

THE HIGH COURT

[2006 No 489 J.R.]

BETWEEN

A.M., I.M., A.M., AND N.M.
AND
MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANTS

RESPONDENT

Judgment of Mr. Justice Hedigan delivered on the 13th day of December, 2007

1. The relief sought in this case is leave to apply for judicial review an order of certiorari quashing the deportation orders made by the respondent in respect of the first, second and third named applicants and issued on or about the 26th August 2002; secondly, an order of certiorari quashing the refusal of the respondent, his servants or agents communicated to the applicants by letters dated the 2nd of April 2006 to grant their applications for residency in the State pursuant Regulation 1612/68 of the EEC; thirdly, an order of mandamus compelling the respondent to grant the first to third named applicants residency status in the State; fourthly an order of prohibition restraining the respondent, his servants or agents from deporting the first to the third named applicants; and such further or other relief as seems to be appropriate. The fourth named applicant is an EU citizen of German nationality. The first and second named applicants are the parents of her husband who is not a party to the proceedings. The third named applicant is the son of the first two and brother-in-law of the fourth applicant.

2. The material facts seem to me as follows. The three first named applicants may well indeed have been dependants of the fourth applicant when resident in Russia prior to 2000. However, that clearly ended when they left for Belgium and subsequently arrived in Ireland on the 30th of May 2000, more than seven years ago and six years before the final decision impugned. From then until the decision of the Refugee Appeals Tribunal they pursued a claim for asylum. During this time, the first applicant was on basic supplementary welfare allowance until January 2005 and rent allowance from the 12th of August 2002 to the 8th of June 2004. It is not clear exactly when the fourth applicant came to Ireland; I am informed that it was in 2004. I do note from the papers that she opened an account with Allied Irish Bank on the 19th of March 2004 and seems to have commenced work in April 2004 as her tax credits document exhibited is dated the 8th of April 2004. The third applicant commenced employment on the 1st of May 2004. The second applicant commenced employment on the 25th of April 2004.

3. Upon their arrival in Ireland, the first, second and third applicants made applications for asylum which were refused on the 12th of December 2001 by the Refugee Appeals Commissioner. That decision was upheld by the Refugee Appeals Tribunal on the 3rd of May 2002. They then applied for leave to remain. Under section 3 of the Immigration Act 1999, an examination of their files was made and, on the 20th of August 2002, a recommendation was issued that the Minister sign the deportation order. That recommendation was approved by the Minister. The order in this respect was signed on the 26th of August 2002. The first, second and third applicants were required to present themselves for deportation on the 13th of September 2002; they did not do so. By a letter from their then legal advisers, Mr Shane F McCarthy & Company, dated the 2nd of September 2003, the applicants indicated they wished to bring judicial review proceedings in respect of the deportation orders above. I am unaware of what, if any, action has been taken in this regard.

4. On the 5th of May 2004, an application was lodged on behalf of the first, second and third applicants for residence permits to remain in the State pursuant to EU Regulation 1612/68. The application was refused on the 2nd of June 2005 on the basis that they had not established they were dependants in the country of origin and also that the second and third applicants were in employment as of, respectively, the 25th of April and the 1st of May 2004. It is to be noted that, in fact, the three first named applicants were in Ireland for approximately four years before the fourth named applicant upon whom they claim to be dependent.

5. Following further correspondence, a certificate was produced, dated the 5th of July 2004, purporting to come from the administration of the Lipovsk village area, Gusev region, Kaliningrad District in the Russian Federation. The certificate certified that the three applicants had lived with the Keberlajn family, i.e the fourth named applicant's family from October 1999 to March 2000 following a fire which destroyed all their belongings. The purpose of this letter was to try to establish that they lived "under the roof" of the fourth applicant in the country of origin. It is to be noted that this document purported to certify a state of affairs that existed well before the relevant timeframe, i.e. 2005. Its relevance to the case being made at the time that they were dependants in Ireland is hard to see. The authenticity of this document was questioned by the respondents and the Russian Embassy were not able to confirm the authority in question was the "competent authority" required. The manner in which this was done by the respondents was not satisfactory, being that the non-confirmation was simply by a message on an answer phone. However, this may not necessarily be the respondent's fault in the light of the fact that the Russian Embassy is not under their direction.

6. I do not have enough information to express a view one way or the other on this document. I do not consider the matter of this document need trouble me because I do not think it relevant to the status of the applicants as sought to be established at the time of the consideration of their applications.

7. On the 2nd of August 2005, a second application was acknowledged. This application was on the basis of the new document. The usual requirement that changes of employment be notified to the Department was included in the acknowledging letter. Subsequently, it was determined that the fourth applicant had, in fact, ceased her employment but had not notified the authorities. On the 7th of April 2006, the second applicant was refused on the basis that the fourth applicant was not a person who was exercising her EU Treaty rights because it had been ascertained that she was no longer in the employment she had previously indicated. The information had not been furnished to the authorities.

8. It seems to me that the two decisions refusing ought properly to be dealt with together. The matter central to this case is the question of dependency, that is, are the first, second and third applicants dependent on the fourth? This is more important, in my view, than the overall question as to whether or not the applicant was exercising her EU Treaty rights at the time in question. There may, indeed, be some question as to whether or not she ought to have been allowed to make some submissions in relation to the fact that she, in fact, had become self-employed, information that may well have been readily available to the authorities.

9. However, I think that the essence of this case is one of dependency. Dependency is a concept dealt with in the decision of the European Court of Justice in the *Migrationsverket* case reported in the 2007 Weekly Law Reports. In that case, it was held that the family member had to need the material support of the Community national or his spouse in order to meet his essential needs in his state of origin or the state in which he had come at the time when he had applied to join the Community national. The Court noted that:

"According to case law of the Court [of Justice], the status of 'dependent' family member is the result of a factual situation characterised by the fact that material support for that family member is provided by the Community national who has exercised his right of free movement or by his spouse. (See in relation to Article 10 of Regulation No. 1612/68 on a right of residence, *Centre publique d'aide sociale de Courcelles v. Lebon and Chen v. the Secretary of State for the Home Department.*)

"In order to determine whether the relatives in the ascending line of the spouse of a Community national are dependent on the latter, the host member state must assess whether, having regard to their financial and social conditions, they are not in a position to support themselves. The need for material support must exist in the state of origin of those relatives or the state whence they came at the time when they came to join the Community national."

"... proof of the status of dependent relatives in the ascending line of a worker or his spouse within the meaning of Article 10 of Regulation No. 1612/68 is to be provided by a document issued by the competent authority of the 'state of origin or the state whence they came' testifying that the relative concerned is dependant on the worker or his spouse, although this is not the only means of adducing such evidence."

10. What is the factual situation here? The second and third applicants are in employment. They are, respectively, wife and son of the first applicant. There is no evidence before the Court of any material way in which the fourth applicant supports the first to the third applicants. There is certainly no evidence that at the time of the application they were being supported in the country of origin by the fourth applicant.

11. The whole question, in any event, must be seen in the light that the first, second and third applicants have not come from a country of origin to Ireland and continued a position of dependency that existed there. They were already here four years prior to the arrival of the fourth applicant. The air of improbability that surrounds the whole situation is such that I find it a case where the Court's discretion to grant leave to seek judicial review should not be exercised. Even were I not of this view, there seems to me to have been ample evidence upon which the respondent could rely to decide that the first to third applicants were not dependent upon the fourth applicant. Accordingly, I refuse the leave.