THE HIGH COURT

JUDICIAL REVIEW

[2017 No. 528 JR]

BETWEEN

MUHAMMAD ASIF

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY,

IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Mr Justice David Keane delivered on the 9th August 2019

Introduction

1. This is the judicial review of a decision by the Minister for Justice and Equality ('the Minister'), dated 7 June 2017 ('the review 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 1 June 2016, under Reg. 27(1) of the 2015 Regulations, to revoke the residence card granted to Muhammad Asif, a national of Pakistan, as the spouse of Andreia Patricia Pereira Tavares, a Portuguese – and, hence, European Union – citizen, exercising free movement rights in the State, on the basis that the entitlement concerned had been claimed through a marriage of convenience, amounting to an abuse of rights.

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.

Procedural history and grounds of challenge

3. The application is based on a statement of grounds, dated 22 June 2017, supported by an affidavit of Mr Asif, sworn on the same day.

4. By order made on 9 October 2017, Humphreys J granted Mr Asif leave to seek the following substantive reliefs:

> (a) an order of *certiorari* quashing the review decision;
>
> (b) a declaration that the review decision is unlawful in applying the 2015 Regulations with retrospective effect to a decision to grant a residence card, made on 10 September 2015, under the European Communities (Free Movement of Persons) Regulations 2006 and 2008 ('the 2006 Regulations');
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> (c) a declaration that Reg. 28 of the 2015 Regulations, which permits the Minister to disregard a marriage of convenience in any determination under those regulations, is an attack on the institution of marriage, contrary to Art. 41.3.1° of the Constitution of Ireland;
>
> (d) a declaration that Reg. 28(2) of the 2015 Regulations, whereby the parties to a marriage relied on under those regulations may be required to satisfy the Minister that it is not a marriage of convenience when the Minister has reasonable grounds to consider otherwise, is a usurpation by the Minister of the judicial power of the State, under s. 29 of the Family Law Act 1995, to determine the validity of a marriage and, hence, a breach of the separation of powers under the Constitution of Ireland;
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> (e) alternatively, a declaration that the finding that Mr Asif's marriage was one of convenience is *ultra vires* or unreasonable, or both;
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> (f) an order of *certiorari* quashing the Minister's proposal of the same date, pursuant to s. 3(3) of the Immigration Act 1999, as amended ('the Act of 1999'), to make a deportation order against Mr Asif; and
>
> (g) an order of *mandamus* compelling the Minister to determine an application that Mr Asif made on 12 January 2017, under s. 4 of the Immigration Act 2004, as amended ('the Act of 2004') for permission to be in the State.

5. The Minister delivered an undated statement of opposition in early 2018. It is supported by an affidavit of verification, sworn on 12 January 2018 by Sinead Murphy, a higher executive officer in the Department of Justice and Equality.

6. In that statement of opposition, the Minister raises the following preliminary objections. First, a notification of a proposal to deport, under s. 3(3)(a) of the Act of 1999, is not a decision amenable to judicial review. Second, Mr Asif no longer has any sufficient interest in the Minister's decision to uphold the revocation of his residence card, as he contends that his marriage to the EU citizen concerned has broken down; that she is no longer resident in the State; and that, accordingly, he no longer has a derived right of residence in the State as the spouse of an EU citizen exercising free movement rights here. Third, there is no obligation on the Minister to consider or determine Mr Asif's residence permission application under s. 4 of the Act of 2004, while the issue of his derived entitlement to reside in the State under the 2015 Regulations is under judicial review. And fourth, Mr Asif does not have a sufficient interest to pursue the declarations he seeks concerning the unlawful retrospective application of the 2015 Regulations, the unlawful attack on the institution of marriage, contrary to Art. 41.3.1° of the Constitution of Ireland, or the breach of the separation powers represented by Reg. 28(2) of the 2015 Regulations, because he no longer has a derived right of residence in the State based upon his marriage to an EU citizen exercising free movement rights here.

7. Without prejudice to those preliminary objections, the Minister joins issue with Mr Asif on each one of the grounds that he has

raised in support of the various reliefs he seeks.

Background
8. Mr Asif is a citizen of Pakistan, born in 1980, who arrived in Ireland on 10 November 2006 on a student entry visa. On 22 January 2007, he registered with the Garda National Immigration Bureau ("GNIB") under s. 9 of the Immigration Act 2004, as amended, and had what is known as a "Stamp 2" put in his passport. Under an extra-statutory administrative scheme operated by the Department of Justice and Equality, a 'Stamp 2' evidences permission to be in the State to pursue an approved course of education on a full-time basis. It permits the holder to work in casual employment for a maximum of 20 hours per week, and 40 hours per week during holidays, but not to engage in any business or trade or to claim any benefit. Mr Asif's initial student residence permission ran until 31 January 2008. After that, it was renewed on a periodic basis before finally expiring on the 30 September 2013.

9. According to the documentation he has exhibited, Mr Asif first registered to study for a Diploma in Business Studies at the Institute of Business and Technology in Swords, County Dublin in November 2006. He did not pass his first-year exams. In January 2008, Mr Asif registered for a Diploma in Accounting with the Grafton College of Management Sciences, Gardiner Row, Dublin 1. On 2 March 2009, that college wrote to confirm that Mr Asif was then enrolled for the first year of a two-year programme entitled Diploma in Accounting and Finance that had commenced in January 2009. On 18 November 2009, that college wrote to confirm that Mr Asif had been accepted to participate in a one-year programme entitled Advanced Certificate in Administration (FETAC – Level 6) that was to commence in January 2010. In November 2010, the same college was writing to the GNIB to say that Mr Asif had enrolled for the first year of a three-year course entitled 'Bachelor of Business in Accounting', that had commenced in October 2010. In September 2011, the Cork School of Business, with an address at the Grand Parade in Cork, was writing to inform the local immigration officer that Mr Asif had registered in August for a one-year 'Postgraduate Diploma in Business Management' that was due to commence in October of that year. In October 2011, the same institution wrote to an immigration officer in another part of the State to confirm that Mr Asif was again starting the same one-year diploma course.

10. From that documentation, I have been unable to glean any evidence that Mr Asif completed a single course or, indeed, passed a single examination during the relevant period. I mention that fact not to embarrass Mr Asif but to explain my difficulty with the statement in the written legal submissions filed on his behalf that, having arrived in the State in 2006 to pursue a course of studies, he 'successfully completed' that course 'and went on to complete further courses', demonstrating himself to be 'a capable and diligent student.' Mr Asif himself makes no such claim in the affidavit that he swore to ground the present application.

11. Whatever about his scholarship, there is no doubt that Mr Asif is a capable and diligent worker. He has exhibited a number of employer references and employment contracts. The references include one, dated 23 July 2016, from Patrick Morris, the owner and manager of the Spar convenience shop at 13 South Circular Road, Dublin 8. In it, Mr Morris confirmed that Mr Asif had been employed in that shop since December 2006 and had been promoted to full time supervisor on 25 July 2015. Another reference, dated 26 July 2017, is from Alexandra Szabo-Williams, manager of the Applegreen service station, Kinsealy, County Dublin, confirming that Mr Asif had been employed by the company that operates it, Petrogas Group Limited, since November 2012 and was then working there as a shop assistant on a part-time permanent contract.

12. In her affidavit on behalf of the Minister, Ms Murphy exhibits a report obtained from the Department of Employment Affairs and Social Protection, which demonstrates that Mr Asif worked 101 weeks in 2010, 107 weeks in 2011, and 101 weeks in 2012, which indicates that he was working in more than one employment for more than 40 hours per week for most, if not all, of those years, in breach of the terms of his student residence permission.

13. As noted above, Mr Asif's final student residence permission expired on 30 September 2013. Something remarkable then occurred. On 21 November 2013, Mr Asif obtained a 'green card' employment permit from the Department of Enterprise, Jobs and Employment to work as a business analyst for Mr Morris, trading as Spar, 13 South Circular Road, Dublin 8, for an initial two-year period between 9 December 2013 and 8 December 2015. That employment permit, now known as a critical skills employment permit, enables highly skilled non-EEA nationals to work in eligible occupations. On foot of that work permit, the Minister granted Mr Asif a further permission to reside in the State from 27 November 2013 to 27 November 2014. Less than three months later, on 20 February 2014, the Employment Permits Section of the Department of Enterprise and Employment wrote to Mr Asif to notify him that it had been informed that the relevant employment had ceased and that his work permit should be returned immediately. Mr Asif explains that, in February 2014, 'the company' – by which I assume he means Mr Morris, the owner of the convenience shop – informed him that the recent opening of a supermarket nearby meant that the highly skilled role of business analyst with the convenience shop – the original purpose of which, and his qualification for which, Mr Asif does not explain – was no longer available. Thus, despite what is evident from the employer references he has exhibited, Mr Asif had no permission to work in the State from that point forward, whether for Mr Morris, Petrogas Group Ltd or any other employer. Further, Mr Asif did not have permission to reside in the State from 28 November 2014 onward.

14. While these matters are not directly relevant to any of the issues that I must decide on the present application, they are relevant to the issue of Mr Asif's credibility. That is because, at paragraph 27 of his affidavit sworn on 22 June 2017, he expressly avers:

> 'I am a person who has always complied with the laws of this country and at all times ensured that I was here lawfully.'

Mr Asif's marriage and residence card application
15. Mr Asif avers that he met Ms Pereira Tavares in March 2014. They married on 11 November 2014. That was 16 days before his permission to reside in the State was due to expire.

16. By application dated 13 March 2015 and received by the Minister on 18 March 2015, Mr Asif applied, under the 2006 Regulation then in force, for a residence card as a qualifying family member – i.e. the spouse – of Ms Pereira Tavares, a Portuguese – and, hence, Union – citizen, exercising free movement rights in the State. In that application, Mr Asif stated that Ms Pereira Tavares had arrived in the State on 27 February 2014 and was employed by one Farhan Iqbal Malik of BARBQ TONIGHT, 35 Lower Clanbrassil Street, Dublin 8.

17. On the basis of that application, on 7 April 2015, the Minister granted Mr Asif a six-month 'Stamp 4' permission to reside in the State between 16 April and 17 October 2015. I understand that a 'Stamp 4' placed on a third country national's passport indicates permission to stay in Ireland for a specified period and to take up employment, work in a profession, establish and operate a business, and access state funds as determined by Government departments or State agencies, although I would take this opportunity to request, once again, that extra-statutory jargon not be used without explanation in judicial review (or any other) proceedings. One of the essential differences between legislation and extra-statutory administrative schemes is that the presumption of knowledge of the law only applies to the former.

18. On 10 September 2015, the Minister wrote to Mr Asif to inform him that his application under the 2006 Regulations for a residence card had been approved. To obtain it, Mr Asif was required to present himself with his spouse, Ms Pereira Tavares, at his local Garda Síochána Registration Office, which was Garda National Immigration Bureau ('GNIB') at 13/14 Burgh Quay, Dublin 2.

19. Mr Asif and Ms Pereira Tavares attended at the GNIB on 22 September 2015 and were interviewed there. In her affidavit on behalf of the Minister, Ms Murphy avers that it was clear at that interview that Ms Pereira Tavares did not speak English and could not communicate with either Mr Asif, the immigration officers present, or the members of staff of the Irish Nationality and Immigration Service ('INIS') EU Treaty Rights Investigation Section who were asked to assist by the immigration officers. The only information that Ms Pereira Tavares was able to convey was that she worked as a cleaner for someone named 'Malik'. Mr Asif claimed to have met Ms Pereira Tavares through an acquaintance after she entered the State in February 2014 and to have supported her in the State between March 2014 and January 2015 when she commenced work as a cleaner.

20. The concerns raised by that interview prompted the Minister to write to Mr Asif on 23 September 2015, requesting the provision of further information. Mr Asif's legal representatives replied on 4 November 2015, enclosing certain documentation evidencing the residence of Ms Pereira Tavares in the State from November 2014 onwards and her employment in the State from July 2015 onwards.

21. The Minister wrote again on 14 December 2015, stating in material part:

> 'As your client and his spouse married on 11/11/2014, the absence of evidence relating to her residence in the State prior to this time is puzzling and something of a concern to the Minister as it suggests that she may not have in fact resided here in the State since February 2014 as originally claimed and calls into question the credibility of the statements made and documentation submitted by your client. The Minister may draw inference (sic) from the absence of such documentation which may lead to questions as to whether your client's marriage is one of convenience, contracted solely to obtain a residence card.'

22. In that letter, the Minister afforded Mr Asif one further opportunity to provide evidence of the activities of Ms Pereira Tavares in the State between March 2014 and February 2015. There was no response.

23. The 2015 Regulations came into operation on 1 February 2016.

24. On 16 March 2016, the Minister wrote to Mr Asif again, stating in material part:

> 'Although you had stated that you had been supporting Ms Tavares from March 2014 to February 2015, no evidence to support this was submitted. As previously advised, the evidence submitted to date reflects residence from November 2014 and employment from July 2015. As yourself and Ms. Tavares married on 11/11/2014, the absence of evidence relating to residence and activities in the State is a matter of concern and suggests that Ms. Tavares may not have been residing in the State during this period.
>
> Furthermore checks carried out by the Minister show no record of employment for the EU citizen in the State since she was issued with a PPS [Personal Public Service] Number on 30/05/2014.
>
> In light of this, the Minister is now of the opinion that your marriage may be one of convenience under Regulation 28(2) of the European Communities (Free Movement of Persons) Regulations 2015 (the Regulations) contracted for the sole purposes of obtaining an immigration permission to remain in the State. **If this is found to be the case, the Minister will proceed to revoke your permission to remain in accordance with the provisions of Regulation 27(1)(b) of the Regulations.**
>
> You are now invited to make written representations to this office within 10 working days of the date of this letter, addressing in detail the concerns about the EU citizen's non-exercise of rights in this State and absence of evidence of employment and residence in the State.
>
> Any representations should include a detailed immigration history of the EU citizen including dates of travel to and from the State in the period from 27/02/2014 to present, purpose of travel, documentary evidence of travel where available. A detailed relationship history should also be provided along with any other information/documentary evidence you may wish to provide as to why your permission to remain in the State should not be revoked.'
>
> (emphasis in original)

25. Mr Asif's legal representatives wrote in reply on his behalf on 30 March 2016, enclosing additional documentation. However, as Ms Murphy deposes, none of it evidenced the residence of Ms Pereira Tavares in the State prior to November 2014, or her employment in the State before February 2015. The letter then continued:

> 'We are also further writing to update you that Ms. Tavares has now left the State and the marriage between her and our client has broken down.
>
> We enclose documentary evidence for the fact that Ms. Tavares was working in the State, however these are no longer relevant as our client's spouse is no longer exercising her Treaty Rights in the Jurisdiction.
>
> Accordingly on the basis of the fact that she is no longer exercising her Treaty Rights in the Jurisdiction we understand that you are entitled to revoke our client's permission to remain in accordance with the provision of the regulation but we would ask you to note the extensive evidence that indicates that Ms. Tavares was working in the jurisdiction and was resident in the jurisdiction during the relevant time frame although it is accepted that she no longer is.
>
> Please note that our client wishes to make representations in (sic) why he should be allowed to remain in the State notwithstanding the departure of his wife....'

26. Mr Asif avers, in his affidavit sworn on 22 June 2017, that his marriage ended in October 2015, when Ms Pereira Tavares left the family home. Mr Asif does not explain why that was not disclosed at the time, in particular when his legal representatives wrote to the Minister on 4 November 2015, pressing his application for residence permission on the basis of that marriage.

27. The Minister wrote to Mr Asif on 1 June 2016, stating that his application had been examined and that the decision had been

made to revoke his permission to remain, in accordance with the power to do so under Regulation 27(1) of the 2015 Regulations, on the basis that the marriage he had contracted with Ms Pereira Tavares in Ireland on 11 November 2014 was a marriage of convenience contracted for the purpose of obtaining a residence card, so that his residence card application amounted to an abuse of rights.

28. Through his legal representatives, Mr Asif sought a review of the Minister's decision by letter, dated 20 June 2016. Ms Asif submitted further documentation under cover of a letter, dated 11 August 2016, for the purpose of that review.

29. On 12 January 2017, Mr Asif wrote to the Minister through his legal representatives to request permission to remain in the jurisdiction pursuant to s. 4 of the Act of 2004. The letter included lengthy and wide-ranging representations and was accompanied by extensive supporting documentation.

The decision now challenged

30. The INIS wrote to Mr Asif on behalf of the Minister on 7 June 2017. That letter states in material part:

> 'I am to inform you that the review of your application has not been successful, as you did not fulfil the relevant conditions set out in [the 2015 Regulations] and the [Citizens' Rights Directive]. The review of your application is based upon the information available to the decision-maker at the time at which the decision to revoke your permission to reside in the State was made. The decision to revoke your residence card is affirmed for the following reasons:
>
> You have submitted documentary evidence of your own activities in the State. You have not submitted any verifiable documentary evidence that the decision dated 01/06/2016 is incorrect.
>
> The decision to revoke the residence card granted to you dated 10/09/2015 was based first upon the fact that the Minister had deemed the marriage between the EU citizen and yourself to be a marriage of convenience in accordance with Regulation 28(2) of the Regulations.
>
> On 16/03/2016, this office wrote to you informing you of the intention to revoke your permission to remain in the State and invited you to make representations to the office addressing in detail the concerns about the EU citizen's non-exercise of rights in the State and requesting a detailed immigration history of the EU citizen in the period from 27/02/2014 to 16/03/2016.
>
> The decision maker took into account the correspondence received from your legal representative which submitted that the marriage contracted between the EU citizen and yourself had broken down and that the EU citizen was no longer present in the State.
>
> It was noted in the decision-making process that payslips and bank statements were submitted as proof of the EU citizen's alleged employment in the State. It was noted as a point of concern however that some of the charges and transactions on the EU citizen's bank statements [...] appeared to be in respect of yourself.
>
> The documentation submitted was given due consideration by the decision-maker, however it was concluded that such documentation did not address the substantive issue of the Minister's concern that the marriage contracted between the EU citizen and yourself was a marriage of convenience in accordance with Regulation 28(2) of the Regulations.
>
> The decision maker took into account the circumstances of the attendance for registration at the GNIB office on 22/09/2015, that [Ms Pereira Tavares] was unable to communicate with the staff and appeared to have very little/no English.
>
> Two further requests for information regarding the EU citizen's activities since her arrival in the State were made on 23/09/2015 and 14/12/2015, but no such documentation was received by this office at the time that the initial decision to revoke was made.
>
> It was also noted by the decision-maker that no evidence of a relationship prior to the date of marriage was submitted with the initial application. No evidence was submitted to support the claim that you supported the EU citizen between March 2014 and February 2015 as had been asserted in correspondence.
>
> I have examined the documentation available to the initial decision maker and I confirm that the original decision did not err in fact or law. All relevant documentation was taken into consideration by the decision maker and the applicant was given sufficient opportunities to address the concerns of the Minister that the marriage between the EU citizen and the applicant was one of convenience in accordance with Regulation 28(2) of the Regulations.'

31. By a separate letter of the same date, the INIS wrote to Mr Asif informing him of the Minister's proposal, pursuant to s. 3(3)(a) of the Immigration Act 1999, as amended ('the Act of 1999') to make a deportation order against him.

32. Ms Pereira Tavares has not sworn any affidavit in these proceedings.

The law

33. Article 35 of the Citizens Rights Directive deals with Abuse of Rights. It states:

> 'Member States may adopt the necessary measures to refuse, terminate or withdraw any right conferred by this Directive in the case of abuse of rights or fraud, such as marriages of convenience. Any such measure shall be proportionate and subject to the procedural safeguards provided for in Articles 30 and 31.'

34. Recital 28 of the Citizens' Rights Directive defines a marriage of convenience as a form of relationship contracted for the sole purpose of enjoying the right of free movement and residence.

35. Article 2(1) of the 2006 Regulations provided that:

> 'In these regulations –
>
> "spouse" does not include a party to a marriage of convenience.'

36. Article 2(1) of the 2015 Regulations contains a provision in identical terms.

37. Article 24 of the 2006 Regulations is headed 'Cessation of entitlements' and states:

> '(1) Where it is established that a person to whom these Regulations apply has acquired any rights or entitlements under these Regulations by fraudulent means then that person shall immediately cease to enjoy such rights or entitlements.
>
> (2) In these Regulations "fraudulent means" includes marriages of convenience.'

38. Article 27 of the 2015 Regulations is also headed 'Cessation of entitlements'. It provides in material part:

> '(1) The Minister may revoke...any of the following where he or she decides, in accordance with this Regulation, that the right, entitlement or status, as the case may be is being claimed on the basis of fraud or abuse of rights:
>
> ...
>
> (b) a residence card, a permanent residence certificate or permanent residence card....
>
> (2) Where the Minister suspects, on reasonable grounds, that a right, entitlement or status of being treated as a permitted family member conferred by these Regulations is being claimed, or has been obtained, on the basis of fraud or abuse of rights, he or she shall be entitled to make such enquiries and to obtain such information as reasonably necessary to investigate the matter.
>
> (3) Where the Minister proposes to exercise his or her power under paragraph (1), he or she shall –
>
> (a) give notice in writing to the person concerned, which shall set out the reasons for his proposal and shall give the person concerned a period of 21 days within which to give reasons as to why the right, entitlement or status concerned should not be revoked, and
>
> (b) consider any submission made in accordance with subparagraph (a).
>
> (4) In this Regulation, 'abuse of rights' shall include a marriage of convenience."

39. Regulation 28 of the 2015 Regulations is headed 'Marriages of convenience'. It states:

> '(1) The Minister, in making his or her determination of any matter relevant to these Regulations, may disregard a particular marriage as a factor bearing on that determination where the Minister deems or determines that marriage to be a marriage of convenience.
>
> (2) Where the Minister, in taking into account a marriage for the purpose of making a determination of any matter relevant to these Regulations, has reasonable grounds for considering that the marriage is a marriage of convenience, he or she may send a notice to the parties to the marriage requiring the persons concerned to provide, within the time limit specified in that notice, such information as is reasonably necessary, either in writing or in person, to satisfy the Minister that marriage is not a marriage of convenience.
>
> (3) Where a person who is subject to a requirement under paragraph (2) fails to provide the information concerned within the time limit specified in the relevant notice, the Minister may deem the marriage to be a marriage of convenience.
>
> (4) The Minister may exercise the power under paragraph (2) in respect of a particular marriage whether or not –
>
> (a) that marriage has previously been taken into account in determining any matter relevant to these Regulations or the Regulations of 2006, or
>
> (b) that paragraph has previously been invoked in respect of that marriage.
>
> (5) The Minister shall determine whether a marriage referred to in paragraph (2) is a marriage of convenience having regard to –
>
> (a) any information furnished under these Regulations, and
>
> (b) such of the following matters as appear to the Minister to be relevant in the circumstances:
>
> (i) the nature of the ceremony on the basis of which the parties assert that they are married;
>
> (ii) whether the parties have been residing together as husband and wife, and, if so, the length of time during which they have so resided;
>
> (iii) the extent to which the parties have been sharing income and outgoings;
>
> (iv) the extent to which the parties have been dealing with other organs of the State or organs of any other state as a married couple;
>
> (v) the nature of the relationship between the parties prior to the marriage;
>
> (vi) whether the parties are familiar with the other person's details;

(vii) whether the parties speak a language that is understood by both of them;

(viii) whether a sum of money or other inducement was exchanged in order for the marriage to be contracted (and, if so, whether this represented a dowry given in the case of persons from a country or society where the provision of a dowry on the occasion of marriage is a common practice.

(ix) whether the parties have a continuing commitment to mutual emotional and financial support;

(x) the history of each of the parties including any evidence that either of them has previously entered into a marriage of convenience or a civil partnership of convenience;

(xi) whether any previous conduct of either of the parties indicates that either of them has previously arranged a marriage of convenience or otherwise attempted to circumvent the immigration laws of the State or any other state;

(xii) the immigration status of the parties in the State or in any other state;

(xiii) any information provided by an tArd-Chláraitheoir or registrar within the meaning of the Civil Registration Act 2004;

(xiv) any other matters which appear to the Minister to raise reasonable grounds for considering the marriage to be a marriage of convenience.

(6) For the purpose of these Regulations "marriage of convenience" means a marriage contracted, whether inside or outside the State, for the sole purpose of obtaining an entitlement under –

(a) the [Citizens' Rights Directive] or these Regulations,

(b) any measure adopted by a Member State to transpose the Directive, or

(c) any law of the State concerning the entry and residence of foreign nationals in the State or the equivalent law of another State.'

Analysis
i. preliminary objections

40. In substance, the Minister advances three separate preliminary objections to the consideration of the present application.

41. The Minister's first objection is that his notification to Mr Asif, under s. 3(3)(a) of the Act of 1999, of a proposal to make a deportation order against him is not a decision amenable to judicial review, since it is merely a preliminary step in a procedure that may, or may not, lead to a deportation order. I do not accept that argument. The administrative decision to issue a notification of a deportation proposal is, like any other administrative decision affecting rights or imposing liabilities, one that is susceptible to judicial review under Order 84 of the Rules of the Superior Courts ('RSC') in the absence of any statutory limitation upon, or exclusion of, the exercise of that public law jurisdiction. Indeed, as s. 5(1)(a) of the Illegal Immigrants (Trafficking) Act 2000, as inserted by s. 4 of the Employment Permits (Amendment) Act 2014, makes clear, a person cannot question the validity of a notification under s. 3(3)(a) of the Act of 1999 of a proposal to make a deportation order otherwise than by way of an application for judicial review under Order 84.

42. The Minister's second preliminary objection is that Mr Asif lacks sufficient interest in the review decision to mount the present challenge to it because, on his own case, his marriage to the EU citizen concerned has broken down; she is no longer resident in the State; and, accordingly, he no longer has a derived right of residence in the State as the spouse of an EU citizen exercising free movement rights here. For the same reason, the Minister objects that Mr Asif lacks a sufficient interest to pursue the declarations that he seeks concerning what he alleges to be the unlawful retrospective application of Reg. 28(2) of the 2015 Regulations, the unlawful attack on the constitutionally protected institution of marriage he claims it represents, and the breach of the separation of powers he claims it entails, because he no longer has a derived right of residence in the State based upon his marriage to an EU citizen exercising free movement rights here and, thus, has no standing to raise those claims.

43. However, the position is not as simple as the Minister's argument implies. The decision under challenge – the review decision – is based on the Minister's conclusion that the family relationship through which Mr Asif had claimed a residence card was a marriage of convenience. Mr Asif's concession that he no longer has a derived right of residence through that relationship is based upon the breakdown of that marriage and the departure of Mr Asif's Union citizen spouse from the State. Mr Asif does not accept that his marriage was one of convenience.

44. The distinction is, at least potentially, significant. While Art. 35 of the Citizens' Rights Directive makes plain that the withdrawal of rights conferred by the Directive in the case of abuse of rights or fraud, such as a marriage of convenience, shall be proportionate and subject to the procedural safeguards provided for in Arts. 30 and 31, the scope of the procedural entitlements available to a third country national spouse of a Union citizen whose right of residence has ceased due to the Union citizens' return to the Member State of which he or she is a national awaits clarification by the Court of Justice of the European Union, notwithstanding the Opinion of Advocate General Szpunar in Case C-94/18 *Chenchooliah v Minister for Justice and Equality* ECLI:EU:C:2019:433 that such a person has rights under Arts. 15, 30 and 31 that would seem, therefore, to be equivalent in scope. It is, thus, not possible to conclude with certainty whether Mr Asif's rights are capable of being affected adversely as a person in the latter category by a decision that he is a person in the former category. Moreover, Mr Asif asserts that his right to his good name and reputation gives him standing to challenge the decision that the right of residence he claimed was based upon a marriage of convenience and, hence, amounted to an abuse of rights. For those reasons, I will proceed by assuming, without deciding, that Mr Asif has standing to challenge the lawfulness of the review decision.

45. The Minister's third preliminary objection, more obviously a substantive one, is that Mr Asif is not entitled to an Order of *mandamus* compelling the Minister to decide on the application he made on 12 January 2017 for permission to remain under s. 4 of the Act of 2004 because the Minister is under no legal obligation to consider that application. I accept that objection for two reasons. First, the situation contemplated by s.4 is that of an immigration officer at a frontier post, port or airport, who stamps a passport or other official identity document and the section does not set a general template for all applications for permission to be in the State; S*ulaimon v Minister for Justice, Equality and Law Reform* [2012] IESC 63, (Unreported, Supreme Court (Denham CJ, Hardiman, Murray,

Hardiman, Fennelly, O'Donnell JJ), 21 December 2012). Second, there is no legal entitlement to insist upon the determination of an application for permission to remain in the State, outside the context of international protection or European Union law; *A.B. v Minister for Justice and Equality* [2016] IECA 48, (Unreported, Court of Appeal (Ryan P; Peart and Hogan JJ concurring), 26 February 2016).

ii. meaning and effect of the term 'marriage of convenience' under the 2006 Regulations

46. Mr Asif submits that, until the 2015 Regulations came into operation on 1 February 2016, the term 'marriage of convenience' had no meaning or effect in Irish law and that the concept of a marriage of convenience was not known to the laws of the State at the relevant time.

47. In my view, that is an insupportable argument.

48. The 2006 Regulations, under which Mr Asif applied for a residence card as the spouse of a Union citizen exercising free movement rights in the State, clearly stipulated that, for the purpose of those regulations, the term 'spouse' did not include a party to a marriage of convenience, and that where it was established that any rights or entitlements under those regulations had been acquired by fraudulent means, including marriages of convenience, those rights or entitlements would immediately cease.

49. Mr Asif's position is that those provisions were devoid of any legal effect because the term 'marriage of convenience' was nowhere defined in the domestic law of the State at the material time. But the sole purpose of the 2006 Regulations was to transpose the Citizens' Rights Directive. Thus, the 2006 Regulations were subject to the principle of consistent interpretation or indirect effect, first articulated by the European Court of Justice in Case 14/83 *Van Colson and Kamann* [1984] ECR 1891, and more recently restated by the ECJ in Case C-397-403/01 *Pfeiffer* [2004] ECR I-8835 in the following terms:

> '110 However, it is apparent from case-law which has also been settled since the judgment of 10 April 1984 in Case 14/83 *Von Colson and Kamann* [1984] ECR 1891, paragraph 26, that the Member States' obligation arising from a directive to achieve the result envisaged by the directive and their duty under Article 10 EC to take all appropriate measures, whether general or particular, to ensure the fulfilment of that obligation is binding on all the authorities of Member States including, for matters within their jurisdiction, the courts (see, inter alia, Case C 106/89 *Marleasing* [1990] ECR I-4135, paragraph 8; *Faccini Dori*, paragraph 26; Case C 126/96 *Inter-Environnement Wallonie* [1997] ECR I-7411, paragraph 40; and Case C 131/97 *Carbonari and Others* [1999] ECR I 1103, paragraph 48).
>
> …
>
> 113 Thus, when it applies domestic law, and in particular legislative provisions specifically adopted for the purpose of implementing the requirements of a directive, the national court is bound to interpret national law, so far as possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by the directive and consequently comply with the third paragraph of Article 249 EC (see to that effect, inter alia, the judgments cited above in *Von Colson and Kamann*, paragraph 26; *Marleasing*, paragraph 8, and *Faccini Dori*, paragraph 26; see also Case C 63/97 *BMW* [1999] ECR I 905, paragraph 22; Joined Cases C 240/98 to C 244/98 *Océano Grupo Editorial and Salvat Editores* [2000] ECR I-4941, paragraph 30; and Case C 408/01 *Adidas-Salomon and Adidas Benelux* [2003] ECR I-0000, paragraph 21).
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> 114 The requirement for national law to be interpreted in conformity with Community law is inherent in the system of the Treaty, since it permits the national court, for the matters within its jurisdiction, to ensure the full effectiveness of Community law when it determines the dispute before it (see, to that effect, Case C 160/01 *Mau* [2003] ECR I-4791, paragraph 34).'

50. As Member State authorities, both the Minister and the Courts were obliged to interpret the relevant national law, in the form of the 2006 Regulations, in conformity with the relevant Community law represented by the general principles of law in the European Union legal order and the specific terms of the Citizens' Rights Directive.

51. It is a general principle of Union law that the abuse of rights is prohibited. Individuals must not improperly or fraudulently take advantage of provisions of Community law; Case C-321/05 *Kofoed v Skatteministeriet* ECLI:EU:C:2007:408 (para. 38). There would be an abuse if the facilities afforded by Community law in favour of migrant workers and their spouses were invoked in the context of marriages of convenience entered into in order to circumvent the provisions relating to entry and residence of nationals of non-Member States; Case C-109/01 *Secretary of State for the Home Department v. Akrich* ECLI:EU:C:2003:491 (para. 57).

52. Article 35 of the Citizens' Rights Directive permits Member States to adopt the necessary measures to refuse, terminate or withdraw any right conferred under it in the case of abuse of rights or fraud, such as marriages of convenience.

53. Recital 28 of the Citizens' Rights Directive defines a marriage of convenience as a form of relationship contracted for the sole purpose of enjoying the right of free movement and residence. Council Resolution of 4 December 1997 on measures to be adopted on the combating of marriages of convenience (97/C 382/01) sets out a list of factors which may provide grounds for believing that a marriage is one of convenience. European Commission Communication of 2 June 2009 (COM (2009) 313 Final) on guidance for the better transposition and application of the Citizens' Rights Directive includes a series of indicative criteria that suggest that a given marriage or equivalent relationship is unlikely to represent an abuse of process and a series of indicative criteria that suggest a possible intention to abuse the rights conferred by the Citizens' Rights Directive for the sole purpose of contravening national immigration laws.

54. Thus, contrary to the unsupported assertion of Mr Asif, I am satisfied that the term 'marriage of convenience' as it appears in the 2006 Regulations, transposing the Citizens' Rights Directive, did have a specific meaning and effect in the law of the State at the time when Mr Asif entered into a marriage on 11 November 2014; when he applied for a residence card on 13 March 2015; and when he initially obtained a favourable decision on that application on 10 September 2015. Specifically, it meant that the exclusion of a party to a marriage of convenience from the definition of 'spouse' for the purpose of the 2006 Regulations was considered a necessary measure to ensure the refusal, termination or withdrawal of the rights conferred under the Directive in a case of abuse of rights or fraud of that type.

iii. principle against the retroactive application of Community law

55. Mr Asif argues that the Minister retrospectively applied the 2015 Regulations, which came into operation on 1 February 2016, to

his marriage of 11 November 2014; the residence card application that he made on 13 March 2015; or the Minister's decision of 10 September 2015 to grant that application under the 2006 Regulations, in a manner that breaches the principle against the retroactive application of Community law.

56. That argument does not withstand scrutiny.

57. At the time when each of the events just described occurred, the general principle against the abuse of rights was long established in European Union law and the Citizens Rights Directive had long been transposed into Irish law by the 2006 Regulations, which came into operation on 1 January 2007.

58. The revocation of Mr Asif's residence permission obtained through a marriage of convenience as an abuse of European Union free movement and residence rights is not the retroactive application of a criminal measure for two reasons. The first is that a marriage of convenience was an abuse of process at the material time; it has not been deemed one retrospectively. The second is that the revocation of a residence permission obtained through an abuse of rights is not a criminal measure. Thus, it cannot offend against the principle *nullum crimen, nulla poena sine lege*, enshrined in both Article 15 of the Constitution of Ireland and Article 7 of the European Convention on Human Rights, and recognised as a general principle of European Union law.

59. The 2015 Regulations came into operation on 1 February 2016. It was not until 16 March 2016 that the Minister invoked Regulation 28(2) of those Regulations, then in force, in correspondence with Mr Asif. That provision creates a procedure to assist in the determination of whether a marriage relied upon for any purpose under the Regulations is one of convenience. It does not alter or amend the substantive definition of the term 'marriage of convenience'. In European Union law, changes in procedural rules are presumed to apply to all pending situations. As the ECJ explained in Joined Cases C-361 and C-362/02 *Elliniko Dimosio v Tsapalos* (at para. 19):

> 'It must be recalled that, according to settled case-law, procedural rules are generally held to apply to all proceedings pending at the time when they enter into force, whereas substantive rules are usually interpreted as not applying to situations existing before their entry into force (see, in particular, Joined Cases 212/80 to 217/80 *Salumi and Others* [1981] ECR 2735, paragraph 9; Joined Cases C-121/91 and C-122/91 *CT Control (Rotterdam) and JCT Benelux v Commission* [1993] ECR I-3873, paragraph 22; and Case C-61/98 *De Haan* [1999] ECR I 5003, paragraph 13).'

60. Regulation 28(4) of the 2015 Regulations provides that the Minister may exercise the procedural power under Reg. 28(2) in respect of a particular marriage whether or not the marriage has previously been taken into account in determining any matter relevant to the 2006 Regulations. Of course, Mr Asif's marriage had been taken into account in the original decision to grant him residence permission under the 2006 Regulations.

61. It was not until 1 June 2016, that the Minister wrote to Mr Asif notifying him of the decision to revoke his permission to remain, in accordance with the power to do so under Regulation 27(1) of the 2015 Regulations, then in force, on the basis that the marriage he had contracted with Ms Pereira Tavares in Ireland on 11 November 2014 was a marriage of convenience contracted for the purpose of obtaining a residence card, so that his residence card application amounted to an abuse of rights.

62. I conclude that Mr Asif has failed to establish any breach of the principle against the retroactive application of Community law.

iv. unconstitutional attack on the institution of marriage

63. Mr Asif contends that the Minister's power under Regs. 27 and 28 of the 2015 Regulations to disregard a marriage deemed to be a marriage of convenience and to revoke the residence rights obtained by the spouse of a Union citizen through a marriage of convenience as an abuse of those rights, is an attack on the institution of marriage, prohibited under Article 41.3.1° of the Constitution of Ireland.

64. Mr Asif argues, without citing any authority, that the power of the Minister under Reg. 28(1) of the 2015 Regulations to disregard a marriage that the Minister deems to be a marriage of convenience in determining a matter relevant to those regulations, in some way improperly entrenches upon the power of the court under s. 29 of the Family Law Act 1995 to make a declaration concerning the validity or subsistence of a marriage.

65. I do not accept either of those submissions.

66. On the issue of the constitutional imperative to protect the institution of marriage from unjust attack, it seems to me that in preventing persons from obtaining or retaining EU free movement and residence rights through marriages of convenience, the 2015 Regulations aid in that objective. As Humphreys J explained, in approaching the matter from the other direction in *KP v Minister for Justice and Equality* [2017] IEHC 95, (Unreported, High Court, 20 February 2017) (at para. 21):

> 'Legal action designed to enforce 'rights' deriving from a marriage of convenience is an affront to the court and makes a mockery of the constitutional commitments to legality, human rights, and to marriage and the family. The court is an institution of State and, while obviously not in any way to be identified with the interests of the government of the day, is certainly to be identified with values fundamental to the Constitution, the State and to an ordered society.'

67. On the issue of whether the 2015 Regulations somehow improperly entrench upon the statutory role of the courts under s. 29 of the Family Law Act 1995, the judgment in *Hamza v Minister for Justice, Equality and Law Reform* [2010] IEHC 427 (Unreported, High Court (Cooke J), 25 November 2010) is instructive. That was a case concerning the family reunification provision of s. 18 of the Refugee Act 1996 in which the issue presented was whether a person was in a subsisting marriage as the spouse of a refugee. Far from determining that the Minister should abdicate the decision-making responsibility in that regard in favour of requiring the refugee to obtain the appropriate declaration from a court under s. 29 of the Family Law Act 1995, lest the Minister wrongly entrench upon the exercise of that statutory function, Cooke J found (at para. 15):

> '… [I]t would not in any event be competent or appropriate for the Minister to require the obtaining of such a declaration as a condition for the making of a decision on a family reunification application under s. 18. In that section, the Oireachtas has designated the Minister as the sole authority to decide whether permission should be granted or refused under subsection (3). It is to the Minister that the application for permission is made under subsection (1) and it is the Minister alone who must be satisfied that "the person the subject of the application is a member of the family of the refugee" under subsection (3) (a). It is envisaged by the provision that he will do so on the basis of the report furnished by the Office of the [Refugee Applications Commissioner] under subs. (2) which has "set out the relationship between the

refugee concerned and the person the subject matter of the application". The Minister cannot delegate to any third party, therefore, (including a Circuit Judge) the decision he is required to make under subs. (3)(a), namely, that the person comes within the definition of a family member or, in a case such as the present, that the person concerned and the refugee are parties to a subsisting marriage.'

68. In affirming the decision of Cooke J on appeal in *Hamza v Minister for Justice, Equality and Law Reform*, the Supreme Court (per Fennelly J) (at para. 44) reiterated:

> '.. [I]t is desirable to state clearly that a declaration pursuant to s. 29 is not an alternative means of satisfying the requirements of s. 18. As the learned judge correctly held, it was for the Minister and him alone to determine whether Ms. Elkhalifa was the spouse of Mr. Hamza.'

69. Thus, the determination whether a marriage, while valid and subsisting for all other legal purposes, is a marriage of convenience that cannot operate to confer EU free movement and residence rights, is one for the Minister properly and lawfully to make where appropriate under the 2015 Regulations, and is unaffected by the quite separate and different jurisdiction vested in the courts under s. 29 of the Family Law Act 1995 to make a declaration on the validity or subsistence of certain marriages.

70. I am reinforced in that conclusion by a consideration of the decision in *Izmailovic v Commissioner of An Garda Siochana* [2011] IEHC 32, (Unreported, High Court, 31 January 2011). In that case, Hogan J pointed out that the exercise of the power of the Minister under Reg. 24 of the 2006 Regulations – to determine that rights or entitlements under those Regulations acquired by fraudulent means (including a marriage of convenience) should immediately cease to be enjoyed – was quite separate in nature and scope from any determination concerning the validity of a marriage of convenience, particularly having regard to the fact that a marriage of convenience was then a perfectly valid marriage in law (on the authority of the decision of the United Kingdom House of Lords in *Vervaeke v. Smith* [1983] A.C. 145 and that of the Supreme Court in *H (otherwise S.) v. S.* (Unreported, Supreme Court, 3 April 1992) within the meaning of ss. 2 and 58 of the Civil Registration Act 2004.

71. The position has since changed, subsequent to Mr Asif's marriage, through the enactment of the Civil Registration (Amendment) Act 2014, which amended the Civil Registration Act 2004 to include a definition of 'marriage of convenience' (at s. 2), and to make an intended marriage of convenience an impediment to marriage (at s. 58). But that simply serves to emphasise that the new statutory obligation on an tArd-Chláraitheoir to prevent a marriage of convenience, entered into for the sole purpose of securing an immigration advantage, and the pre-existing power of the Minister to disregard a marriage of convenience, entered into for the sole purpose of enjoying EU free movement and residence rights, are separate and mutually consistent legal provisions.

72. Thus, I am satisfied that the powers of the Minister under Regs. 27 and 28 of the 2015 Regulations do not constitute an attack on the institution of marriage, contrary to Art. 41.3.1° of the Constitution, and that the exercise of those powers is not a usurpation of any judicial function, contrary to Art.34.1 of the Constitution.

v. failure to consider Mr Asif's rights under Art. 8 of the ECHR

73. Next, Mr Asif submits that, in reciting that it did not interfere with any rights Mr Asif may wish to assert under the Constitution or Art. 8 of the ECHR, the review decision wrongly disregards those rights.

74. I cannot find any merit in that argument.

75. In advancing it, Mr Asif relies upon the decision of the Court of Appeal in *Luximon v Minister for Justice* [2016] 2 IR 725 as authority, by analogy, for the proposition that in considering the decision to revoke his residence card under Reg. 27 of the 2015 Regulations, the Minister was obliged to take into consideration the effect of that decision on Mr Asif's right to respect for his private and family life under Art. 8 of the European Convention on Human Rights ('ECHR').

76. In *Luximon*, both the Court of Appeal and the Supreme Court (in *Luximon v Minister for Justice* [2018] 2 I.R. 542), held that, in considering an application pursuant to s. 4(7) of the Act of 2004, the Minister was under a duty to assess whether the applicant's rights to respect for private and family life under Art. 8 of the ECHR were capable of being engaged, at a time when the applicant remained within the State. But the facts in *Luximon* are distinguishable from those of the present case in two fundamental ways. First, *Luximon* was not an abuse of rights case. The Supreme Court (*per* MacMenamin J at 549) was at pains to point out that the legal status of the applicants in that case had altered as a result of an alteration in Government policy, not as a result of some unlawful act on their part, and that the judgment was based entirely on the facts of that case. An abuse of rights case is entirely different. As the ECJ observed in Case C-16/05 *R on the application of Veli Tum and Mehmet Dari v Secretary of State for the Home Department* ECLI:EU:C:2007:530 (at para. 64):

> '…[I]t must be borne in mind that, according to settled case-law, Community law cannot be relied on for abusive or fraudulent ends (Case C-255/02 *Halifax and Others* [2006] ECR I 1609, paragraph 68) and that the national courts may, case by case, take account – on the basis of objective evidence – of abuse or fraudulent conduct on the part of the persons concerned in order, where appropriate, to deny them the benefit of the provisions of Community law on which they seek to rely (see inter alia Case C-212/97 *Centros* [1999] ECR I-1459, paragraph 25).'

77. Second, as the Minister submits, the applicant did not invoke the right to respect for family and private life in seeking the review of the Minister's decision. In *Luximon*, the Court of Appeal pointed out (at 735):

> 'At a level of general principle it appears correct that the Minister in an application under s. 4(7) of the 2004 Act is only obliged to consider and take into account matters which have been raised on behalf of the applicants in the application or which objectively may be considered as having been brought to the Minister's attention or matters of which the Minister should be aware.'

78. That point was reinforced by Humphreys J in *Jahangir v Minister for Justice and Equality* [2018] IEHC 37, (Unreported, High Court, 1 February 2018), in emphasising (at para. 7):

> 'On a number of previous occasions, I have made it clear that it is not open to an applicant to condemn a decision on the basis of a point that has occurred to him or her later, and that was not put to the decision-maker.'

vi. inapplicability of the deportation procedure under the Act of 1999

79. Finally, Mr Asif submits that he can only be removed from the State in accordance with the removal procedure under the 2015 Regulations and not the deportation procedure under the Act of 1999.

80. Mr Asif relies on the decision in *Igunma v Governor of Wheatfield Prison & Ors* [2014] IEHC 218 (Unreported, High Court (Hogan J), 29 April 2014). In that case, Hogan J found that a third country national whose Union citizen spouse was no longer exercising free movement rights in the State could only be removed under the 2006 Regulations implementing the requirements of Chapter VI of the Citizens' Rights Directive (cf. the Opinion of Advocate General Szpunar in Case C-94/18 *Chenchooliah v Minister for Justice and Equality* ECLI:EU:C:2019:433), and not by way of the deportation process under the Act of 1999.

81. In truth, *Igunma* is an authority that undermines, rather than supports, Mr Asif's argument because Hogan J was very careful to emphasise (at paras. 7 and 21) that there was no suggestion that it concerned a marriage of convenience. It was not an abuse of rights case. It did not concern a situation in which EU law rights were deemed never to have been lawfully acquired but, rather, a situation where EU law rights had been lawfully invoked but later ceased.

82. A more pertinent authority is the case of *KP*, already cited. The applicant in that case had a student visa that was about to expire when he entered into what the Minister later found to be a marriage of convenience with a Union citizen ostensibly exercising free movement rights, before seeking residence permission on that basis. That application was initially approved but later revoked. In refusing the applicant leave to seek judicial review, Humphreys J observed (at para. 38):

> 'Where a person's rights have been refused or withdrawn under art. 35 of the directive due to a marriage of convenience or other abuse of rights, substantial grounds have not been shown to suggest that such a person is validly exercising EU treaty rights. There are therefore no substantial grounds to contend that there is a breach of EU law in expelling such persons by way of deportation order rather than removal order (assuming compliance with proportionality and arts. 30 and 31 of the directive). That is the inevitable consequence of the refusal, termination or withdrawal of all directive rights where an abuse envisaged by art. 35 applies.'

83. I would respectfully adopt that analysis.

84. Mr Asif attempts to distinguish his situation from that in *KP* on the basis that the Minister's finding that there had been a marriage of convenience had not been directly challenged before a later challenge was brought to the decision to deport him. But that is a distinction without a difference. In these proceedings, just as in *KP*, the applicant seeks to raise technical and constitutional objections to the lawfulness of the review decision that his was a marriage of convenience; he has not challenged the rationality or reasonableness of that decision. Mr Asif does argue, rather faintly, that the Minister acted *ultra vires* the 2015 Regulations (which Mr Asif had earlier argued did not apply) in finding that Mr Asif's marriage was for the sole purpose of obtaining an entitlement under the Citizens' Rights Directive or the 2006 Regulations (as a transposing measure) because at the time of his marriage, Mr Asif still had a valid residence permission to be in the State. However, that simply ignores the fact that Mr Asif's permission to reside in the State was due to expire 16 days after the date of his marriage. I can find nothing in that circumstance inconsistent with the Minister's finding that Mr Asif's marriage was for the sole purpose of obtaining the relevant residence entitlement, much less anything capable of rendering the Minister's decision, or the review decision, *ultra vires* the 2015 Regulations.

Conclusion

85. The application is refused.