th November, 2018.

1. Ms Domun came to Ireland alone in 2009. She left two children in Mauritius in the care of her extended family. Save for holiday visits, she has not lived with them since. Around September 2016, Ms Domun applied for visas for those children to enter Ireland. The visas were refused in July 2017. Appeal was made. By letter of 09.01.2018, the Minister advised that this appeal was unsuccessful. Various reasons were offered by the Minister for his decisions. The applicants seek an order of *certiorari* quashing the initial/appeal decisions, an order of *mandamus* compelling the Minister to re-assess the appeal, a declaration that the decision-making process violated Art.41 of *Bunreacht na hÉireann*, and a declaration that the refusal to grant visas and the manner in which those decisions were made breach the rights of Ms Domun's youngest child as an Irish/EU citizen.

2. *Article 41*. The point raised in respect of Art.41 is that the extent to which the Minister relied on (a) the Department of Justice's *Policy Document on Non-EEA Family Reunification* (December 2016) and (b) Ms Domun's failure to meet the financial thresholds set out therein, without regard to (i) her particular circumstances and (ii) the fact that being a single homemaker she is unable to seek paid employment, breaches the State's duties under Art.41.2 of the *Bunreacht*. Unfortunately, even if one accepts that this contention is factually well-grounded, it must fail: there is nothing in Art.41.2 or related case-law which supports the proposition that Art.41.2 can confer immigration rights on non-EU/EEA nationals.

3. *Rigid and Inflexible Application of* Policy Document. Ms Domun claims that her personal circumstances are such that she cannot work outside the family home so as to earn an income that would surpass the financial thresholds identified in the *Policy Document* and that there has been an inflexible application of same. Two points arise. (1) Any fair reading of the decisions shows that all manner of factors were considered relevant to Ms Domun's circumstances. There is no suggestion in the decision that the Minister set his mind against Ms Domun solely because she is poor. However, the Minister is entitled to have regard to (and indicates in the *Policy Document*, 5, that he will have regard to) cost issues presenting. This yields the contentious consequence that poor people will find it harder to reunify families in Ireland than their wealthier counterparts. But that the Minister had regard to cost-issues in this case does not taint his decision at law. (2) When it comes to the *Policy Document*, there is nothing on the facts of this application to support the assertion that the Minister applied it rigorously/inflexibly. Every factor presented by Ms Domun was considered. There is nothing to suggest that if she had come up with some factor not anticipated by the *Policy Document* that decision-makers would have given that factor anything but a fair-minded consideration. There was no fettering of discretion in the creation of the *Policy Document* and there was no fettering of discretion in the consideration of Ms Domun's application, whether by reference to the *Policy Document* or otherwise.

4. *Article 8 Rights*. Complaint is made that the Article 8 ECHR rights of the second-named applicant were considered in a generic or generalised manner. This point was not raised on appeal and cannot now be raised. Had it fallen to be considered it would have been rejected: contrary to what the applicants contend, there is 'meaningful engagement' by the decision-makers with the Art.8 ECHR rights of the second-named applicant; the Art.8 ECHR rights were specifically considered, weighed and balanced, in a context where the general sense of the Minister (though not his unvarying or close-minded sense), as identified in the *Policy Document*, at 56, is that "*seeking to bring to Ireland…all siblings* [here half-siblings], *on the basis of the citizenship of a single minor would seem to go beyond what is reasonable, particularly if the State would be required to provide financial support for the family".*

5. *Best Interests*. The applicants complain that while the Minister stated himself to have considered the best interests of the second-named applicant, he did not identify those best interests. But "*save for exceptional circumstances*" (and the court does not see such circumstances here) "*the Minister is not required to inquire into matters other than those…sent to him"* (*Oguekwe v. Minister for Justice* [2008] 3 IR 795, 822) *i.e*. there is no positive obligation on the Minister to identify the best interests of the second-named applicant. The second-named applicant is in Ms Domun's custody, she has made an application in which she identifies what she considers are his best interests; it is not for the Minister to supplant her views in this regard. Neither, conversely, is there an obligation on the Minister to give effect to what Ms Domun claims is in the best interests of the second-named applicant. The latter's best interests are, per the *Policy Document*, 37, "*a key consideration*", not the sole consideration. There is nothing in the impugned decisions to suggest that decision-makers did not attach due weight to the best interests of the second-named applicant, as identified by his custodial parent, in reaching their decisions.

6. *Dependency*. It was argued at hearing that because the *Policy Document*, 36, refers to a person over 18 years of age being "*permitted to apply* [for reunification] *where he/she is dependant on the care of a parent sponsor"* and then refers, at 37, to the "*best interests*" of a child being "*a key consideration*" in cases involving a child (without reference to dependency), it follows that there is no need to show dependency of a minor child. It seems to the court, with respect, that the applicants are mistaken in this regard: the *Policy Document*, 39, states that "*A minor child living with its parents will be automatically assumed to be their dependant*"; it follows as a matter of logic that a minor child not living with its parents will not automatically be assumed to be dependant.

7. *Fatal Flaw*. There is a fatal flaw to the within application. Various of the reasons offered in the impugned decisions for those decisions are unchallenged. The inexorable consequence of this fact is that the Minister's decisions to refuse the visas must and will stand, regardless of any view that the court has as to such other grounds as have been raised by the applicants. There may be circumstances in which a decision-maker could offer good grounds for a decision but that decision might nonetheless fall, *e.g.*, if the decision-maker was guilty of corruption or partiality, but absolutely nothing of the sort presents or has even been alleged here. Instead the court is confronted with two reasoned decisions, impartially rendered, which offer a variety of independent, stand-alone reasons for refusing the visas, some of which reasons have never been challenged.

8. *Replication*. Some criticism has been levelled at the decision-makers because there was replication of text under the various headings of their decisions. Decision-makers are not required to bring literary greatness to the drafting of decisions; it is inevitable that in a decision which deals with overlapping points that there will be some replication of response; there is no obligation on decision-makers to devise different ways of saying much the same thing.

9. For the reasons set out above, all of the reliefs sought in the within application are respectfully refused.