Neutral Citation Number: [2006] IEHC 343

THE HIGH COURT
JUDICIAL REVIEW

Record No. 2005 1234 J.R.

BETWEEN

SAMIR MORISS GERGES FARES

APPLICANT

AND
THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENT

AND BY ORDER OF THE HIGH COURT OF 12TH JULY, 2006
FLOBATER SAMIR MORISS GERGES FARES

Supplementary Judgment of Ms. Justice Finlay Geoghegan delivered the 14th day of November, 2006.

1. The second named applicant was born in the State on 14th September, 2003 and is an Irish citizen. The first named applicant is his father and is an Egyptian national.

2. The first named applicant and his wife spent approximately six weeks in the State on a visitor's visa at the time of the second named applicant's birth. They returned to the State on 10th March, 2005 and the first named applicant made an application on IBC/05 from within the State for permission to remain in the State based on the parentage of his Irish citizen child.

3. On 19th August, 2005 this application was refused. The refusal was in the following terms:

> "It is a requirement under the revised arrangements that the applicant is residing in the State with their Irish born child on a continuous basis since the child's birth. In this case I note from your application form that you have been resident in Egypt from 13 October 2003 to 10 March 2005. On this basis I am satisfied that you do not meet the criteria for the granting of permission to remain in the State under the revised arrangements and accordingly your application is hereby refused."

4. On 21st November, 2005 the first named applicant was granted leave by order of the High Court (Butler J.) to apply by way of an application for judicial review for a number of declarations which relate to the alleged invalidity of the decision to refuse his application under IBC/05. By order of the 12th July, made in the course of the hearing the second named applicant was joined to seek the reliefs in the statement of grounds in respect of which leave had been granted on grounds set out therein.

Related proceedings and judgment
5. These proceedings were heard with the proceedings listed in the judgment delivered by me herein in Deborah *Olarantimi Bode & Ors. v. Minister for Justice, Equality and Law Reform* (2006 No. 102 J.R.). Whilst the factual circumstances of the first named applicant and his family may differ from those of the families who were the subject matter of the other proceedings insofar as they never claimed asylum in this country, that difference is not relevant to the submissions made in the applications in relation to the alleged invalidity of the decision taken on his application under IBC/05.

Conclusion
6. There is no substantive difference between the position of the second named applicant as a citizen child and his father as an applicant under IBC/05 so as to distinguish them in any way from the conclusions which I reached in the *Bode* judgment. Accordingly, for the reasons fully set out in that judgment I have concluded:

> 1. The decision taken by the respondent on the application under IBC/05 of the first named applicant as communicated in the letter dated 19th August, 2005 is unlawful as it was taken in breach of the second named applicant's rights under Article 40.3 of the Constitution.
>
> 2. The decision of the respondent on the application under IBC/05 of the first named applicant communicated in the letter of 19th August, 2005 is unlawful as it was taken in breach of the respondent's obligations under s. 3(1) of the European Convention on Human Rights Act, 2003, as it was taken in a manner which is not compatible with the State's obligations to the second named applicant under article 8 of the Convention.

Relief
7. Having regard to the above conclusions it appears to me that the appropriate relief is an order of *certiorari* quashing the decision of the respondent dated 19th August, 2005 refusing the application of the first named applicant under IBC/05 and an order remitting that application for consideration and determination by the respondent in accordance with law.