THE HIGH COURT

JUDICIAL REVIEW

Record No. 2017/994JR

Between:

OMOTAYO MOBOLAJI OLANEYE

Applicant

-and-

THE MINISTER FOR BUSINESS, ENTERPRISE AND INNOVATION

Respondent

JUDGMENT of Ms. Justice Donnelly delivered on the 9th day of July, 2019

1. In this application for judicial review, the applicant seeks an order of *certiorari* quashing the decision of the respondent ("the minister") to refuse his application for a 'Critical Skills Employment Permit' pursuant to the relevant Employment Permit Regulations. This is a case about the duty to give reasons; the applicant claims that the minister failed to give reasons or adequate reasons for the decision to refuse his application for the employment permit.

2. The applicant is a national of Nigeria. He completed an engineering degree in Nigeria and arrived in this State in August, 2016, pursuant to the appropriate visa to commence a Master's degree in information systems management in NUI Galway. He was then granted the appropriate visa to remain in the state to seek employment, subject to certain conditions, under the third level graduate programme.

3. In January, 2017, the applicant commenced employment with Verisk Insurance Services Ireland Limited ("Verisk") as an IT Systems Administrator. He was employed by Verisk, an Irish-resident company incorporated in the State, on a six-month probationary contract. He successfully completed his probationary period on 23rd July, 2017 and his employment was confirmed on 24th July, 2017 by Verisk. His remuneration was €28,000 per annum for the first six months and thereafter €60,000 per annum.

4. In July, 2017, the applicant made an application, supported by Verisk, to the respondent for a Critical Skills Employment Permit pursuant to s.4 of the Employment Permits Act, 2005 (as amended) ("the Act of 2006"). The application was made on the basis that he was employed in a position which falls under the category of employment listed in Schedule 3 of the Employment Permits Regulations 2017 (SI. No. 95/2017) ("the 2017 Regulations"). His job title was stated as "systems administrator" and the application contained details of the main functions of the job together with the qualifications, skills etc. required for this job.

5. By decision dated the 23rd August, 2017, the application was refused by the minister. The reasons given were twofold: -

> (i) The salary was less than the minimum €60,000 per annum, and
>
> (ii) the category of employment was not one of the employments specified in the list of occupation "*eligible for a Critical Skill Employment Permit with this level of remuneration",* i.e., it did not fall within the said Schedule 3 of the 2017 Regulations.

The letter specifically stated that the occupation in question was not on the 'Highly Skilled Eligible Occupations List'.

6. A review was applied for (as provided for in section 13 of the Act of 2006). The minister refused the review application by letter dated the 29th September, 2017 and did so on fundamentally the same grounds as set out in the original decision. The reviewing officer, having cited her understanding for the earlier refusal, stated her reasons for refusing the review as follows:

> *"The occupation in question, System Administrator, is not one that appears on the Highly Skilled Eligible Occupations List and the minimum annual remuneration offered falls below the €60,000 requirement for all other occupations eligible for a Critical Skills Employment Permit, as set out by regulation 18(1)(a) and Schedule 3 of the Employment Permits Regulations 2017 (S.I. No. 95 of 2017). In line with section 12(3) of the Employment Permits Act 2006, as amended, it will not be possible to issue an employment permit.*
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> *I have reviewed the information you have submitted in support of the request for a review and I am satisfied that having considered all the circumstances of the application that the decision to refuse an employment permit is the correct decision and I confirm that decision under section 13(4)(a) of the Employment Permits Act 2006, as amended"*

7. The "Highly Skilled Eligible Occupations List" is not a term used in the 2017 Regulations. It is however a term used on the website of the Department of Jobs, Enterprise and Innovation. There does not seem to be any issue, but that it is a phrase used to correspond with the list of employments set out in Schedule 3 of the 2017 Regulations.

8. The applicant claimed that his employment came with one of two employments listed under the 2017 Regulations: -

> *"IT business analysts, architects and systems designers" or "All other ICT professionals not elsewhere classified".*

In his submission, the minister's "explanation" merely stated her conclusion but failed to give reasons as to why his employment did not come within those classifications.

The Legislative Provisions

9. The Employment Permits Acts, 2003-2014 establish different types of employment permits that may be granted by the minister. s.3A(2)(a) of the Act of 2006 provides for the grant of an employment permit i.e. the 'Critical Skills Employment Permit', for the following purposes: -

> *"2(a) To ensure that appropriately skilled foreign nationals with skills that are required –*

(i) in enterprises in an economic sector that is of importance for the economic and social development of the State, and

(ii) in employments that are essential to the development and growth of those enterprises or economic sector and that are in critical short supply in the State, are encouraged to become available for employment in the State, in such enterprises and employments and the Minister is satisfied that where such enterprises are unable to recruit such appropriately skilled persons, or there is a shortage of such persons, the inability to recruit or such shortage is likely to hinder:

(I) the development and growth of such enterprises, and

(II) the economic development of, and the development of industry,

technology and enterprise in, the State and the services which support such development."

10. Regulation 18(1) of the 2017 Regulations provide that a Critical Skills Employment Permit may be granted for employments that meet the following criteria:

"(a) The employments listed in Schedule 3 for which the minimum annual remuneration is €30,000 and in respect of which the minimum hourly rate of remuneration is €14.79, and

(b) All other employments, other than the employments listed in Schedule 4, for which the minimum annual remuneration is €60,000 and in respect of which the minimum hourly rate of remuneration is €29.58."

11. Schedule 3 of the 2017 Regulations provides a list of employments under the heading: -

"Employments in respect of which there is a shortage in respect of qualifications, experience or skills which are required for the proper functioning of the economy."

"SOC-3 Employment category SOC-4 Employments"
A number of categories are set out. The Schedule itself has four columns as follows: -

12. Under SOC-3 and SOC-4, there are further numbers which are linked to a particular employment category and to employments. At the end of Schedule 3 it is stated: -

" Note: *"SOC-3" and SOC-4" refer to applicable levels in the Standard Occupational Classification system (SOC 2010)"*

13. For the purpose of the present case the relevant columns are as follows: -

SOC-3	Employment category	SOC-4	Employments
113	ICT Professionals	1136	Information technology and telecommunications directors
213		2133	IT specialist managers
		2134	IT project and programme managers
		2135	IT business analysts, architects and systems designers
		2136	Programmers and software development professionals
		2137	Web design and development professionals
		2139	All other ICT professionals not elsewhere classified

14. Section 12(4) of the Act of 2006 provides for the duty to give reasons: -

"Where the Minister refuses to grant an employment permit, the Minister shall notify, in writing, the applicant of the decision and the reasons for it."

15. Section 13(4) of the Act of 2006 provides for the duty to give reasons following a review: -

"In the case of a review of a decision referred to in subsection (1), the person so appointed having afforded the person who submitted the decision for review an opportunity to make representations in writing in relation to the matter, may —

(a) confirm the decision (and, if the person does so, shall notify in writing the second-mentioned person of the reasons for the confirmation), or

(b) cancel the decision and grant to the foreign national concerned the employment permit the subject of the application to which the review relates."

The Case Law
16. Since the judgment of the Supreme Court in *Mallak v Minister for Justice, Equality and Law Reform* [2012] I.E.S.C. 59, which is the principle authority for the proposition that an administrative decision must contain reasons, there has been an explosion in the number of cases dealing with "reasons" issues. In *Connelly v An Bord Pleanála* [2018] I.E.S.C. 31, the Supreme Court gave its most recent authoritative judgment on the duty to give reasons. Clark C.J. provided an in-depth explanation of the rationale behind the

requirement to give reasons and the extent of the reasons that must be given. He identified the main Supreme Court decisions giving effect to the principles. It is appropriate therefore to quote extensively from the judgment of Clarke C.J. as follows: -

> *"5.1 It is perhaps trite to say that it is very difficult to be specific about the manner in which the obligation to give reasons must apply in different types of situations. This is so not least because the kind of decisions to which the obligation to give reasons applies can vary enormously. Furthermore, the process leading to a decision can differ greatly from one case to the next. Some decisions follow on from a largely adversarial process not entirely unlike that which might occur where a court is required to consider a similar question. Others involve a decision of a regulator who has engaged only with a regulated entity. Some decisions, such as most in the environmental field, can involve the interests of a wide range of persons and the participation of many in the process itself.*
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> *5.2 Furthermore, the legal requirements which go into different types of decisions may, themselves, vary very significantly from case to case. In certain circumstances a decision maker may be required to determine whether very precise criteria are met. The issue will, therefore, be as to whether those criteria are present, and the reasons which will require to be given will necessarily have to address why it is said that the criteria were, or were not, met. That, in turn, may very well itself require an understanding of the process which led to the decision and the precise issues which were focused on in that process. On what basis was it suggested that the criteria were not met and how did the person concerned suggest that those questions could be answered in its favour? The issues which arise clearly inform the reasoning behind any decision.*
>
> *5.3 However, other decisions involve much broader considerations involving general concepts, and often, to a greater or lesser extent, a degree of judgment or margin of appreciation on the part of the decision maker. Indeed, it may be said that, in the field of environmental law, issues at various points along that spectrum can arise. There may be specific issues as to whether, for example, a particular project conforms to a development plan or guidelines which the decision maker is required to take into account. On the other hand, a decision may also involve a broader question of whether, for example, a proposed development would involve an excessive impairment of visual amenity in a sensitive area. Many other examples could be given. However, the point is that the type of reasons which may be necessary will depend, amongst other things, on the type of decision which is being made and the legal requirements which must be met in order for a sustainable decision of that type to be reached.*
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> *5.4 In my view it is of the utmost importance, however, to make clear that the requirement to give reasons is not intended to, and cannot be met by, a form of box ticking. One of the matters which administrative law requires of any decision maker is that all relevant factors are taken into account and all irrelevant factors are excluded from the consideration. It is useful, therefore, for the decision to clearly identify the factors taken into account so that an assessment can be made, if necessary, by a court in which the decision is challenged, as to whether those requirements were met. But it will rarely be sufficient simply to indicate the factors taken into account and assert that, as a result of those factors, the decision goes one way or the other. That does not enlighten any interested party as to why the decision went the way it did. It may be appropriate, and perhaps even necessary, that the decision make clear that the appropriate factors were taken into account, but it will rarely be the case that a statement to that effect will be sufficient to demonstrate the reasoning behind the conclusion to the degree necessary to meet the obligation to give reasons.*
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> *5.5 Arising out of those general observations there seem to me to be three specific areas of law which it is necessary to address before going on to apply the principles identified to the circumstances of this case. They are:-*
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> > *(a) The criteria by reference to which a court should assess whether the reasons given are adequate in any particular case;*
> >
> > *(b) The identification of the documents or materials which can properly be considered for the purposes of identifying the reasoning of the decision maker as part of the process of determining whether adequate reasons have been given; and*
> >
> > *(c) …….*
> >
> > *……*

6. *The Purpose behind Reasons*

> *6.1 As noted above, what the Court is concerned with here is the criteria by reference to which a court should assess whether the reasons given are adequate in any particular case. It seems to me that it is possible to identify some key principles from the recent case law in this area.*
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> *6.2 Mallak v. Minister for Justice, Equality and Law Reform [2012] IESC 59 concerned a refusal by the relevant Minister to grant a certificate of naturalisation to the appellant, a Syrian refugee residing in the State. The Minister's decision did not give any reason for the refusal beyond simply stating that the Minister had exercised his absolute discretion under the relevant legislation.*
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> *6.3 ….*
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> *6.4 …*
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> *6.5 …*
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> *6.6 ….*
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> *6.7 ….*
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> *6.8 ….*

6.9 Therefore, Fennelly J.'s decision in Mallak points to at least two purposes served by the provision of reasons by a decision maker being, first, to enable a person affected by the decision to understand why a particular decision was reached, but secondly, to enable a person to ascertain whether or not they have grounds on which to appeal the decision where possible or seek to have it judicially reviewed.

6.10 It is possible to cite further recent decisions of this Court in this context to similar effect.

6.11 In Meadows v. Minister for Justice [2010] 2 I.R. 701, Murray C.J. stated:-

> *'An administrative decision affecting the rights and obligations of persons should at least disclose the essential rationale on foot of which the decision is taken. That rationale should be patent from the terms of the decision or capable of being inferred from its terms and its context.*
>
> *Unless that is so then the constitutional right 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.'*

6.9 In my judgment in Rawson v. Minister for Defence [2012] IESC 26, I stated at paragraph 6.8:-

> *'As pointed out by Murray C.J. in Meadows a right of judicial review is pointless unless the party has access to sufficient information to enable that party to assess whether the decision sought to be questioned is lawful and unless the courts, in the event of a challenge, have sufficient information to determine that lawfulness. How that general principle may impact on the facts of an individual case can be dependant on a whole range of factors, not least the type of decision under question, but also, in the context of the issues with which this Court is concerned on this appeal, the particular basis of challenge.'*

6.13 Similarly, in EMI Records (Ireland) Limited & ors v. The Data Protection Commissioner [2013] IESC 34, I concluded at paragraph 6.5:-

> *'It follows that a party is entitled to sufficient information to enable it to assess whether the decision is lawful and, if there be a right of appeal, to enable it to assess the chances of success and to adequately present its case on the appeal. The reasons given must be sufficient to meet those ends.'*

6.14 In Oates v. Browne [2016] IESC 7, Hardiman J. stated at paragraph 47:-

> *'It is a practical necessity that reasons be stated with sufficient clarity that if the losing party exercises his or her right to have the decision reviewed by the Superior Courts, those Courts have the material before them on which to conduct such a review. Secondly, and perhaps more fundamentally, it is an aspect of the requirement that justice must not only be done but be seen to be done that the reasons stated must "satisfy the persons having recourse to the tribunal, that it has directed its mind adequately to the issue before it".'*

6.15 Therefore, it seems to me that it is possible to identify two separate but closely related requirements regarding the adequacy of any reasons given by a decision maker. First, any person affected by a decision is at least entitled to know in general terms why the decision was made. This requirement derives from the obligation to be fair to individuals affected by binding decisions and also contributes to transparency. Second, a person is entitled to have enough information to consider whether they can or should seek to avail of any appeal or to bring judicial review of a decision. Closely related to this latter requirement, it also appears from the case law that the reasons provided must be such as to allow a court hearing an appeal from or reviewing a decision to actually engage properly in such an appeal or review.

6.16 However, in identifying this general approach, it must be emphasised that its application will vary greatly from case to case as a result of the various criteria identified earlier which might distinguish one decision, or decision making process, from another."

17. In *F.P. –v- Minister for Justice, Equality and Law Reform* [2002] 1 I.R. 164, the Supreme Court dealt with the requirement for reasons where leave to remain was refused to those persons who had failed in their application for asylum. That case concerned the provisions of s.3 of the Immigration Act, 1999, which contained a list of factors to which the relevant minister must have regard in making a deportation order. The letter of the minister sought to make a deportation which was challenged on the basis of the lack/inadequacy of reasons and in particular the failure to explain public policy and the common good to which the letter had referred and which said concepts were to be found in s.3(6) of the said Act.

18. Hardiman J. giving judgment for the Supreme Court confirmed that a discursive judgment was not required in the case of administrative decisions. He went on to hold: -

> *"31. In the circumstances of this case, the respondent was bound to have regard to the matters set out in s. 3(6) of the Act of 1999. In my view he was also clearly entitled to take into account the reason for the proposal to make a deportation order, i.e. that the applicants were in each case failed asylum seekers. If the reason for the proposal had been a different one, he would have been entitled to take that into account as well. He was obliged specifically to consider the common good and considerations of public policy. In my view he was entitled to identify, as an aspect of these things, the maintenance of the integrity of the asylum and immigration systems. The applicants had been entitled, in each case, to apply for asylum and to remain in Ireland while awaiting a decision on this application. Once it was held that they were not entitled to asylum, their position in the State naturally falls to be considered afresh, at the respondent's discretion. There was no other legal basis on which they could then be entitled to remain in the State other than as a result of a consideration of s. 3(6) of the Act of 1999. In my view, having regard to the nature of the matters set out at sub-paras. (a) to (h) of that subsection, the decision could be aptly described as relating to whether there are personal or other factors which, notwithstanding the ineligibility for asylum, would render it unduly harsh or inhumane to proceed to deportation. This must be judged on assessment of the relevant factors as, having considered the representations of the person in question, they appear to the respondent. These factors must be considered in the*

context of the requirements of the common good, public policy, and where it arises, national security.

32. To put this another way, each of the applicants was, at the time of making representations, a person without title to remain in the State. This fact constrains the nature of the decision to be made. The legislative scheme is that such a person may be deported. If this were not so, such persons would be enabled in effect to bypass the normal system of application for entry into the country, made from outside. There is no reason of policy why they should be enabled to bypass this system simply on the basis that they had made an application for asylum which had failed, or might even have been found "manifestly unfounded".

33. In this context, it is important to reiterate that the "common good" in this context has already been held to include the control of aliens, in The Illegal Immigrants (Trafficking) Bill, 1999 [2000] 2 I.R. 360 and the authorities referred to therein. That, in my view, is the context in which the phrase "the common good" occurs in s. 3(6)(j) of the Act of 1999. I agree with the observations of the trial judge in relation to the different context in which the phrase is used in s. 3(2)(i). It follows from this that the invocation of "the common good" in subs. (6) does not require or imply any opinion derogatory to the individual whose case is being considered. It simply entitles the respondent to have regard to the State's policy in relation to the control of aliens who are not, on the facts of their individual cases, entitled to asylum.

34. Accordingly, I would reject the submissions that the decision as communicated takes into account extraneous or unintelligible matter: in my view it affirmatively states considerations which are both relevant and entirely intelligible. For the reason already given I consider that reference to "the common good" does not imply any conclusion derogatory to the applicants as individuals. The reference to the necessity to maintain the integrity of the asylum and immigration system in my view refers to a legitimate aspect of public policy and the common good, and one which has been clearly expounded in the judgment of the court in The Illegal Immigrants (Trafficking) Bill, 1999 [2000] 2 I.R. 360. It follows from these findings that I consider that adequate reasons have been stated in the letter which has been quoted and that these are sufficiently understandable."

The Issues and Evidence

19. Undoubtedly, the applicant was entitled to reasons for the refusal. Those reasons did not have to be discursive, on the other hand as Clarke C.J. stated in *Connelly, "the reasoning cannot be so anodyne that it is impossible to determine why the decision went one way or the other*" (para 10.1). In the present case, the applicant was given the reason for the refusal to grant him the employment permit; the occupation was not contained in the list set out in Schedule 3 of the 2017 Regulations. He asserted that these were not reasons at all but rather a conclusion. I am satisfied that the central issue in this case is whether the explanation given was so perfunctory or inadequate that it cannot be said to be a reason at all.

20. The applicant made significant complaint about the letter of refusal including a reference to his salary being under €60,000. His submission is that he had never applied for a permit on any basis other than his salary was over €60,000 and he came within the list of employments set out in Schedule 3 of the 2017 Regulations. In my view there is no substance to this complaint. Depending on the level of remuneration (minimum €30,000 or €60,000), and provided other criteria are met, the minister may issue a Critical Skills Employment Permit. The applicant had applied for a Critical Skills Employment Permit. The form he completed referred to both paths that permitted the minister to grant such a permit under the provisions of the 2017 Regulations. In those circumstances, the minister was obliged to refer to both of those paths to the permit in her letter refusing the application.

21. The reason given to the applicant indicated directly that his occupation, 'systems administrator', did not appear on the High Skilled Eligible Occupations List, i.e., with Schedule 3 of the 2017 Regulations. He was also told that all the information he submitted in support of his request for a review was considered. That material included a letter from his employer Verisk.

22. Verisk's letter set out the important work in the IT sphere the applicant has carried out for them in the course of his employment. The letter listed the many aspects of his role. The letter writer concluded: -

"I believe that Omotayo's job and duties fall within the category IT business analysts, architects and systems designers as well as the category 2139 All other ICT professionals not elsewhere classified in the Highly Skilled Eligible Occupations list as he is an ICT professional and as such he would not need a Labour Market Test." The employer went on to says that the applicant's "occupation, and specialist skill set is critically important to growing Ireland's economy, and is in high demand. There is currently a shortage of people with these high-level IT skills in the country."

23. This letter was written in support of the applicant's request for a review after the initial refusal of his application. The letter from Verisk was, in my view, designed to address any issue that could have arisen from the earlier refusal. It directed the minister's attention to the categories in the 2017 Regulations under which he claimed entitlement to the employment permit. The decision of the minister to refuse, by way of the letter from the reviewing officer, acknowledged that this documentation was considered, but nonetheless indicated that the occupation did not come within the list in Schedule 3 of the 2017 Regulations. The applicant's case is that this is inadequate information because the reasons must be such as to inform him as to why it is that the employment he performs does not fall into category 2135 (IT business analysts, architects and systems designers) or category 2139 (all other ICT professionals not elsewhere classified).

24. It is important to note that the occupation "Systems Administrator" is not listed expressly in the occupation under the heading of 'ICT Professionals'. The applicant submitted that it could not be the case that the title of the role was determinative. The respondent through the affidavit of Kieran Harrington, Higher Executive Officer, in the minister's department accepted that the title given is not determinative of the issue. He stated in his affidavit that it is the functions of that job as set out by the applicant in his documentation that do not fall within category 2139 in the 2017 Regulations.

25. Mr. Harrington highlighted in his affidavit the background to the 'Highly Skilled Eligible Occupations List'. He said it was developed having regard to reviews carried out by the 'Expert Group on Future Skills Needs' which advised the government on skills needs and labour market issues arising. The list is subject to a twice yearly review to make sure it remains relevant to the labour market. It was most recently updated with the adoption of the 2018 Regulations (SI 70/2018), which do not make any relevant alterations. He said this is an evidenced based process.

26. In terms of the list, Mr. Harrington said it was organised using the 'Standard Occupational Classification System' (SOC 2010), an international classification system for employment categories which permits the organisation of jobs into a clearly defined set of groups according to the tasks and duties undertaken in that job. He said that the use of the SOC 2010 in the context of the 'Highly

Skilled Eligible Occupations List' is explained on the minister's website. Mr. Harrington proceeded to explain that applications for the Critical Skills Employment Permits are examined carefully to ensure they fall within the list. He said staff employ a Computer Assisted Structured Coding Took ("CASCOT"), which is a computer programme designed to make the coding of text information to standard classification simpler, quicker and more reliable. In addition to CASCOT, the employment permits section staff examine all the evidence contained with an application, including the functions of the job that is the subject matter of the employment permit.

27. Mr. Harrington stated that the CASCOT informed system was neither opaque nor particularly subjective. He pointed to the employer of the respondent asserting his belief that the applicant's job came within either of two categories. He said that this is not correct. The list is a list of occupations for highly skilled professionals in medicine, ICT, sciences, finance and business. He provided examples of 'Highly Skilled Eligible Occupations' as including web designers, web design consultants, network managers, software analysts and game programmers.

28. Mr. Harrington asserted that the decision was reached having regard to the eligibility criteria. The applicant had to establish that his job was on the list and carried a salary of €30,000 or that the position carried a salary of €60,000 and was not on the ineligible categories of employment lists. He said that the applicant was unable to establish that he met those criteria.

29. In response, the applicant said that he had never asserted that the system was opaque but that he was not given the reason why he was refused the permit. He said he did not know about CASCOT. He also submitted that he was still not any wiser as to the reason his occupation did not come within Schedule 3 of the 2017 Regulations. His solicitor exhibited the SOC 10 referred to by Mr. Harrington.

30. A final affidavit was sworn by Mr. Harrington in which he stated that the list published by the respondent was closely aligned with SOC 10 but did not mirror it. He further stated that the job to which the applicant's application related equated to SOC Code 3131 (IT Operations Technician). He said it was the job description that was important to bear in mind and that had been assessed by the Department. He said that the applicant was in error as regards the SOC code classification. He said the SOC 2010 was a precise tool and would not be functional if it were subject to the wide fluctuations of application for which the applicant argued.

31. The applicant objected to Mr. Harrington's affidavits being used for the purpose of the retrospective creation of reasons relying on Humphries J. in *PS Consulting Engineers Ltd. v Kildare County Council* [2016] I.E.H.C. 113. The minister submitted that these affidavits were not sworn for that purpose but for the purpose of explaining the circumstances. It was submitted that the minister had to be entitled to put before the Court the context for the decision.

32. I am satisfied that the minister is not entitled to rely upon the subsequent affidavits to provide reasons that were not provided (either expressly, or by necessary implication) at the time of the decision. I am also satisfied that the minister must be entitled (and to a certain extent is obliged) to put before the Court the background to the decision that has been taken. This is particularly important where specialist decision-making has taken place. The High Court must be able to assess the position, taking into account the knowledge that the parties will have had of the issues involved.

33. At the hearing, counsel for the applicant referred to the SOC 10 and pointed towards differences between it and the list set out in Schedule 3 of the 2017 Regulations. In particular, counsel referred to SOC Minor Group 213 ('Information Technology and Telecommunications Professionals') and to sub-group 2139 which is headed 'Information Technology and Telecommunication Professionals N.E.C.'. The text in that box in the SOC indicated *"Job holders in this unit group perform a variety of tasks not elsewhere classified in MINOR GROUP 213: Information Technology and Telecommunication Professionals".* It then listed the qualifications which the entrants usually possess, including a degree or equivalent qualification and then outlined the tasks undertaken, mainly testing software systems or developing quality standards and validation techniques. This was contrasted with the failure of the list in Schedule 3 to limit the ICT professionals not elsewhere classified. Furthermore, counsel pointed out that the SOC 2010 was a list compiled for statistical purposes in the United Kingdom.

34. Counsel for the minister submitted that the applicant was seeking to challenge the decision itself by comparing and contrasting the different systems. Counsel also submitted that this was in contradiction to the applicant's sworn affidavit in which he stated that he was still unaware of the reasons why he had been refused. I am satisfied that the applicant was not seeking to challenge the merits of the decision but was attempting to demonstrate why the reasons in the decision were inadequate. It is important for this Court to state that this judgment does not deal with whether the decision to refuse the applicant was correct or incorrect. The only focus of this decision is on whether the reasons provided were adequate.

35. The applicant's main submission was that the reasons given were actually conclusions. A conclusion had been reached that the occupation was not on the list. There was no engagement with the reason as to why.

36. Counsel for the minister submitted that the case-law demonstrated that the extent of the reasons to be given in administrative decisions is case specific. There was no requirement here to give discursive reasons. He submitted that the Court is entitled to have regard to the process from which the decision arises. The Court also has to take into account the application process. The interaction of the applicant with the respondent in this case was indicative of his familiarity with the issues i.e. the categories into which he said his job fell.

37. The Court, it was submitted, must also take into account that the use of the SOC 2010 in the context of the list in Schedule 3 is explained on the website of the minister's department. This set out the structure of the classification and described that the occupations fall broadly into four skill levels. This indicated that the lists operate at levels 3 and 4 of SOC 2010. In particular, level 4 occupations are termed professional occupations and high level management positions in corporate enterprises. Occupations at this level normally require a degree and/or substantial work experience. The job specifications for the applicant's job did not in fact require a degree but an IT related certificate/diploma or equivalent experience of 2-3 years' experience in a similar role. The website also stated that if an applicant assigns a SOC code to an employment, the department will evaluate it based on its own criteria. It pointed out that in determining the relevant SOC code to be applied, the following criteria was indicative of those used by the department. It then set out a list of matters including: salary, job title, educational qualifications and description of the employment to be undertaken and the job specifications.

38. Counsel for the minister also pointed to the reference in Schedule 3 of the 2017 Regulations to SOC-3 and SOC-4. At the bottom of the table set out in Schedule 3 the following is to be found: -

> *"Note: "SOC-3" and "SOC-4" refer to applicable levels in the Standard Occupational Classification system (SOC 2010)."*

39. Counsel for the minister then referred to the introduction contained in the SOC which stated that over the past ten years a

system has been developed for locating within a single framework the wide range of qualifications available in the UK and Ireland. The body involved in revising the earlier classification have been working with the UK qualifications authorities and the "Republic of Ireland" on comparing qualifications.

Analysis and Decision of the Court
40. Under the Act of 2006, an employment permit, of any variety, can be refused for a large number of reasons. The applicant knows that his permit was not refused for any reason other than the occupation did not come within Schedule 3 of the 2017 Regulations. That in itself is a narrowing down of the reason why he was refused. To answer the question of whether that was a sufficient reason, it is necessary to look at the purpose served; does the affected person understand why a particular decision was reached, and do the reasons given enable the person to ascertain whether they have grounds on which to appeal or judicially review the decision?

41. It is noteworthy that after the initial refusal by the minister's department to grant the permit, the applicant's employer, Verisk, sent a letter which specifically drew the attention of the department to the classification under which he claimed entitlement. The applicant clearly knew that this was the crucial factor upon which he had to concentrate his attention.

42. Murray C.J. stated in Meadows that the rationale should be patent from the terms of the decision or capable of being inferred from its terms and its contents. In *Connelly* the Supreme Court said that the decision of An Bord Pleanála had to be seen in the context of the sequence of events, which included the Inspector's report which had been referred to in the decision. In my view, the case law indicates that in assessing the adequacy of the reasons given, it is necessary to consider the process out of which the decision was made and to consider if the rationale can be inferred from the terms and contents of that decision.

43. In the present case, the applicant submitted that, unlike *Connelly*, there are no other documents available to the applicant or to which the decision referred. In my view, that submission must be rejected. The application was made pursuant to the 2017 Regulations and those Regulations made express reference to the SOC 2010.

44. The applicant has submitted that there was no definition section within the Regulations which defined "the Standard Occupational Classification system (SOC 2010)". That may be so and it may form part of any further challenge to the decision of the minister. It does not mean, however, that the applicant did not know or could not reasonably have known to which classification system it referred. It was on the website of the minister's department under a heading entitled "Clarification on the classification of employments for the purposes of Employment Permits." As part of that clarification there was a further direction to a website of the UK government which included in its web address 'soc2010'.

45. The website also included a reference to the criteria that the department would consider in reaching its decision. Those criteria establish that the job title was only one such criteria. If the website is taken into account when considering the reasons given, it is clear that although the decision of the reviewing officer stated that the occupation in question, 'systems administrator', does not appear on the list, it was the role actually undertaken by the applicant that was considered.

46. In my view, the process undertaken all leads to the inevitable conclusion that in considering the extent of the reasons given, the Court has to be cognisant of the level of information made available to an applicant. This conclusion is based upon a number of factors. The application form directed an applicant towards the relevant permit information available at the department's website. The form asked for details of the job in question that went significantly beyond the title of the job. Separate sections asked about the main functions of the job, the qualification skills knowledge or experience required for the job and finally the relevant qualifications, skills, knowledge and experience of the foreign national. The form also directed attention to Schedule 3 and 4 in the Regulations as being relevant to issues about the granting of 'Critical Skills Employment Permits'.

47. In those circumstances, the applicant was aware that in considering whether he came within the list set out in Schedule 3, the minister took into account whether the role he performed met the criteria, that the classification system in Schedule 3 referred to applicable levels in SOC 2010, and that those levels were described on the minister's website. The decision indicated to him that all his documentation was considered in reaching the decisions. In those circumstances, the decision communicated to the applicant made him aware that the role he performed did not meet the classification set out in Schedule 3 and as such his role did not meet the applicable levels set out in SOC 2010.

48. The next question is whether that information was sufficient to enable the applicant to ascertain whether he had grounds on which to seek to have the decision of the minister judicially reviewed. As set out above, the decision must be read in the context of the wording of Schedule 3 including the note that the classification system therein was referring to the applicable levels of SOC 2010. The application form draws attention to the minister's website where clarification is given on the classification system. That included a statement that the lists operate at levels 3 and 4 of SOC 2010.

49. In my view, there was sufficient information to challenge the lawfulness of the decision. The rationale of the decision that his job role was not included in Schedule 3 was directly stated. The importance of SOC 2010 to that decision was capable of being inferred from the terms and context of the decision, in light of the reference thereto in Schedule 3 and the clarification in respect of same on the website of the minister's department, to which the application form directed aspiring applicants. In reality this was a decision that the role for which the applicant sought the permit did not come within the high skill level required by the 'Critical Skills Employment Permits' in accordance with the classification system in use. In my view, in light of all the information available, it was not necessary to give a discursive reasoning that would explain in narrative detail any more precisely why the permit was not granted.

50. The information provided gave to the applicant the ability to challenge the lawfulness of the decision. He could for example, challenge the reliance on SOC 2010; in particular, if he thought that the clarification on that classification as set out on the website was wrong in law in light of the absence of a definition of SOC 2010 in the Regulations. Furthermore, he could have challenged the decision that his job role was not included in the catch-all phrase of SOC 2139 "*all other ICT professionals not elsewhere classified*" from the information provided to him. The reason why the minister did not give the wide interpretation for which the applicant contended was explicitly set out in the clarification on the website, namely that in SOC 2010, SOC 4 was directed at "*professional*" occupations and high level management position in corporate enterprises which might normally require a degree and/or substantial work experience. If the applicant considers that an incorrect interpretation, he may challenge it by way of judicial review. He cannot maintain however, that the reasons for that decision were unknown to him.

Conclusion
51. The assessment of the adequacy of the reasons given to the applicant must include a reference to the process from which the decision emanated. In this case, the relevant Regulations drew the attention of the applicant to the use of the classification system set out in the 'Standard Occupational Classification system' (SOC 2010). The application form for the permit drew attention to the department's website on which clarification was given about the classification of employments for the purpose of employment permits.

From that website there cannot have been any doubt as to what system was in use by the minister and the criteria under which the application was assessed.

52. There was no requirement to give a narrative reasoning for the decision in this particular case. The decision was clear, his job role did not come within the occupations set out in Schedule 3. The classification system in SOC 2010 referred to in the Regulations and relied upon by the minister on her website indicated the high skill level that was required for all positions of ICT professionals.

53. In the circumstances set out above, I reject the applicant's case that the minister has failed to provide or disclose reasons for her decision. The applicant is not entitled to an order of *certiorari* of the decision.