THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 676 J.R.]

BETWEEN

XI MEI LIN

AND

XING JIAN ZHENG

AND

XIN YI LIN (A MINOR SUING BY HER MOTHER AND NEXT FRIEND XI MEI LIN)

AND

ZOE XIN YUE ZHENG (A MINOR SUING BY HER MOTHER AND NEXT FRIEND XI MEI LIN)

APPLICANTS

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

(No. 2)

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 10th day of November, 2017

1. The second named applicant arrived in Ireland in 2003 without permission. The first named applicant arrived in 2009, also without permission. The third and fourth named applicants are children of the first and second named applicants, born in 2011 and 2016. The parents have been self-employed, running a Chinese restaurant since May, 2015.

2. I am dealing in this judgment with a challenge to deportation orders made in respect of the applicants and I have heard helpful submissions from Mr. Conor Power S.C. (with Mr. James Buckley B.L.) for the applicants and Mr. Oisín Quinn S.C. (with Ms. Kilda Mooney B.L.) for the respondent. I granted leave on 21st November, 2016 (*Xi Mei Lin v. Minister for Justice and Equality (No. 1)* [2016] IEHC 670) on narrower grounds than originally sought, and essentially on two points relating firstly to an alleged factual error and secondly, in relation to service on one of the children.

3. The respondent is not pressing an objection regarding extension of time so I will extend time and I am grateful to Mr. Quinn for the practical approach adopted. In addition, the respondent is not pressing an objection that the applicants should be denied relief due their unlawful presence in the State, and again I am grateful to Mr. Quinn in that regard.

4. On the factual error point, both analyses of file in respect of each of the parents are constructed on the basis that the employment prospects of the parents are to be assessed in terms of paid employment. There was a very faint suggestion by Mr. Quinn that the applicants set up a company and were therefore technically employees but that, it seems to me, is something of a creative and imaginative reprogramming of the actual decision. The decision is framed in terms of taking up a post of employment by way of displacing an Irish or EU national. That reasoning does not cover a situation where an applicant sets up a company and is principal of such company. The point is also made on behalf of the respondent that the parents' self- employment, to call it that, was unlawful but that does not get the respondent too far because the Minister is still obliged to assess the employment prospects of the applicants in a rational manner bearing in mind their work history, whether lawful or unlawful. Whether you call it misunderstanding, factual error or irrationality, it seems to me that the analysis in this case does not deal with the actual facts of the case given that the parents are effectively self-employed. Therefore there is an error in the reasoning process.

5. There is some passing reference to the Minister having considered submissions made and noting the establishment of their business, and that might have been acceptable had the Minister not gone on to refer expressly to their only prospects being by way of employment to the exclusion of an Irish or an EU national. Given that latter finding, it seems to me that there is an error in the reasoning process and that the Immigration Act 1999 is not functioning in this case as envisaged by the legislature. It is suggested by Mr. Quinn that the error is severable because it is said to be minor in the overall context; but it seems to me to be an important issue on the facts of this particular case. More generally, as stressed in *N.V.H. v. Minister for Justice and Equality* [2017] IESC 35 [2017] 1 I.L.R.M. 105 (at para. 17, *per* O'Donnell J.), the freedom to work is a fundamental part of human personality. Errors in relation to employment prospects might not necessarily be fatal in every case but come into focus where the employment issue is central to the decision and where, on particular facts, the applicants have a clear position of employment or self-employment which was not properly considered. The assessment of the parents' situation here clearly has a knock-on effect on the deportation orders in relation to the children. So in the circumstances of the present case, and on this fact-specific issue, I find for the applicants and uphold grounds E (i) and (ii) of the statement of grounds. It is therefore not necessary to make any decision relating to the alleged defect in service.

Order

6. The order therefore will be:

> (i). that there be an order of *certiorari* removing for the purpose of being quashed the deportation orders relating to the applicants in terms of paragraph D (i) of the statement of grounds; and
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> (ii). that costs be awarded to the applicants including reserved costs to be taxed in default of agreement on the basis that it was appropriate for the applicants to have had solicitors and two counsel.