[2018] IEHC 645

THE HIGH COURT

2018 No. 38 JR

Between:

NUURTO ABDIKADIR AHMED, ABDIRAHMAN MOHAMED OSMAN and LEYLO MOHAMED OSMAN (a minor suing through her mother and next friend)

NUURTO ABDIKADIR AHMED)

Applicants

– and –

THE MINISTER FOR JUSTICE AND EQUALITY

Respondent

JUDGMENT of Mr Justice Max Barrett delivered on 19th November, 2018.

1. Ms Ahmed is an Irish citizen. She is the mother of the Osmans, Somali nationals resident in Ethiopia. She is also the mother of a young man of 18 years, resident in Ireland, a brother of the Osmans. He suffers from a physical disability and an illness so severe that Ms Ahmed cannot work outside the home and so cannot earn any income additional to her carer allowance, not even to the limited extent to which such work is permitted under the carer allowance scheme.

2. The decisions now before the court arose as follows: on 05/10/2016, application for two 'join family' visas were submitted for Mr AM Osman (then eight days shy of his 18th birthday) and Miss LM Osman (then and now a minor). The Osmans reside with their father in Ethopia; he is claimed to be of such an age that he finds caring for his children difficult. By letter of 30/05/2017, the Irish Embassy in Addis Ababa advised the Osmans that their visas had been refused. By letter of 28/07/2017, these decisions were appealed. By letters of 20/10/2017, the Minister refused the appeals. These proceedings followed. There are a number of deficiencies in the appeal decisions.

3. ***"No Medical Documents***". When it comes to the alleged ailing health of the Osmans' father, the Minister states: "No medical documents have been provided". This is wrong. A medical certificate has been provided.

4. ***No Special/Exceptional Circumstances?*** The appeal decisions indicate that "[t]*he…officer has considered all matters and documents submitted with regard to the application and whether there are any special circumstances…and…concluded that there are none".* This is an intended reference to the *Department's Policy Document on Non-EEA Family Reunification* (December 2016) (the 'Reunification Policy'), para.1.12, which states: "[D]*ecision-makers…retain the discretion to grant family reunification in cases that… do not appear to meet the requirements of the policy….rare cases that present an exceptional set of circumstances…*". Three points arise. (1) The test that para.1.12 indicates will be brought to bear is "*exceptional circumstances*"; the impugned decisions state the decision-maker looked for "*special circumstances*"; so a different test was brought to bear (just how different is unclear). (2) The court respectfully does not consider it adequate in terms of reasoning, in circumstances where (a) a young man has a lifelong physical disability, (b) is otherwise so unwell that his mother (i) is in receipt of a carer's allowance and (ii) just cannot (under the terms of the allowance or as a matter of practicability) take up paid employment so as to bring herself above the financial thresholds identified in the Reunification Policy, (c) a specialist medical doctor/registrar has indicated that "[the young man] *would benefit hugely from reunification with his siblings"* (with no contrary medical evidence on file), for the decision-maker to state flatly that no "*special circumstances*" (*sic*) of the type contemplated in para.1.12 present. In treating baldly with this issue the decision-maker is guilty of a like failure to engage with the submissions (here the submissions made on appeal as to exceptional circumstances) as presented in *Pfakacha v. Minister for Justice and Equality* [2017] IEHC 620. (3) Counsel for the Minister contended that facts relevant to the para.1.12 analysis are considered in the decisions; however, there is nothing to indicate that they have been considered by reference to para.1.12; it is possible that facts treated one way in one part of a decision will be treated differently elsewhere in same when considered in light of whatever factor is or ought to be brought to bear (here para.1.12).

5. ***The Doctors' Letters****.* Among the materials submitted by the appellants is a letter of 03.08.2017, on headed paper, from a medical doctor/registrar at a renowned health-service provider that provides treatment to Ms Ahmed's Irish-resident son. The registrar indicates that the risk of social isolation of Ms Ahmed's Irish-resident son is such that "[h]*e would benefit hugely from reunification with his siblings*". In his decisions, the decision-maker indicates that "*there* [is] *no clear link between this doctor*" and Ms Ahmed's son. The court does not know what this is intended to mean: if a practising medical professional writes a letter concerning an individual it must be because s/he considers that professionally s/he is positioned to do so. If there is a concern on the part of a decision-maker that a letter is somehow phoney or that a particular doctor is behaving unprofessionally, there are ways of addressing this. Neither such circumstance is alleged to present. So the registrar's letter falls to be treated as a letter written by an informed medical professional competent to write the letter. To disregard the registrar's evidence (this appears to be what was done) is to act wrongly and unreasonably. One further point: the Irish-based son is also under the care of a consultant at the same health-centre; the decision-maker notes that the reunification point is not addressed in a formal letter that the consultant issued on 25.07.2017; the court notes that that means the registrar's medical opinion in this regard stands un-contradicted.

6. ***The Wired Monies***. Ms Ahmed claims to have sent monies over the years from Ireland to her children in Ethiopia. Although she has mislaid some receipts, she was able to supply a good number on appeal. The amounts claimed to have been sent on each occasion were small (typically €50-150). Not all the sender-receiver details on the receipts tally perfectly with the names of Ms Ahmed and the Osmans' father. The decision-maker concluded that what was supplied in this regard was deficient. It was open to the decision-maker to so conclude. In passing, there seems to be an internal inconsistency in the decisions: the decision-maker appears to accept that the sole income of Ms Ahmed's household comprises welfare benefits; yet the decision-maker concludes that it has not "*been sufficiently evidenced where these* [wired] *monies originated*". There is no suggestion of criminality on the part of Ms Ahmed and/or her Irish-resident son; nor is it alleged that Ms Ahmed has some undeclared income. So the mite Ms Ahmed states herself to have saved/wired could only have come, if saved/wired, from what she managed to scrimp from the benefits received.

7. ***Talking to Her Children***. Ms Ahmed claims in her appeal that she talks to her children in Ethiopia every day. She does not appear to have claimed that she writes to them by email/ordinary mail. The decision-maker concludes that "*No evidence of social support has been provided such as letters, phone calls, emails,* etc". If Ms Ahmed does not claim to correspond by email/ordinary mail with her children, it is difficult to see why it would count against her that she does not provide copies of emails/ordinary mails. That said, it

was open to the decision-maker to conclude that, in the absence of phone records there was nothing to suggest that there was the regular phone correspondence claimed by Ms Ahmed.

8. ***Legal Advisors and Curing Deficiencies***. Counsel for the Minister noted that the appellants have been represented throughout the application process by legal advisors. They have, but that does not cure the deficiencies in the appeal decisions that the court has identified. Counsel for the Minister submits that not even the deficiencies resolved in the initial decision were resolved by the appeal stage. Even if that is so, the administrative law deficiencies identified above and hereafter justify, between them, the court's ordering the below-identified reliefs.

9. **Conclusion**. The court considers six key deficiencies to present in the appeal decisions, which between them justify the court exercising its discretion in favour of granting certain of the reliefs sought: (1) when it comes to the health of the Osmans' father, the Minister's decision concludes that no medical documents were provided; in fact medical evidence was provided and clearly not perceived to be such; (2) the test that the Reunification Policy (para.1.12) indicates will be brought to bear is "*exceptional circumstances*"; here the decision-maker looked for "*special circumstances*" (just how different the two tests are is unclear); (3) in treating baldly with the issue of "*special circumstances*" (which, as stated in (2), was not the test which the Minister has indicated that he will apply) the decision-maker is guilty of a *Pfakacha*-style failure of reasoning; (4) to disregard the registrar's evidence for the reasons stated was to act wrongly and unreasonably; (5) there appears to be an internal inconsistency in the appeal decisions concerning the source of the wired monies; (6) if Ms Ahmed does not claim to correspond by email/ordinary mail with her children, it is difficult to see why it would count against her that she does not provide copies of emails/ordinary mails. Given the foregoing, the court will grant: (a) an order of *certiorari* quashing the appeal decisions of 20th October, 2017, in respect of the second and third-named applicants; and (b) remit the applications concerning same to the Minister for reconsideration in light of the within judgment.