

THE HIGH COURT
IN THE MATTER OF SECTION 5 OF THE
ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000

2014 No. 735 JR

BETWEEN**HUI ZHU CHEN****APPLICANT****– AND –****THE MINISTER FOR JUSTICE AND EQUALITY****RESPONDENT****AND****THE IRISH HUMAN RIGHTS AND EQUALITY COMMISSION AND THE ATTORNEY GENERAL****NOTICE PARTIES****JUDGMENT of Mr Justice Max Barrett delivered on 13th May, 2019.**

1. Ms Chen is a national of China. She came to Ireland on 14.11.2013 on a 90-day 'C' visa and remains here today. On 19.02.2014, she applied, by reference to s.4(7) of the Immigration Act 2004, to stay in Ireland on a long-term basis. That application failed. Ms Chen then commenced these proceedings.

2. 'C'-type visas facilitate short term visits to Ireland; they are not a route to long-term residence. There is a separate 'D' visa for visa-required persons seeking long-term residence; Ms Chen did not apply for same. Under s.4(7) of the 2004 Act, "*A permission under this section may be renewed or varied...on application*". This wording contemplates renewal/variation of a granted visa, not the substitution/granting of some other class of visa. So the Minister, under s.4(7), cannot properly acquiesce to Ms Chen's application. To conclude otherwise would involve the court accepting that, through s.4(7), the Oireachtas ended the decades-long understanding of short-term visas as facilitating brief visits to Ireland and transformed such visas into a first step (at a visitor's election) towards long-term residence. Nothing in the 2004 Act suggests that s.4(7) seeks/attains this transformative end.

3. Ms Chen cannot force her way through the immigration system, submitting an application that is not contemplated by the statutory provision pursuant to which she purports to make it, and then complaining that there has not been due engagement with such points as she has raised in an application which did not fall properly to be brought. For her to have any prospect of succeeding before the Minister/this Court requires, in the first instance, that the form of application she made to the Minister be contemplated by the statutory provision pursuant to which that application was purportedly brought. Here it is not. Why the Minister engaged in any detail with Ms Chen's application instead of politely refusing it on the simple but correct basis, as tendered in his submissions, that the application did not fall to be brought under s.4(7), is unclear. But that the Minister proceeded as he did does not endow him with a jurisdiction, or Ms Chen with a right, under s.4(7), that he or she does not properly enjoy thereunder. For the court now to consider Ms Chen's criticisms of the Minister's decision would be as futile as was her application to the Minister. Without prejudice to the generality of the foregoing, the court notes that Ms Chen has not suffered any loss/damage of any nature and so is not entitled to any damages.

4. For the reasons aforesaid the court must respectfully decline to grant the reliefs that Ms Chen now seeks.