

Between:

MUHAMMAD BILAL ASHRAF, SOBIA SALEEM, MUHAMMAD HANASH BILAL and ANUSH BILAL (the 3rd and 4th applicants are minors suing by their next friend SOBIA SALEEM)

Applicants

– and –

MINISTER FOR JUSTICE AND EQUALITY

Respondent

JUDGMENT of Mr Justice Max Barrett delivered on 21st December, 2018.

1. Mr Ashraf, a Pakistani gentleman resident in Pakistan, has obtained a critical skills employment permit (CSEP) from the Department of Business, Enterprise and Innovation (DBEI). Since receiving same, he, his wife and minor children have applied for long-stay visas which have been refused by the respondent. Failed appeals have followed. The applicants seek, *inter alia*, orders of *certiorari* in respect of the appeal decisions. The respondent enjoys wide discretion when exercising executive power in immigration matters (*Olakunori v. Minister for Justice, Equality and Law Reform* [2016] IEHC 473), but he is subject to judicial review. Deficiencies present in Mr Ashraf's refusal on appeal which states, *inter alia*, that he:

(i) "*has not provided a six month detailed bank statement*". This is not correct.

(ii) "*has not supplied any evidence of experience of working in a similar capacity*". A copy of the CSEP was supplied. DBEI guidance on CSEPs states, consistent with the Employment Permits Act 2006, that applicants "*must possess the... experience...required for...employment*". So a CSEP is a form of evidence of experience.

(iii) "*may branch into the...UK*". Assuming this means that Mr Ashraf might seek to enter the UK, so too might any third country national present here. To paraphrase *TAR v. Minister for Justice, Equality and Defence* [2014] IEHC 385, para.27, the court cannot determine accurately what this reason means in the context of Mr Ashraf's application.

2. Points (i) and (ii) show that the respondent did not consider all the evidence before him and/or did not appreciate certain evidence for what it was. (Point (iii) is a further deficiency, though of a different nature). Appeals must be considered on all duly submitted evidence, with that evidence being understood for what it is. The court will therefore grant the order of *certiorari* that Mr Ashraf seeks.

3. The first ground for refusing Ms Saleem's appeal is that Mr Ashraf's application failed. Other reasons were offered (including a Point (iii) point in respect of her). Given the deficiencies presenting as regards Mr Ashraf's appeal, an order of *certiorari* will follow for Ms Saleem. As to the children, their appeals failed because their parents' appeals failed. So an order of *certiorari* will also issue in respect of their appeals.

4. The court does not accept that because the applicants can make fresh application, they enjoy an alternative remedy. The alternative remedy concept derives from the idea that judicial relief should be a remedy of last resort in any one administrative process; in this case it is.