

**THE HIGH COURT**

**JUDICIAL REVIEW**

**[2012/674JR]**

**VEIT KUHN, RANIA KUHN, IBRAHIM KHALIL ZAKRI, NAVAL BAHIG MARKUS MEKHAEL, AND MARGARET IBRAHIM ATA KHALIL  
AND MARY IBRAHIM ATA KHALIL**

**APPLICANTS**

**AND**

**THE MINISTER FOR JUSTICE AND EQUALITY AND THE MINISTER FOR FOREIGN AFFAIRS**

**RESPONDENTS**

**JUDGMENT of Mr. Justice Mac Eochaidh delivered on the 22nd day of August 2013**

1. The first named applicant is a German national who lives in Ireland and is married to the second named applicant who is Egyptian. During the course of the decisions challenged in these proceedings she became an Irish citizen (14th June 2012). They operate a piano tuning and repair business. The third and fourth named applicants are Egyptian citizens who are the parents of the second named applicant. The fifth and sixth named applicants are also Egyptian nationals and are the adult sisters of the second named applicant. (For ease of reference the first and second named applicants will sometimes be referred to as 'the Irish based family' and the other applicants as 'the Egyptian based family'.)

2. On 11th May 2010, the Egyptian based family applied to the Embassy of Ireland in Cairo for a short stay visa (C-class). On 12th and 13th May 2010, these visas were refused. The decision was appealed and on 25th May 2010, the appeals were unsuccessful in respect of the fifth and sixth named applicants (the sisters). The appeals in respect of the third and fourth named applicants (the parents) were upheld and short stay visas were granted to the parents valid from 26th May 2010 to 25th August 2010.

3. Further applications for visas were made the following year in August 2011. Both long stay (D-class visas) and short stay (C-class visas) were sought in respect of the parents and the sisters. On 22nd September 2011, the family was informed that the applications had been refused because the applicants had not provided sufficient documentation to satisfy the Visa Officer that they had sufficiently strong obligations to return to Egypt after their intended trip to Ireland, in relation to their short stay visa application, and had failed to show dependence on an EU citizen in relation to their long stay visa applications.

4. There being no restriction on the number of visa applications a person can make, the parents again applied for short stay and long stay visas on 6th February 2012, culminating in unsuccessful appeals dated 8th and 9th July 2012. In essence, the officials in the Visa section in the Irish Embassy in Abu Dhabi did not accept that the second named applicant's parents were financially dependent on the Irish based family and it was not accepted that rights under Article 8 of the ECHR and Article 41 of the Constitution had been engaged.

5. The second named applicant's sisters also made new applications for short stay and long stay visas on 6th February 2012, and refusals were ultimately communicated to the unsuccessful applicants on 9th July 2012 on the basis that the sisters were not financially dependent on the Irish based family. Neither was it accepted that rights under Article 8 of the ECHR and Article 41 of the Constitution were not engaged.

6. Leave to seek judicial review was granted on 30th July 2012 by Cooke J. to permit the applicants to request *certiorari* of the decisions refusing the D class and C class visas for the family in Cairo. The applicants were also granted leave to seek a declaration that by refusing to provide the visas to the applicants, the State had not complied with Article 5(2) and Article 5(4) of Directive 2004/38/EC and a declaration that through its misapplication of the dependence test in respect of the third and fourth applicants, the State is in breach of Article 2(2)(d) together with Article 3(1) of Directive 2004/38/EC.

7. When the matter came on for hearing on 24th January 2013, I suggested that the respondents should have an opportunity to consider the impact, if any, of the naturalisation of the second named applicant as this had not been expressly communicated to the respondent. On 1st February 2013, a further application was made online for long term visas only. Written submissions with enclosures supporting the application were delivered by the applicants' solicitors. The applications were considered by the Visa office in the Irish Embassy in Abu Dhabi. On 10th April 2013, the Egyptian based family was advised by letters that their appeals against refusal were unsuccessful.

8. On 16th April 2013, an order was made amending the statement of grounds to incorporate the latest appeal decisions and the parties have consented to a telescoped hearing in relation to the leave aspect of these amendments. Two broad challenges against the relevant decisions of the respondents and their officials are pursued. The applicants claim to be beneficiaries of EU rights deriving from Council Directive 2004/38/EC (the 'Citizens Directive') and the applicants also claim to be the beneficiaries of constitutional rights flowing from the position of the second named applicant, who is now an Irish citizen.

**The Citizens Directive**

9. The Citizens Directive deals with the rights of citizens of the Union and their family members to move and reside freely within the territory of the Union. In simple terms, the Directive guarantees the right of movement and residence in the European Economic Area (being the Union and certain non-Union territories) provided persons will not be a burden on the country of residence and that they have comprehensive health insurance. As can be seen from Article 1, rights are conferred equally on Union citizens and their family members. Article 1 provides:

"This Directive lays down:

(a) the conditions governing the exercise of the right of free movement and residence within the territory of the Member States by Union citizens and their family members;

(b) the right of permanent residence in the territory of the Member States for Union citizens and their family members;

c) the limits placed on the rights set out in (a) and (b) and grounds of public policy, public security or public health."

10. Article 2(2) of the Directive provides that the qualifying family member of a Union citizen is that person's spouse, long term partner or direct descendants who are dependants (or the under 21 year old child or dependent child of the Union citizen's spouse or partner) and, importantly for these proceedings, a family member includes "the dependant direct relatives in the ascending line and those of the spouse or partner". It is this provision which relates to the second named applicant's parents. Article 3 extends the category of persons who may enter and reside in the host State chosen by the Union citizen. This extended category is described at Article 3(2)(a):

"any other family members, irrespective of their nationality, not falling under the definition in point two of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen;"

11. The last line of Article 3 is also significant for these proceedings and it provides:

"The host Member State shall undertake an extensive examination of the personal circumstances and shall justify any denial of entry or residence to these people."

12. Neither the Directive nor the domestic implementing measure provide a definition of dependence. The Court of Justice was asked about the meaning of the concept in a *Jia v. Magrationsverket* (Case-1/05) [2007] 1 KB 545. In that case a Chinese national married to a German national residing in Sweden applied for a Resident's Permit in Sweden for his retired Chinese mother. The visa was refused on the ground that there was insufficient proof of her financial dependence on her son and daughter-in-law. Questions were referred to the Court of Justice as to what was the meaning of "dependant" in the Directive.

13. Advocate General Geelhoed noted that in Case-316/85 [1987] ECR 2811, para. 22 (known as *Lebon*), the ECJ ruled that the status of the dependant member of a worker's family:

"is the result of a factual situation, namely, the provision of support by the worker, without there being any need to determine the reasons for recourse to the workers support, or to raise the question whether the person concerned is able to support himself by taking up paid employment."

14. The Advocate General noted that this observation was repeated in *Chen v. Secretary of State for the Home Department* (Case C-200/02) [2005] QB 325, where, in the context of Directive 90/364 (on rights of residence), the court had observed that the status of a dependant member of the family of a holder of a right of residence "is the result of a factual situation characterised by the fact that material support for the family member is provided by the holder of the right of residence". Those observations by the Advocate General and the *dicta* from the *Lebon* and *Chen* cases indicate an assessment of dependence by reference to the fact that support is given by one person to another regardless of the effect of the support. The language does not enquire as to whether the support is needed to improve living standards or to maintain existence. However, the Advocate General goes on to say:

"[95] That being said, in a case such as that in the main proceedings, where dependency is a criterion for establishing the right of a third national to reside with a Community citizen in a Member State, it does seem necessary for it to be established that there is indeed an actual need for financial support and that is attested to by adequate documentary evidence.

[96] As such, whether or not the condition of dependency is fulfilled should be determined objectively, taking account of the individual circumstances and personal needs of the person requiring support. It would seem to me that the appropriate test in this regard is primarily whether, in the light of those personal circumstances, the dependant's financial means permit him to live at the minimum level of subsistence in the country of his normal residence, assuming that is not the Member State in which he is seeking to reside. In addition, it should be established that that is not a temporary situation, but that it is structural in character."

15. The Advocate General's Opinion thus marks a transition from dependence being established by the mere fact of support to dependence being established by reference to a proven need of financial support and proof of that need by documentary evidence. The Grand Chamber echoed the analysis of the Advocate General but adopted a slightly different approach. The court said:

"37. In order to determine whether the relatives in the ascending line of the spouse of a Community national are dependant on the latter, the host Member State must assess whether, having regard to their financial and social conditions, they are not in a position to support themselves. The need for material support must exist in the State of origin of those relatives ..."

16. As to the precise meaning of the provision in Directive 73/148, the court said that the Directive:

"... is to be interpreted to the effect that 'dependent on them' means that members of the family of a Community national established in another Member State within the meaning of Article 43 need the material support of that Community national or his or her spouse in order to meet their essential needs in the State of origin of those family members or the State from which they have come at the time when they applied to join the Community national. [emphasis added] Article 6(b) of that Directive must be interpreted as meaning that proof of the need for material support may be adduced by any appropriate means ..."

17. Before I proceed to examine the final visa appeals I wish to comment upon an aspect of the *Jia* test. In the English language version of the decision of the ECJ, the heart of the test appears to be whether the financial assistance is needed "in order to meet their essential needs". The question which arises is what does the verb "to meet" mean? In its ordinary meaning, to meet someone's expenses means to pay all of the expenses and not simply to make a contribution.

18. In the German language version of *Jia*, the verb deployed for "to meet their essential needs" is "um seine Grundbedürfnisse ... zu decken". The verb "zu decken" translates as "to cover". Thus, the German language version of the test suggests that the financial assistance is needed to cover or to meet all of the costs of essential needs. The French language version of *Jia* suggests a slightly different meaning and its text is "de nécessiter le soutien matériel. ... afin de subvenir à ses besoins essentiels ...". The sense of the words "de subvenir à" is more suggestive of supporting or making a subvention or a contribution to the essential needs. If I

interpreted the test as meaning that dependence requires that assistance be given for all of a person's essential needs, this would greatly restrict the category of persons entitled to claim to be dependants. Only persons who could prove that they were reliant for all of their food and shelter and any other essentials would ever qualify and this, in my view, could not have been the intended effect of the test announced in *Jia*. Such a restrictive test could only be designed by the European legislator and it has not given any indication of such an extreme restriction on the concept of dependence.

19. In my view, the *Jia* decision marks a shift from dependence which was found to exist merely where support is given, to dependence being based upon the need for assistance with the provision of the essentials of life. Neither the European Court of Justice nor the European legislator nor the Irish legislator has ever identified exactly how much support is required to be given to the recipient in order for that person to be said to be dependant on the European based donor. My view is that where outside help is needed for the essentials of life (for example, enough food and shelter to sustain life) then regardless of how small that assistance is, if it is needed to attain the minimum level to obtain the essentials, then that is enough to establish that the recipient is dependent. (The essentials of life will vary from case to case: expensive drugs maybe an essential for someone who is ill, for example.)

20. In these proceedings, the parties agree that the correct test for dependence is to be found in *Jia*. Thus, in accordance with paras. 37 and 43 of *Jia*, my task is to see if the various officials processing the many applications and appeals assessed whether the Egyptian based family require the material support of the Irish based family "in order to meet their essential needs" in Egypt. At the heart of these proceedings is the allegation that the test in *Jia* was misapplied by the respondents.

21. Starting with the applications for visas made on 6th February 2012, a 22-page submission was made by the applicants' solicitor on 29th February 2012. The submission says that:

"[The Irish family] would like to ensure that [the Egyptian family] who are dependant on them, are facilitated in entering the State. They would also like [the Egyptian family] to remain in the State for more than three months."

22. By reference to earlier applications for visas, information on the financial situation of the Egyptian based family was submitted and the following case is made:

"Other than the money provided by [the Irish based family] the [Egyptian based family's] only source of income is a pension of 1197 EGP per month. The provided certified copies of bank statements for the applicant show the extent of his bank balance.

The [Egyptian family's] living expenses for the entire family total 3320 EGP. These are set out in the attached Schedule. We are also enclosing vouching documentation.

[Ibrahim] the Egyptian based father is dependent on the money transfers from [the Irish based family]. Without them, he would not be able to maintain his basic living conditions for himself and the rest of the family in Egypt.

We draw your attention, in particular, to the fact that [the Irish based family] had been supporting [the Egyptian parents] regularly since 2005. It will be further be evidence [sic] from a comparison of our client's bank accounts that [the Irish family] have adequate finances to support [the Egyptian parents] while the Egyptian parents, without their own finances, need financial support, which is provided by [the Irish family]."

23. Having referred to evidence of other monetary transfers from Ireland to Cairo, the submission also stated:

".....as the parents of Mrs. Kuhn, are direct relatives of the spouse of the Union citizen in the ascending line. We respectfully submit that dependence is a matter of fact. The relevant criterion is whether the family members are supported by the EU citizen and his spouse. Ibrahim and Nawal are, as a matter of fact, dependant on Mr. and Mrs. Kuhn."

24. The last quoted section from the submission is very similar to the description of dependence identified by the Advocate General in the *Jia*, *Chen* and *Lebon* judgments. In other words, it suggests that the fact that support is given by the Irish family to the Egyptian family establishes dependence.

25. As we have seen from the decision of the ECJ, the mere fact that support is given does not establish dependence. However, it is important to note that the submission clearly asserts that without the support from the Irish family, basic living conditions could not be maintained for the Egyptian family. Although the submission made does not refer to the definition of dependence in the *Jia* case, that assertion, whether by accident or design, is very close, if not indistinguishable from the language at para. 43 of the *Jia* judgment.

26. The second half of the submission made by the second named applicant's solicitors related to her sisters. It is asserted that the sisters are permitted family members within the meaning of Regulation 2 of the EC (Free Movement of Persons) (No. 2) Regulations 2006. Their dependence is asserted as deriving from the dependence of their parents as they in turn, it is said, are dependant on the parents. The sisters, it is noted, are, for various reasons which have been explained, no longer working. In addition to explaining why the sisters are financially dependant via their parents on the Irish based family, an argument is also made regarding the security situation in Egypt and the dangers facing Coptic Christian women on the streets of Cairo. This submission notes:

"In all these circumstances, it is submitted that it is clear that Mary and Margaret are, as a matter of fact, dependent upon [the Irish family] for emotional, spiritual, familial and moral support, and protection, as well as practical financial support."

27. By letter of 25th May 2012, the applicants' solicitor appealed the first instance refusals in another detailed 25-page submission and accompanying documents. The case in favour of the grant of visas previously made is repeated. The central claim made on the appeal was:

"The [Egyptian family] are dependant on the money transfers from [the Irish family]. Without them, they would not be able to maintain their basic living conditions for herself and the rest of the family in Egypt. [emphasis in original]

The appeal in the next paragraph stated:

"It is respectfully submitted that dependence has been shown and that an examination of the outgoings of the [Egyptian

family] against the income, clearly shows a financial dependence on the [Irish family]."

28. At page 9 of the submission, and in particular in respect of the mother and father in Egypt, the following submission was made:

"[The mother and father] are dependent on the money transfers from [the Irish family]. Without them, they would not be able to maintain their basic living conditions in Egypt. It is not the case as was advanced in the decision that this money merely assists in them having a higher standard of living. The reality is such that the [Egyptian family] would not be able to survive or manage a basic standard of living without the financial assistance of the [Irish family]."

29. In my opinion, that sentence was of critical importance. Though the submission did not in terms identify the *Jia* test, there can be no doubt but that the degree of dependence and the reasons for which the financial assistance is needed as described in that sentence meets the test in *Jia*, provided the decision maker accepts the evidence adduced in support of the asserted facts.

30. At hearing, it was argued by the respondent that the sisters in Cairo are not the sisters of a Union citizen and therefore not members of the family of a Union citizen. The sisters are sisters of a Union citizen's spouse. This was not the basis upon which the sisters' applications for visas was rejected and therefore I am not required to decide whether a Union citizen's sisters-in-law could be deemed to be "any other family member". That is a matter for another day.

31. The appeals lodged against the refusal of the visa applications were unsuccessful and the reasons for the refusal are set out in the following passage:

"I have assessed the additional documentation submitted at appeal by your solicitors ... considering this evidence, I find you have not shown that you are a dependant parent of your daughter, Rania Kuhn, in Ireland and therefore a qualifying member of the EU citizen's family. I also find that you have not shown sufficient evidence that you are a permitted family member of the EU citizen and a dependant of Mr. Kuhn. The additional documentation does not provide sufficient evidence that you are a member of the EU citizen's household. Therefore, your appeal has not established to a sufficient degree of proof that you are a permitted or qualifying family member of an EU citizen and in accordance with the relevant Directive and Regulations. I affirm the findings laid out in the Article 8/41 determination by Mr. Garret Hardogan assessing the basis for the proposition that you are a dependant member of the EU household. Only one appeal per application is permitted."

32. Notwithstanding that the applicants in the clearest terms stated that they were dependent on the Irish family for their basic living conditions, this claim is not analysed. In my view, the appeal decision maker was, at a minimum, required to identify the definition, such as it is, of the concept of dependence as identified in the *Jia* case. Further, the official was required to apply that test to the assertions and facts advanced on behalf of the applicants. Any lawful analysis of a claim of dependence arising under the Citizens Directive must ask a fundamental question: is financial assistance given by a Union citizen and/or his spouse to a qualifying person to meet their essential needs? Nothing short of that analysis will suffice.

33. The case made by the applicant is that the test in *Jia* was misapplied. My view is that there is no evidence that the test was applied in this decision just quoted. The analysis of the concept of dependence made at first instance by Mr. Hargadon is expressly adopted by the decision maker on appeal such that any error which was contained in Mr. Hargadon's analysis infected the appeal.

34. During the course of these proceedings, the second named applicant became an Irish citizen and the case was adjourned to permit a fresh application for family reunification/long-term visa applications to be made at the Irish Embassy in Cairo. The essence of the case advanced arising on citizenship was expressed as follows by the applicants' solicitors:

"In this regard we make further reference to the decisions of the High Court in *O'Leary and Ors. v. The Minister for Justice, Equality and Law Reform* [2012] IEHC 80, and [2011] IEHC 256. The dependence referred to in *O'Leary* is broad in nature. The Kuhn support of the Khalils is financial, emotional and includes a desire to reduce vulnerability of family members owing to the medical needs of Mr. Khalil and the security needs of the family as a whole as Coptic Christians in Egypt. Country of origin information has been previously submitted in regard to this issue."

35. It is noteworthy that in addition to the Irish case law, the submission, for the first time, quotes the test as to dependence from *Jia*. This submission indicated that further financial assistance had been given in the period intervening between the refusal of the appeals in July 2012 and these fresh applications in the spring of 2013.

36. By email and attachment of 7th March 2013, the first instance refusal decisions were communicated by the Visa section of the Embassy of Ireland in Cairo. The reasons given in the refusal are as follows:

"The applicant has failed to show that she is a qualifying member of an EU citizen in accordance with the relevant Regulations and Directive. In order to show that a person is a qualifying family member, they must show sufficient evidence of dependence on the EU citizen or the spouse of the EU citizen. But the applicant has also failed to show that she is dependant on her Irish citizen family member. Having fully considered all documentation submitted in respect of the applicant, it has been determined that the applicant has failed to show sufficient evidence of dependence on an EU citizen or the spouse of an EU citizen. It has also been determined that the applicant has not shown sufficient evidence of dependence on her Irish citizen family member. The applicant's case has also been considered with regard to Article 8 of the European Convention on Human Rights and Article 41 of the Constitution of Ireland, 1937. Enclosed is a copy of this office's written consideration."

37. It must be recalled that the person to whom this letter is addressed is Mrs. Kuhn's mother. She is undoubtedly a qualifying family member in the bloodline and it is clear that the reason for the rejection of the application "is that she is not dependant on her Irish citizen family member" and not dependant on the EU citizen or spouse of the EU citizen. A letter in the same vein was written in respect of Mrs. Kuhn's father and in addition in respect of her two sisters. Accompanying these letters was a detailed assessment of claims again signed by Mr. Hargadon of the Irish Embassy in Abu Dhabi.

38. Bold text at the beginning of the consideration by Mr. Hargadon summarises the case made on behalf of the Egyptian family as follows:

**"It is submitted that the above named Egyptian citizen visa applicants are dependent on Irish citizen, Rania Kuhn nee Ibrahim Ata Khalil and her husband, Veit Kuhn, a German citizen, and are entitled to visas allowing them to enter and reside in Ireland on the basis of EU Directive 2004/38/EC. The applicants' legal representatives have also requested that their submissions contained with their**

**correspondence dated 25/05 in relation to Mrs. Kuhn's Irish citizenship be addressed by the Minister. Mrs. Kuhn became a naturalised citizen on 14/06/2012."**

39. Thus, it is clear that in the assessment which was carried out, both EU rights and Irish constitutional rights pertaining to the family of an Irish citizen were analysed. It is fair to say that Mr. Hargadon on this occasion comprehensively reassesses every conceivable aspect of the claim advanced on behalf of the Cairo based family. Mr. Conlan Smyth B.L. argues that this treatment by Mr. Hargadon expresses 13 reasons for the rejection of the applications. To this, Ms. McDonagh S.C. responds that the decision failed to explain why the family in Cairo is not financially dependent on the family in Ireland.

40. Mr. Hargadon evaluates the claim for financial dependence based on the figures provided of monthly income of approximately EGP 2,200 as against monthly expenses of EGP 3,420 and the submission that the Irish family's contributions make up the difference. A striking feature of Mr. Hargadon's decision on this occasion is the detailed criticisms or negative comment he makes about the state of the documentary information. The first of these is as follows:

"In previous submissions dated 29/02/2012, it is claimed that Mr. Kuhn left €2,000 with the Khalil family in 2007 when he visited Egypt with Mrs. Kuhn. Mrs. Kuhn sent €500 to the family through a friend during the period 2010 to 2011 and Mr. and Mrs. Kuhn also sent €280 to the Khalil family through a friend in February 2012. However, insufficient documentary evidence has been submitted to substantiate any of these claims."

41. The second criticism is that the bank balances of the applicants are indicated only to 25th May 2012, and that the information has not been updated in respect of the current visa applications. The third criticism is that confirmation has not been submitted to support the alleged fact that the sisters are no longer in employment. The fourth criticism mentioned is that a claim by a family friend that he travelled to Egypt in 2011 and June 2012 and gave sums of money from Mrs. Kuhn to the Egyptian family is not supported by documentary evidence. The fifth matter mentioned, apparently by way of criticism, is the same as the third *i.e.* absence of documentary evidence that the sisters have lost their employment. The sixth criticism, also related to the third and fifth issue, is that there was insufficient explanation as to why the sisters were unable to obtain such documentation. The seventh matter is also a further version of this complaint about the sisters and their unemployed state. The eighth matter mentions that no documentary evidence has been submitted in respect of persecutory acts allegedly suffered by the sisters in 2010 and 2011. This is also mentioned in the ninth issue. At issue number ten, it is said that the statements as to the persecution in Egypt and the general security situation is very general in nature. At page 3 of the assessment of the applicants' claims, and almost hidden amongst the various negative comments made about the application as to the absence of documentary proof of various matters, the following statement appears:

"In relation to the above claimed shortfall in income as against expenses, it is important to note that the most recent bank statements submitted in respect of the Khalil family (May 2012) show available finances."

42. This theme is taken up again on page 6 of the 7 page assessment where Mr. Hargadon states:

"While it is clear that Mr. and Mrs. Kuhn have provided the Khalil family with financial support on a number of occasions, it is also clear that [the parents] are both in receipt of pensions and their daughters ... both possess savings."

43. The decision maker also notes that the parents appear to have sold their apartment in Cairo to the sisters and it is noted that:

"It is reasonable to presume that [the sisters] are still the owners of this property and this weakens the claim that the family would be unable to maintain themselves in Cairo."

44. In the next paragraph, Mr. Hargadon appears to set out what he refers to as "the critical question" as follows:

"While it is accepted that financial support that the [Egyptian family] receives from [the Irish family] is welcome and may assist them in having a higher standard of living in Egypt, the critical question is whether it is essential for their support as opposed to being merely welcome. On the basis of the evidence, a financial dependence submitted as outlined above, it is not accepted this has been shown. Furthermore, it is not accepted that the Khalil family is dependent on Mrs. Kuhn and her husband, Veit Kuhn, to the extent that they are precluded from completely independent living such that they are socially dependent on them."

This appears to be the first reason for the refusal.

45. In the next paragraph, Mr. Hargadon says that the Egyptian family:

"Have failed to show sufficient documentary evidence to show that they are qualifying members of an EU citizen or the spouse of an EU citizen in accordance with the relevant Regulations and the EU Directive."

This appears to be the second reason and refers to a failure to prove a set of circumstances rather than an opinion that the circumstances if proved would be insufficient to establish dependence, which appears to be the first stated reason. This same finding is repeated in respect of the two sisters.

46. Dealing, apparently, with the claim made by Mrs. Kuhn's alleged constitutional right to reunify with her family, Mr. Hargadon states:

"While their support is undoubtedly welcomed by the Khalil family and may assist them in having a higher standard of living in Egypt, the critical issue is whether these instances of financial assistance are essential for the Khalil family's support as opposed to being merely welcome. On the basis of the evidence of financial dependence submitted, as outlined previously in this submission, it is not accepted this has been shown."

47. From the foregoing, it is clear that the claim under the Citizens Directive and the claim under Irish constitutional law are dealt with in precisely the same manner. The decision maker decides that the family in Cairo failed to show that the assistance they received from Ireland is essential "for the family's support". It is true to say that Mr. Hargadon spells out in some detail deficiencies in documentary evidence submitted in support of the case as to financial dependence. However, the decision cannot be read as one where the claim that the Egyptian family are dependants is rejected for want of supporting documentation. On any fair interpretation of the decision, Mr. Hargadon comes to the firm view that the persons claiming to be dependants failed to show that the assistance they receive from Ireland "is essential for their support". Even assuming that to be the correct test (and I note that this is not the

precise language of *Jia*) the decision maker never offers any analysis of the monthly shortfall of approximately EGP 1,500.

48. Mr. Hargadon does not decide that dependence does not exist where it is established that there are savings available to meet a monthly shortfall. The sisters have savings which would permit the family to meet this monthly shortfall for a number of years. However, this was not stated to be the reason why Mr. Hargadon came to the view that financial dependence had not been established. By letter of 14th March 2013, in what appears to be an unending series of applications and appeals, a further appeal was made against the recommendation of Mr. Hargadon.

49. The decisions on appeal from the March 2013 decisions offer nothing new and to my mind create no new illegality. They are endorsements of the first instance decision in March 2013 and therefore the legality of the appeal decisions fall to be determined by reference to the first instance decision.

### **Conclusion**

50. The decision makers repeatedly failed to refer to the proper test by which dependence should be evaluated under EU law. The applicant made the case that the Cairo based family was dependent upon the Irish family for the essentials of life. Though the officials engaged with this concept, they never set out the *Jia* test, even in the decisions taken in 2013.

51. Multiple reasons were expressed as to why there were shortcomings in documentation but these were never stated to be the reasons why the application was flawed or had to be refused. The Hargadon decisions of March 2013 are the height of the decision making process (endorsed on appeal) and these simply state that the Egyptian family failed to show that they require financial assistance from Ireland for the essentials of life. The decision maker does not say that this failure lies in bad documentation - though that criticism is clearly made.

52. The Egyptian family are left in the dark as to why the assistance they receive to meet the monthly difference between income and expenditure is not evidence of dependence. One would have thought that if the decision makers believed that the shortfall nonetheless left the Egyptian family with enough to survive every month and that EGP 2,000 was enough for this family of four, then this should have been stated with reasons attached. If the decision maker believed that the savings of the sisters' made up the monthly shortfall in income, then this too should have been stated.

53. If asserted facts are not established because documentation is inadequate then this should be stated in the clearest terms. Proceeding to determine the existence or non-existence of dependence in circumstance where one has a view that the documentation is inadequate is likely to lead to a very confusing decision. It is to be recalled that the standard required of decision makers has been set out by Murray C.J. in *Meadows v. Minister for Justice, Equality and Law Reform* [2010] IESC 3, who stated:

"An administrative decision affecting the rights and obligations of persons should at least disclose the essential rationale on foot of which the decision is taken. That rationale should be patent from the terms of the decision or capable of being inferred from its terms and its context.

Unless that is so then the constitutional right to access to the Courts to have the legality of an administrative decision judicially reviewed could be rendered either pointless or so circumscribed as to be unacceptably ineffective

In my view the decision of the Minister in the terms couched is so vague and indeed opaque that its underlying rationale cannot be properly or reasonably deduced."

54. My conclusion in this case is that it is not possible to understand why the case made by the Egyptian family that the assistance they regularly received from the Irish family does not meet the *Jia* test. The decision maker does not posit a test for dependence under EU law and another for dependence under Irish law. Both claims are assessed and rejected on the same basis and therefore suffer the same frailties. I grant leave to seek judicial review in respect of the most recent decisions and, as this aspect has been 'telescoped', I make final orders of *certiorari* in respect of all decisions referenced in the pleadings and described in this decision.