

**THE HIGH COURT
JUDICIAL REVIEW**

[2017 No. 398 JR]

BETWEEN**IRAM GUL****APPLICANT****AND****THE MINISTER FOR JUSTICE AND EQUALITY****RESPONDENT****JUDGMENT of Mr Justice David Keane delivered on the 21st December 2018****Introduction**

1. This is the judicial review of a decision by the Minister for Justice and Equality ('the Minister'), dated 20 April 2017 ('the decision'), under Reg. 25 of the European Communities (Free Movement of Persons) Regulations 2015 ('the 2015 Regulations'), to uphold on review a first instance decision of 13 April 2016, under Reg. 7(5) of the 2015 Regulations, to refuse the application of Iram Gul, a national of Pakistan, for a residence card as a permitted family member of her brother Muhammad Khan, a British - and, hence, European Union - citizen, exercising free movement rights in the State.

2 The 2015 Regulations were made, in exercise of the powers conferred on the Minister by s. 3 of the European Communities Act 1972, to give effect to Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the rights of the citizens of the Union and their family members to move and reside freely within the territory of the Member States ('the Citizens' Rights Directive'). They came into operation on 1 February 2016.

3. In substance, the reason the Minister gave for the decision is that Ms Gul failed to establish that she is a 'permitted family member' of Mr Khan, within the meaning of that term under Regulations 2(1) and 3(6) of the 2015 Regulations (transposing the requirements of Article 3(2) of the Citizens' Rights Directive concerning 'other family members'), because she failed to establish that in the People's Republic of China (as the country from which she had come), she was either: (a) a dependant of Mr Khan, as a Union citizen; or (b) a member of the household of Mr Khan, as a Union citizen.

Procedural history and grounds of challenge

4. The application is based on a statement of grounds dated 15 May 2017, supported by an affidavit of Ms Gul, sworn on the same date.

5. By order made on 22 May 2017, O'Regan J granted Ms Gul leave to seek an order of *certiorari* quashing the Minister's decision on the grounds: first, that it was irrational or unreasonable; and second, that it was made in breach of Ms Gul's entitlement to natural and constitutional justice and fair procedures, in each instance because no, or no adequate, reasons were provided for it.

6. The Minister delivered a statement of opposition dated 29 September 2017. It is supported by an affidavit of verification, sworn on 25 September 2017 by Tony Dalton, an assistant principal officer in the Department of Justice and Equality. The Minister contends that Ms Khan was given clear reasons for the decision.

Background

7. Ms Gul, who gives her date of birth as 15 August 1986, claims to have entered the State on 5 March 2013 and to reside here with her brother, Muhammad Khan, and his wife, Mahnaz Khan (who is, hence, Ms Gul's sister-in-law), as both a dependent and member of the household of Ms Khan. Ms Gul tersely avers that she had previously resided in China, where she attended university.

8. On 24 June 2013, through her solicitors, Ms Gul, who was then 26 years old, submitted an application for a residence card as a family member of Ms Khan to the Immigration and Naturalisation Service ('the INIS') within the Department of Justice and Equality. The cover letter from those solicitors asserted that Ms Gul was both a dependant and member of the household of Ms Khan, a British - and, hence, Union - citizen. It would appear that Muhammad Khan, Ms Gul's brother and Ms Khan's husband, was at that time a citizen of Pakistan.

9. The cover letter goes on to submit that, under the applicable law, there was no obligation on Ms Gul to show evidence of her dependency upon Ms Khan prior to her entry into the State, although, without prejudice to that unsupported submission, a letter from Ms Khan was enclosed in which she asserts that she and Mr Khan have been 'fully supporting Iram Gul for the past 6 years during her medical education in China.'

10. The INIS acknowledged receipt of that application on 30 July 2013.

11. On 28 November 2013, the INIS wrote to Ms Gul to inform her that the Minister had decided to refuse her application for a residence card for the following reasons:

'You have failed to submit satisfactory evidence that you are a family member of an EU citizen in accordance with Regulation 2(1) of [the 2015 Regulations].

You did not submit the necessary documents which were requested on 30/07/2013 - Evidence of dependence on the EU citizen, including dependence prior to residing in the State OR evidence of membership of the EU citizen's household prior to residing in the State....'

12. By letter dated 10 December 2013, the solicitors for Ms Gul wrote to the INIS, enclosing a completed application form requesting a review of the Minister's decision to refuse to grant Ms Gul a residence card as a family member of a Union citizen exercising free movement rights. While the 'grounds of review' section of that application form was left completely blank, the cover letter invokes the decision of the Court of Justice of the European Union ('CJEU') in Case C-83/11 *Secretary of State for the Home Department v Rahman* ECLI:EU:C:2012:519 as authority for the proposition that 'the notion of "dependent" does not imply that dependency existed shortly before the Union national came to the host Member State', before submitting that the current and prior financial dependency of Ms Gul on Ms Khan could be established through the documentary evidence already provided and further documentary evidence enclosed with the application for review.

13 On 16 January 2014, the INIS wrote to acknowledge receipt of Ms Gul's application for a review. On the issue of 'evidence of dependence on [the] EU citizen prior to arrival in the State', the INIS returned (thereby acknowledging receipt of) the following supporting documentation:

- '- DEX international money transfer receipt for €95 dated 01/11/12
- Money Gram transfer receipt for \$144 dated 14/11/2012
- Money Gram transfer receipt for \$134 dated 08/12/2012
- Money Gram transfer receipt for \$99.50 dated 13/02/2013'

The INIS letter also acknowledges receipt of documentation evidencing certain money transfers made by Mr Khan to Ms Gul prior to her arrival in the State (described further below) and certain payments made into Ms Gul's bank account after her arrival in the State, described on the relevant bank statements as 'family support.'

14. The INIS letter contains a request for further supporting documentation from Ms Gul, including further evidence of dependence on Ms Khan prior to Ms Gul's arrival in the State. The solicitors for Ms Gul responded by letter dated 12 June 2014, enclosing what appears to be the documentation already submitted, together with very limited additional documentation, to evidence a small number of modest money transfers made by Ms Khan to Ms Gul.

15. On 22 July 2014, the INIS wrote to Ms Gul, informing her that her application for a review of the Minister's decision not to grant her a residence card had been unsuccessful, as she did not fulfil the relevant conditions set out in [the 2015 Regulations]. The letter continued:

'The refusal decision dated 28/11/2013 is confirmed for the same reasons set out therein.

The supporting documentation submitted for your review application is insufficient and does not demonstrate that you are a dependant of the EU citizen. You have failed to submit satisfactory evidence that you qualify as a 'permitted family member' of an EU citizen in accordance with Regulation 2(1) of [the 2015 Regulations]. It is not evident that you were a member of the EU citizen's household prior to travelling to Ireland. It is not evident that you are or were dependent on the EU citizen for health reasons.'

16. A little over a year later, on 14 August 2015, the solicitors for Ms Gul, who was then one day shy of her twenty-ninth birthday, wrote to the INIS on her behalf submitting a new application for a residence card, in this instance 'on the basis of her marriage to Muhammad Khan, an EU worker in the State.' However, as was clear from the supporting documentation submitted with that application, the relationship between Ms Gul and Mr Khan is, of course, that of sister and brother. On 12 October 2015, the INIS wrote to acknowledge that application, returning Ms Gul's passport and the United Kingdom passport of Mr Khan, from which I am left to infer that Mr Khan had become a citizen of the United Kingdom in the period between Ms Gul's first and second applications.

17. The INIS wrote to Ms Gul again on 14 November 2015, acknowledging receipt of the various other supporting documents enclosed with Ms Gul's application, and requesting the provision of certain further documentation.

18. On 13 April 2016, the INIS wrote to Ms Gul to inform her that the Minister had decided to refuse her application for a residence card for the following material reasons:

- '- You have not provided satisfactory evidence to show that you were a dependent (sic) of your EU citizen brother prior to your arrival in the State.
- You have not provided satisfactory evidence to show that you were a member of the EU citizen's household prior to your arrival in the State.'

19. By letter dated 14 April 2016, the solicitors for Ms Gul wrote to the INIS, enclosing a completed application form requesting a review of the Minister's decision. In the 'grounds of review' section of that form, the only words entered in the space provided are 'as attached.' The cover letter simply states that the Minister's decision 'errs in fact and in law' and that 'more than ample evidence has been submitted to show that [Ms Gul] is a family member of the EU citizen', before adding that documentation providing further evidence of that status was enclosed.

20. Regrettably, Ms Gul's legal representatives did not attempt to index, describe or elucidate that further documentation either in the course of the review process or in the course of the present application for judicial review. Providing the best summary I can, in material part it comprises the following:

(i) A copy of a letter dated 24 September 2010 from AIB Bank to Mr Khan, concerning an international payment of \$3,850 that it had attempted to make on his behalf on 22 September 2010 but which had not gone through because the receiving bank had not received details of Mr Khan's full name, address and date of birth. The recipient of the payment is not identified. No further information is provided on whether the payment ever went through or what its significance might be.

(ii) Copies of receipts from a money transfer company named Money Gram International Incorporated for the following international fund transfers made by Mr Khan to Ms Gul, both before and - unaccountably - after 5 March 2013 (the date upon which she claims to have entered the State):

17 November 2009 €112.50

10 May 2010 €100

18 July 2010 €112.50

26 October 2010 €200

31 May 2011 €100
31 July 2011 €60
14 November 2012 (receipt in duplicate) €144
8 December 2012 (from Ms Khan alone) €124
11 December 2013 (from Ms Khan alone) €112.50
Undated (from Mr and Mrs Khan) €200
Undated €101
Undated €112.50 (\$154.44)
Total (November 2009 to December 2013) €1,366.50

(iii) A copy of a receipt from a company named Dex International Ltd for a money transfer made by Ms Khan in Ireland to Ms Gul in Pakistan on 1 November 2012 in the sum of €95.

(iv) A copy of a notification from AIB plc that an international payment of €1,000 was pending on 8 December 2009 to an account in China held by Ms Gul from an account with that bank in Ireland, the number of which tallies with an account held by Mr Khan, although he is not named in that document.

22. The INIS wrote to the solicitors for Ms Gul on 13 May 2016 to confirm that her review application had been accepted for consideration. The letter continued, in relevant part:

'Your client has applied for residence in the State under EU Treaty Rights on the basis that she is a 'permitted family member' of the EU citizen, Muhammad Naeem Khan, in accordance with Regulation 5(1) of [the 2015 Regulations]. Her review application should therefore demonstrate (as per criteria below) that she was - in the country from which both of them have come:

- (i) a dependant of the Union citizen, Muhammad Naeem Khan
- (ii) a member of the household of the Union citizen, Muhammad Naeem Khan....

It is open to Ms Gul to submit any additional supporting documentation she may wish to be considered in respect of the criteria at (i)-(iii) above.

Therefore, in order for this office to process your client's application further, please submit copies of the following documents by registered post to [the INIS]:

Evidence of Ms Gul's relationship with the EU citizen, Muhammad Naeem Khan

- Evidence of dependence on the EU citizen, Muhammad Naeem Khan, including dependence prior to both residing in the State.
- Evidence of membership of the EU citizen's household prior to residing in the State

...

Please note that if the requested documents are not received, a decision will be made on Ms Gul's review application in due course based on the documentation currently held on file.'

(all emphasis in the original)

23. No further documentation was submitted by, or on behalf of, Ms Gul.

24. On 20 April 2017, the INIS wrote to Ms Gul, informing her that her application for a review of the Minister's decision not to grant her a residence card had been unsuccessful, as she did not fulfil the relevant conditions set out in the 2015 Regulations and the Citizens' Rights Directive. The letter continued, in material part:

'On the basis of the documents supplied, the Minister has determined that you do not meet the criteria in respect of permitted family member as set out in Regulation 5(1) of [the 2015 Regulations].

The documentary evidence does not demonstrate that in the country from where you travelled to this State, that you resided as a member of the EU citizen's household. Documentary evidence in respect of being financially dependent on the EU citizen is unsatisfactory.'

The law

25. Article 1 of the Citizens' Rights Directive lays down, amongst other things, 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. Article 2 of the Citizens' Rights Directive defines both a 'Union citizen' and the 'family member' of a Union citizen for the purposes of the exercise of

those rights. Under Article 2(2), a 'family member' is defined as: (a) the spouse; (b) registered partner (in certain defined circumstances); (c) direct descendant under the age of 21 or a dependant of the Union citizen, spouse or partner (so defined); and (d) dependent direct relative in the ascending line of the Union citizen, spouse or partner (so defined). As Article 3(1) of the Citizens' Rights Directive confirms, these are the persons who are the designated beneficiaries of the rights the exercise of which it conditions.

26. Article 3(2) states:

'Without prejudice to any right to free movement and residence the persons concerned may have in their own right, the host Member State shall, in accordance with its national legislation, facilitate entry and residence for the following persons:

(a) any other family members, irrespective of their nationality, not falling under the definition in point 2 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;

(b) the partner with whom the Union citizen has a durable relationship, duly attested.

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.'

27. Article 10 provides, in material part:

'1. The right of residence of family members of a Union citizen who are not nationals of a Member State shall be evidenced by the issuing of a document called "Residence card of a family member of a Union citizen" no later than six months from the date on which they submit the application. A certificate of application for the residence card shall be issued immediately.

2. For the residence card to be issued, Member States shall require presentation of the following documents:

...

(e) in cases falling under Article 3(2)(a), a document issued by the relevant authority in the country of origin or country from which they are arriving certifying that they are dependants or members of the household of the Union citizen...;

...'

28. Recital 6 in the preamble to the Citizens' Rights Directive states:

'In order to maintain the unity of the family in a broader sense and without prejudice to the prohibition of discrimination on grounds of nationality, the situation of those persons who are not included in the definition of family members under the Directive, and who therefore do not enjoy an automatic right of entry and residence in the host Member State, should be examined by the host Member State on the basis of its own national legislation, in order to decide whether entry and residence could be granted to such persons, taking into consideration their relationship with the Union citizen or any other circumstances, such as their financial or physical dependence on the Union citizen.'

29. The Citizens Rights Directive is now transposed in Ireland by the 2015 Regulations.

30. Under the heading 'Interpretation', Regulation 2(1) of the 2015 Regulations provides that:

"family member" means a qualifying family member or a permitted family member;

...

"permitted family member" means, in relation to a particular Union citizen, a person who is, under Regulation 3(6), a permitted family member of the Union citizen;

"qualifying family member" means, in relation to a particular Union citizen, a person who is, under Regulation 3(5), a qualifying member of the Union citizen

....'

31. Regulation 3 states, in material part:

'(1) This paragraph applies to—

(a) Union citizens entering or remaining in the State in accordance with these Regulations, and

(b) a family member of a Union citizen referred to in subparagraph (a) who—

(i) enters the State in the company of the Union citizen,

(ii) enters the State for the purpose of joining the Union citizen, or

(iii) becomes a family member while in the State and seeks to remain with the Union citizen in the State.

...

(5) For the purpose of these Regulations, a person is a qualifying family member of a particular Union citizen where—

(a) subparagraphs (a) and (b) of paragraph (1) apply, respectively, to the Union citizen and the person, and

(b) the person is—

(i) the Union citizen's spouse or civil partner,

(ii) a direct descendant of the Union citizen, or of the Union citizen's spouse or civil partner, and is—

(I) under the age of 21, or

(II) a dependent of the Union citizen, or of his or her spouse or civil partner, or

(iii) a dependent direct relative in the ascending line of the Union citizen, or of his or her spouse or civil partner.

(6) For the purposes of these Regulations, a person is a permitted family member of a particular Union citizen where—

(a) subparagraphs (a) and (b) of paragraph (1) apply, respectively, to the Union citizen and the person, and

(b) the Minister has, in accordance with Regulation 5, decided that the person should be treated as a permitted family member of the Union citizen for the purposes of these Regulations, which decision has not been revoked pursuant to Regulation 27.'

32. Regulation 5 states, in pertinent part:

'(1) This paragraph applies to a person who—

(a) irrespective of his or her nationality, is a member of the family (other than a qualifying family member) of a Union citizen to whom paragraph (2) applies and who in the country from which the person has come—

(i) is a dependant of the Union citizen,

(ii) is a member of the household of the Union citizen....

(2) Where a Union citizen has entered or is residing in the State in accordance with these Regulations or is proposing to do so, a person to whom paragraph (1) applies may apply to the Minister for a decision that he or she be treated as a permitted family member for the purposes of these Regulations and shall, for the purposes of such an application, produce to the Minister—

(a) (i) where the applicant is a national of a Member State, a valid passport or national identity card, or

(ii) where the applicant is not a national of a Member State, a valid passport,

(b) evidence that he or she is a member of the family of the Union citizen,

and

(c) one of the following:

(i) documentary evidence from the relevant authority in the country of origin or country from which he or she has come, that he or she is a dependant, or a member of the household, of the Union citizen;

....

(3) Upon receipt of the evidence referred to in paragraph (2), and on being satisfied that the applicant is a person to whom paragraph (1) applies, the Minister shall cause to be carried out an extensive examination of the personal circumstances of the applicant in order to decide whether the applicant should be treated for the purposes of these Regulations as a permitted family member of the Union citizen concerned.

(4) For the purposes of his or her decision under paragraph (3), the Minister may require the applicant to produce such additional evidence as the Minister may reasonably require.

(5) The Minister, in deciding under paragraph (3) whether an applicant should be treated as a permitted family member for the purposes of these Regulations, shall have regard to the following:

(a) where the applicant is a dependant of the Union citizen concerned, the extent and nature of the dependency and, in the case of financial dependency, the extent and duration of the financial support provided by the Union citizen to the applicant prior to the applicant's coming to the State, having regard, amongst other relevant matters, to living costs in the country from which the applicant has come, whether the financial dependency can be satisfied by remittances to the applicant in the country from which the applicant has come and other financial resources available to him or her;

(b) where the applicant is a member of the household of the Union citizen concerned, the duration of the period during which he or she has been living within the household of the Union citizen;

...

(e) whether the relationship described in subparagraph (a), (b), (c) or (d), as the case may be, was brought about with the objective of obtaining permission to remain in the State or a Member State;

(f) the capacity of the Union citizen concerned to continue to support the applicant in the State in the event that the applicant is to be treated as a permitted family member under these Regulations.

(6) The Minister, following an examination under paragraph (3), shall—

(a) where he or she decides that an applicant should be treated as a permitted family member for the purposes of these Regulations, notify the applicant in writing of the decision, or

(b) where he or she decides that an applicant should not be treated as a permitted family member for the purposes of these Regulations, notify the applicant in writing of the decision and of the reasons for it.

....'

33. Regulation 7 provides:

'7. (1) A family member who is not a national of a Member State—

(a) may, within 3 months of the relevant date, apply to the Minister for a residence card, and

(b) shall, where an application under paragraph (a) has not been made within the period specified in that paragraph, before the expiry of 4 months after the relevant date, apply to the Minister for a residence card.

(2) In paragraph (1), the "relevant date" means—

(a) in the case of a qualifying family member, the date on which he or she—
(i) entered the State as a qualifying family member, or

(ii) having already been in the State, became a qualifying family member,

and

(b) in the case of a permitted family member—

(i) the date on which he or she first entered the State as a permitted family member, or

(ii) where he or she was present in the State on the date on which the Minister decided that he or she should be treated as a permitted family member, that date.

(3) An application under paragraph (1) shall contain the particulars specified in Schedule 2 and shall be accompanied by such additional information requirements provided for in that Schedule as are applicable.

(4) The Minister shall cause to be issued a notice acknowledging receipt of an application under paragraph (1).

(5) The Minister shall, within 6 months of the date of receiving an application under paragraph (1)—

(a) where he or she is satisfied that it is appropriate to do so, issue a residence card containing the particulars set out in Schedule 3 to the family member concerned, or

(b) notify the family member concerned that his or her application has been refused, which notification—

(i) shall be accompanied by a statement of the grounds for the refusal, and

(ii) may be accompanied by a notification under Regulation 21(1) or 23(3), or both.

(6) An applicant under paragraph (1) may remain in the State pending a decision on the application.'

34. Regulation 25 states:

'(1) A person who has, or who claims to have, an entitlement under these Regulations to enter or reside in the State may seek a review of any decision concerning such entitlement or claimed entitlement.

(2) An application for review under this Regulation shall be submitted to the Minister within 15 working days of the receipt by the person concerned of the decision and shall set out in writing the grounds for review and the particulars specified in Schedule 4.

(3) The Minister may, where he or she is satisfied that it is warranted in the particular circumstances, extend the period referred to in paragraph (2) within which a review must be submitted.

(4) A review under this Regulation of a decision under paragraph (1) shall be carried out by an officer of the Minister and who—

(a) shall be a person other than the person who made the decision, and

(b) shall be of a grade senior to the grade of the person who made the decision.

(5) The officer carrying out the review shall have regard to the information contained in the application and may make or cause to be made such enquiries as he or she considers appropriate and may—

(a) confirm the decision the subject of the review on the same or other grounds having regard to the information contained in the application for the review, or

(b) set aside the decision and substitute his or her determination for the decision.

(6) A person who makes an application under paragraph (1) for the review of a removal order may, at the same, make an application for the suspension of the enforcement of the order.’

(7) Where a person makes an application under paragraph (6), the removal of him or her from the State shall, unless the officer carrying out the review is of the view that the removal decision is based on imperative grounds of public security, be suspended until such time as that officer makes his or her decision under paragraph (5).

Analysis

i. failure to give reasons

35. Ms Gul contends that the Minister’s decision to uphold on review the decision to refuse her a residence card is invalid due to a lack of clarity or a lack of adequate reasons or both.

36. In seeking to invoke the status of ‘permitted family member’ for the purpose of Regulation 3(6) and 5(1) of the 2015 Regulations, which is essentially that of ‘other family member’ under Article 3(2) of the Citizens’ Rights Directive, Ms Gul was obliged to satisfy the Minister that, in the People’s Republic of China, as the country from which she had come, she was either a dependent of the Union citizen Mr Khan or a member of his household.

37. Under Regulation 5(2)(c) of the 2015 Regulations, reflecting the requirements of Article 10(2) of the Citizens’ Rights Directive, in claiming that status on the basis upon which she did, Ms Gul was obliged to produce to the Minister documentary evidence from the relevant authority in the country from which she had come that she was a dependant, or a member of the household, of Mr Khan. In reality, Ms Gul was entirely at large on the issue of both the evidence she chose to present in support of her claim and the means whereby she chose to adduce that evidence; Case C-215/03 *Oulane* [2005] E.C.R. I-1215 (at para. 53), Case C-1/05 *Jia* [2007] 1 C.M.L.R. 41 (at para. 41). Nonetheless, whatever evidence she did submit was always going to be subject to qualitative assessment and, in particular, as the ECJ has made clear in *Jia* (at para. 42), ‘a mere undertaking from a Community national or his spouse to support the family member concerned need not be regarded as establishing the existence of that family member’s situation of real dependence.’

38. In *Moneke v Secretary of State for the Home Department* [2011] UKUT 341, the Upper Tribunal stated (at paras. 42 and 43):

‘42. We of course accept...that dependency does not have to be “necessary” in the sense of the [United Kingdom] Immigration Rules, that is to say an able bodied person who chooses to rely for his essential needs on material support of the sponsor may be entitled to do so even if he could meet those needs from his own economic activity; see [*SM (India) v Entry Clearance Officer (Mumbai)* [2009] EWCA Civ 1426]. Nevertheless, where, as in these cases, able bodied people of mature years claim to have been always dependent upon remittances from a sponsor, that may invite particular close scrutiny as to why this should be the case. We note further that Article 10(2)(e) of the Citizens Directive contemplates documentary evidence. Whether dependency can ever be proved by oral testimony alone is not something we have to decide in this case, but Article 10(2)(e) does suggest that the responsibility is on the applicant to satisfy the Secretary of State by cogent evidence that is in part documented and can be tested as to whether the level of material support, its duration and its impact upon the applicant combined together meet the material definition of dependency.

43. Where there is a dispute as to dependency (as there was in the present case) immigration judges should therefore carefully evaluate all the material to see whether the applicant has satisfied them of these matters.’

39. That appears to me to be a correct statement of the law. It follows that the onus was on Ms Gul to satisfy the Minister by cogent evidence that was in part documented and could be tested either that the level of material support she received from Mr Khan, its duration, and its impact upon her personal financial circumstances combined together to meet the material definition of dependency in the People’s Republic of China (as the country from which she had come) or that she had lived for some time under the roof of a household that could be said to be that of Mr Khan in the People’s Republic of China (as the country from which she had come) so as to establish membership of his household there. The Minister concluded that Ms Gul had failed to do so.

40. In attempting to meet that onus, Ms Gul provided little or no information about her personal or family circumstances in the People’s Republic of China, beyond her terse assertion that she had attended university there and the assertion of her sister-in-law Ms Khan in correspondence in 2013 that Mr and Ms Khan had fully supported Ms Gul ‘for the past 6 years during her medical education in China.’ The evidence produced to support Ms Gul’s claim that she was dependent upon Mr Khan in the People’s Republic of China comprises a limited number of financial transfers in very small amounts that occurred at irregular intervals between 2009 and 2013. In the decision under challenge, the Minister concluded that this evidence was not sufficient to establish the dependency of Ms Gul upon Mr Khan in China. No evidence whatsoever was adduced to establish that Ms Gul was a member of Mr Khan’s household in China and, indeed, the very limited material before the Minister strongly suggests that Mr Khan never resided in that country.

41. It will be remembered that, in the INIS letter of 20 April 2017, the Minister gave the following reasons for concluding that Ms Gul did not fulfil the relevant conditions set out in the 2015 Regulations and the Citizens’ Rights Directive:

‘On the basis of the documents supplied, the Minister has determined that you do not meet the criteria in respect of

permitted family member as set out in Regulation 5(1) of [the 2015 Regulations].

The documentary evidence does not demonstrate that in the country from where you travelled to this State, that you resided as a member of the EU citizen's household. Documentary evidence in respect of being financially dependent on the EU citizen is unsatisfactory.'

42. The existence and scope of the requirement to give reasons for an administrative decision affecting the rights and obligations of persons is not in issue between the parties to these proceedings. In *Meadows v. Minister for Justice, Equality and Law Reform* [2010] 2 I.R. 701 at 732, Murray CJ explained:

"[93] 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.

[94] Unless that is so then the constitutional right of 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."

43. Moreover, national authorities are required to give reasons for decisions which affect adversely European Union law rights as an aspect of the right to effective judicial review; Case C-222/86 *UNECTEF v Heylens* [1987] ECR 4097. As Advocate General Fennelly explained in Case C-70/95 *Sodemare and Others v Regione Lombardia* [1997] ECR I-1275 (para. 17):

"The obligation to give reasons for national decisions affecting the exercise of Community-law rights does not arise from any extension of Article 190 [of the Treaty of Rome, later Article 253 EC, now Article 296 TFEU], but from the general principle of Community law, flowing from the constitutional traditions of the Member States, that judicial remedies should be available to individuals in such cases."

44. As Charleton J pointed out in *EMI Records (Ireland) Ltd v Data Protection Commissioner* [2013] 2 IR 669 at 708:

'[47] Sometimes the requirement for reasons can be met in terse terms. A useful test is whether a reasonable person who has heard the entire of the case, or a person who has read all of the relevant papers, would on hearing or reading the decision or judgment be apprised of the reasons for the decision...Reasons are not to be judged as inadequate on the terms in which they are put but instead are to be assessed by reference to what a reasonable person with full knowledge of the background would conclude by reading the relevant text.'

45. I have no doubt that this is such a case. The Minister's reasons for the decision may be terse but the test the Minister was required to apply was a straightforward one and the evidence produced by Ms Gul in an attempt to meet it was, in the Minister's view, non-existent in relation to her membership of Mr Khan's household in China and unsatisfactory in relation to her dependence on Mr Khan there. Thus, it seems to me that the Minister provided clear and cogent reasons for the decision on review to confirm the decision not to grant Ms Gul a residence card. For that reason, Ms Gul's challenge to the Minister's decision on the basis that no adequate reasons were provided for it cannot succeed. Nor can I find anything in the decision to suggest that the reasons given for it fail the test of reasonableness under the well-established *Keegan* and *O'Keefe* principles, confirmed by the Supreme Court in *Meadows v Minister for Justice* [2010] 2 IR 701.

Conclusion

46. Ms Gul's application for judicial review is dismissed.