Neutral Citation Number [2006] IEHC 30

THE HIGH COURT
JUDICIAL REVIEW

2005 No. 1192 J.R.

BETWEEN

VALENTINE IATAN, ANNA DANIELA TEMNEANU, MARIA FLORIANA IATAN (A MINOR SUING BY HER FATHER AND NEXT FRIEND VALENTINE IATAN) AND VALENTINE DANIEL IATAN (A MINOR SUING BY HIS FATHER AND NEXT FRIEND VALENTINE IATAN)

APPLICANTS

AND

THE COMMISSIONER OF AN GARDA SÍOCHÁNA, THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, THE REFUGEE APPLICATIONS COMMISSIONER, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

Judgment of Mr. Justice Clarke delivered 2nd February, 2006.

1. Introduction
1.1 These proceedings raise, in somewhat unusual circumstances, the question of the entitlement of the first named applicant ("Mr. Iatan") to be within the State. There does not seem to be any significant dispute as to the principal primary facts. However, the legal consequence of those facts is a matter of controversy between the parties. In order to set out fully the contentions made on behalf of Mr. Iatan as to his status within the State and the authorities' position in relation to that status it is appropriate to address firstly the undisputed facts.

2. Facts
2.1 It would appear that Mr. Iatan is the husband of the second named applicant ("Ms. Temneanu"). There is no doubt but that Ms. Temneanu was granted refugee status on 10th June, 2003. The minor applicants are the children of Mr. Iatan and Ms. Temneanu. All are Romanian nationals. While it will be necessary to return to the legal basis of such applications in due course, it is sufficient for a recital of the facts to note that there exists both in law and in practice, a scheme for the consideration of what is called "family reunification" where, in certain circumstances, close members of the family of a person who has been given refugee status are entitled to join the refugee in the State. Such persons are given rights which appear to be identical to the rights of the refugee him or herself.

2.2 It will be necessary to return to the precise application made on behalf of Ms. Temneanu and Mr. Iatan in due course, as this is material to some of the issues which arise in the case. It is sufficient, for this brief recital of the facts, to note that on foot of correspondence written by solicitors acting on behalf of Ms. Temneanu, it was indicated by officers of the Minister for Justice, Equality and Law Reform ("the Minister") that an application for a visa should be made to the Irish Honorary Consul in Bucharest (being the appropriate Irish diplomatic location having regard to Mr. Iatan's residency). On foot of that application a visa was granted and Mr. Iatan came to Ireland.

2.3 In circumstances which are central to the controversy which now exists between the parties it would appear that, upon being given permission to land at Dublin airport, Mr. Iatan was advised to go to the Garda National Immigration Bureau ("GNIB"). Mr. Iatan consulted the firm of solicitors who had acted for his wife in her refugee application and was, quite properly, advised that he would have to present himself to officials at the GNIB at Burgh Quay. Thereafter, on attending at Burgh Quay, Mr. Iatan was given a GNIB identity card and his passport was stamped with a permission to remain in Ireland for one year, until 27th April, 2005. That permission also bears the number "G/4" which, I am told, permits the holder of such a permission to work while in the State.

2.4 It was not intimated, either to Mr. Iatan, to Ms. Temneanu , or to the solicitor who had advised both of them, that any further application was required in order to secure permission to remain indefinitely in the State in accordance with the family reunification scheme. For that reason no further application was made.

2.5 However, things came to a head when Mr. Iatan lost his identity card and, on applying for a new card, was informed that his permission to be in the State had expired (it being after 27th April, 2005). In those circumstances Mr. Iatan was informed that he no longer had any legal entitlement to remain in the State.

2.6 Correspondence from the Applicants' solicitors ensued. In a reply of the 21st September, 2005, on behalf of the Minister, the distinction between different forms of visas and permissions was set out. It was contended that no permission under s. 18 had ever been granted and finally it was indicated that it was open to the Applicants "to make an application to remain/family re-unification under Section 18 of the Refugee Act, 1996."

3. The Issues
3.1 It should be noted that it is not contested on the part of the State authorities that Mr. Iatan is the husband of Ms. Temneanu. It does appear that, subsequent to the reunification of Mr. Iatan and Ms. Temneanu in the State their marriage ran into difficulties and they are now separated. Mr. Iatan retains a close relationship with his children. The fact of the parties separation does not appear to be material to any of the issues which I have to consider.

3.2 In substance, the State authorities draw attention to the fact that there are a number of different permits or permissions (and consequently documents recording such permissions) which are of relevance for the purposes of establishing the entitlements and rights of persons in a position such as each of the applicants in this case. It will be necessary to consider the legal distinction between the various permissions and documents concerned in due course. However, for the purposes of defining the issues it is sufficient to note that it is contended that there are significant legal and practical differences between:-

(1) a visa;

(2) a permission to be and remain in the State; and

(3) a permission, under s. 18 of the Refugee Act, 1996, conferring upon a person who is a member of the family of a refugee, rights analogous to those conferred by law on such refugee.

3.3 In simple terms, the State authorities contend that the successful application of Mr. Iatan to the Irish Honorary Consul in Bucharest resulted in him being given a visa and no more. Secondly, it is said that his application to the GNIB at Burgh Quay resulted in him being given a permission to remain in the State but no more than its terms provided for (that is to say, a permission for one year). On that basis it is suggested that that permission is now spent. Finally, it is said that no permission under s. 18 has been given although it is pointed out that if an application for such permission is made it will be considered on its merits.

3.4 While not disputing the legal distinctions drawn between the various forms of visas, permissions and declarations, counsel for the applicants suggests that the manner in which Mr. Iatan's application (and, indeed, the initial application made by Ms. Temneanu) was made and responded to gives rise to additional legal entitlements beyond those which might formally, be said to flow, in the ordinary way, from the various visas and permissions given.

3.5 In those circumstances it is necessary to look at both the legal distinction between the visa, permission to stay and s. 18 permission which arise in the context of this case, and also to look, in some detail, at the precise sequence of events. In this latter context it is important to note that there was, undoubtedly, a significant level of confusion as to the manner in which Mr. Iatan was dealt with. It will be necessary to analyse the sequence of events in order to determine how and why that confusion arose and to address the legal consequences (if any) of such confusion. However, the starting point must be the legal status of the variety of permits and permissions to which I have referred. I now turn to that issue.

4. The Law

4.1 It was submitted on behalf of the State authorities, and I agree, that the definition of a visa is to be found in s. 1 of the Immigration Act, 2003 as –

> "an endorsement made on a passport or travel document other than an Irish passport or Irish travel document for the purposes of indicating that the holder thereof is authorised to land in the State subject to any other conditions of landing being fulfilled."

Counsel for the respondent is therefore correct when he suggests that a visa does not give a right to remain in the State but merely confers a right to land.

4.2 Section 4 of the Immigration Act, 2004 confers on an immigration officer, acting on behalf of the Minister an entitlement to give to a non-national appropriate documentation authorising such non-national to land or be in the State. Such a document is referred to in the Act as "a permission". It should be noted that s. 4(3) permits the immigration officer to refuse a permission (as so defined) where the officer is satisfied of a variety of things including (at sub-s. (e)):–

> "That the non-national, not being exempt, by virtue of an order under s. 17, from the requirement to have an Irish visa, is not the holder of a valid Irish visa."

4.3 It is clear, therefore, that counsel for the State authorities is correct when he submits that, in the scheme of the legislation applicable, there is a clear distinction between a "visa" on the one hand and a "permission to be in the State" on the other hand. A "visa" is a form of pre-clearance. A "permission" confers an additional entitlement upon the holder of it to remain in the State in accordance with the terms of that permission.

4.4 S. 18 of the Refugee Act, 1996 deals specifically with a different form of permission which can be given by the Minister (rather than an immigration officer) and is to be "in writing to the person to enter and reside in the State and on such permission being given the person shall be entitled to the rights and privileges specified in section 3 for such period as the refugee is entitled to remain in the State." In order to obtain a s. 18 permission the person concerned must be a member of the family of someone who has been given a declaration, in accordance with the 1996 Act, of refugee status. On the application of such refugee, s. 18(2) requires that the application is referred to the Refugee Applications Commissioner (RAC) who investigates the application and submits a report in writing to the Minister, setting out the relationship between the refugee concerned and the person the subject of the application and also the domestic circumstances of that person. If, following consideration of such a report, the Minister is satisfied that the person is a member of the family of the refugee then the Minister is required to grant a permission under the section, subject to the entitlement of the Minister to refuse to grant such permission (or, indeed, to revoke it once granted) under sub-s. (5) in the interests of national security or public policy.

4.5 In substance, therefore, a person who is a member of the family of a refugee (as defined) and in respect of whom no national security or public policy reason exists for determining otherwise, is entitled to permission under the section from the Minister. The Minister is also given a discretion to grant a similar permission to a dependent of the refugee who does not come within the formal definition of "member of the family". However, nothing turns on that issue in the current case. Of some minor relevance is the definition of a spouse which, under s. 18(3)(b)(i), includes within the definition of "member of the family" persons where:-

> "In case the refugee is married, his or her spouse (provided that the marriage is subsisting on the date of the refugee's application pursuant to sub-section (1)."

In that context it is clear that the date of the refugee's application is of importance in that it is the subsistence of the marriage as of that date which governs the entitlements under the section.

4.6 There can be little doubt, therefore, but that counsel for the State authorities is correct when he submits that the three categories of document or permission to which reference has been made are separate and distinct. A visa is, as he submits, simply a permission to land and amounts to a form of pre-clearance to that end. A permission to remain in the State is given by an Immigration Officer under the Immigration Acts and, subject to its terms, allows the recipient to remain in the State for whatever period, and subject to whatever conditions, as may be properly attached to that permission. A permission under s. 18 must be given by the Minister but can only be refused on the basis that the person who is the subject matter of the application for permission either is not a member of the family of the refugee concerned or that there are national security or public policy issues which lead to a proper refusal.

Against that legal background it is necessary to look in more detail at certain aspects of what actually transpired in this case.

5. The Confusion

5.1 The relevant sequence of events commences with a letter of 10th June, 2003 from an officer of the Minister to Ms. Temneanu in which she was informed that her application for a declaration of refugee status had been granted and that the Minister had made the appropriate declaration to that effect. An accompanying document set out the rights which were conferred by the declaration of refugee status and in material part stated as follows:-

> "You may apply to the Minister for permission to be granted to a member of your family to enter and reside in the State in accordance with section 18 of the Refugee Act, 1996 (as amended). If you wish to do this you should contact Department of Justice, Equality & Law Reform, Immigration Section, 13/14 Burgh Quay, Dublin 2."

5.2 Thereafter, solicitors on behalf of Ms. Temneanu wrote to the same officer by letter of 5th September, 2003 which, having referred to the above document, indicated that:-

> "My client intends to apply to bring her husband, Mr. Valentin Iatan to Ireland.
>
> We will be obliged if you could revert to us and give us details to (sic) the necessary steps to be taken in order to make this application."

5.3 A copy of that letter was sent to the Department of Justice Equality and Law Reform Immigration Section under cover of a letter (also on 5th September) which ended with the following paragraph;-

> "Obviously my client and her young family are anxious to be reunited with Mr. Iatan and in that regard we would be obliged if you could revert back to us to let us know what steps need to be taken in order to make the application for reunification."

5.4 The Minister's office replied indicating that the letter to the Minister's officer had been forwarded to "Family Reunification Section" at Immigration, 13/14 Burgh Quay and that all future correspondence should be dealt with by that section.

That section responded by an undated letter but which, for reasons which will become apparent, was likely to have been in early December, 2003. As the letter is of some considerable importance I propose setting it out in full:-

> "Dear Sir/Madam,
>
> I am directed by the Minister for Justice Equality and Law Reform to refer to your recent correspondence regarding information on Family Reunification.
>
> This Family Reunification Scheme, which is administered by the Department of Justice, Equality and Law Reform, uses Section 18 of the Refugee Act, 1996 as a guideline.
>
> Under Section 18 the Minister may, at his or her discretion, grant permission to a dependent member of the family of a refugee to enter and reside in the State. Members of the family for whom admission may be sought is restricted to a spouse, any child who is under 18 and unmarried, the parents of an unmarried refugee under 18, and, at the discretion of the Minister for Justice, Equality and Law Reform, "dependent members of the family" which means "any grandparent, parent, brother, sister, child, grandchild, ward or guardian of the refugee who is dependant on the refugee or is suffering from a mental or physical disability to such an extent that it is not reasonable for him or her to maintain himself or herself fully".
>
> *If the person who wishes to come to Ireland as a spouse or other relative under Section 18 above is in a country where there is an Irish embassy, they should make a visa application in that country. If there is no embassy or the person for whom the visa is required is unable to make the application, then the relative in Ireland can make the visa application through the Department of Foreign Affairs, Consular Section, 13-14 Burgh Quay, Dublin 2.*
>
> The visa application will then be forwarded to the Department of Justice, Equality and Law Reform for consideration under the above scheme. It is important that when any such visa application is being made, either outside of Ireland or in Ireland that the person applying makes it clear that this is an application under the 'family reunification scheme' and supports their application with any relevant documentation (birth certificates, marriage certificates, medical documentation etc.) and also residency documentation in respect of the person in Ireland who is applying on their behalf."

5.5 There are a number of important aspects of this letter. Firstly the letter is stated to be in response to the previous correspondence regarding "Family Reunification". Secondly the letter is somewhat inaccurate where it, in the third paragraph, indicates that the Minister may "at his or her discretion" grant permission to a dependant member of the family of a refugee to enter and reside in the State but goes on to imply that such persons include, *inter alia*, spouses. The Ministerial discretion, as pointed out above, does not arise (subject to security and public policy issues) in relation to the immediate members of the family but only to dependents who are somewhat more remote.

Furthermore the letter makes reference to what might be called the "Family Reunification Scheme" which, it is said, is administered by the Department and uses s. 18 as a guideline. It is by no means clear as to what might be the difference between the "scheme" and the formal application of the s. 18 process.

5.6 It may well be, as was suggested by Counsel for the State Authorities at the hearing, that what the letter intended to convey was that there was a scheme in place that would allow for the relatively early entry into the State of persons who may be covered by s. 18 on a temporary basis so that they can be reunited with the refugee family member concerned pending the carrying out of the investigations required under s. 18 so as to lead to a ministerial decision on their application. While that may well have been the intention of the letter it does not appear to me that any reasonable person reading that letter would have had such an impression conveyed to them. On the contrary the only reasonable reading of the letter is to the effect that the application under s. 18 is to be made in the form of a visa application to the relevant embassy. In coming to that view I have had regard to the entirety of the letter but in particular the fact that the only relevant matters dealt with by s. 18 (and therefore the only circumstances in which a person might be said to come to Ireland under s. 18) is in the context of an application and grant of permission under that section.

A person who is permitted to enter Ireland in advance of a consideration of their application under s. 18 (and while such an application is pending or in order to facilitate the making of such an application) could not, in any real sense, be said to have come to Ireland under s. 18.

5.7 In those circumstances I am satisfied that any reasonable person reading the letter would have had conveyed to them that the way in which the Minister and the Department proposed to deal administratively with applications under s. 18 was through the making of a visa application to the appropriate embassy. This is copper fastened by the first sentence of the final paragraph which indicates that the visa application will be forwarded to the Department "for consideration under the above scheme". Finally I note that the letter does indicate that the application to the relevant embassy is required to specify that it is being made under the "Family Reunification Scheme".

5.8 Such an application was made by the solicitors acting on behalf of Ms. Temneanu by letter of 16th December, 2003, addressed to the Irish Honorary Consul at Bucharest. From the date of that letter I have inferred that the departmental letter suggesting the visa application was sent in early December. The solicitor's letter indicated that Mr. Iatan wished to make "an application for a visa under the Family Reunification Scheme".

5.9 On foot of that application a visa was granted permitting Mr. Iatan to travel to Ireland. A further permission to stay in Ireland was given by the immigration officials at Dublin Airport subject to attendance at the GNIB and there followed the full working one year permission given by the GNIB to which I have referred.

5.10 Before going on, therefore, to a consideration of the legal consequences of the above sequence of events it is necessary to reach some conclusions as to the confusion which apparently arose. Counsel for the State authorities, correctly, drew attention to the fact that there, is in the correspondence emanating from the applicants solicitor, some confusion as to the true meaning of the term visa. This is undoubtedly correct. In the course of the correspondence the term "visa" is used when, more strictly, it would have been correct to use the term "permission" meaning a permission to stay in the jurisdiction. In fairness it should be said that the use of the term in that manner corresponds with the colloquial use of the term "visa" even if it is not technically correct.

5.11 Secondly it is said that Mr. Iatan, having had the benefit of legal advice, should have been aware that the permission to remain in the State given to him by the GNIB could not have been a permission under s. 18 because it was for a limited period of time (being for one year as opposed to the open ended permission under s. 18) and also was not given by the Minister.

5.12 In that context it should be noted that the evidence makes clear that while Mr. Iatan took legal advice prior to going to the offices of the GNIB he does not appear to have had legal advice thereafter until such time as he encountered difficulties when he lost his identity card. There is no evidence, therefore, that Mr. Iatan had legal advice after he received the permission to remain on the 27th April, 2005. Nor is there any basis for suggesting that he should have sought such advice. All of the documentation eminating from the Ministers officers to that point would have led any reasonable person (including a lawyer) to believe that the s. 18 application was being dealt with through the visa application. Finally it should be noted that the GNIB permission is stated to be "for Minister for Justice Equality and Law Reform".

5.13 While it is easy to see, with the benefit of hindsight, and with the benefit of the careful analysis of the legal distinctions outlined in the course of this judgment, that the permission granted on the 27th April, 2005, is not a permission under s. 18, it does not seem to me that it would be reasonable to blame Mr. Iatan (or indeed his solicitor) for the confusion which arose.

5.14 In my view that blame rests squarely upon the official of the Minister who wrote the letter which I have quoted in full above. That letter conveyed to Mr. Iatan, Ms. Temneanu and their lawyer, that the way in which an application under s. 18 was to be progressed was by means of applying for a visa in Bucharest. This they did and the visa application was successful. Having regard to the fact that the original letters written on behalf of Ms. Temneanu, were, in express terms, stated to be in furtherance of an application of the type to which her attention had been drawn by the Minister (i.e. a s. 18 application) and in the absence of it being indicated to any of them that any further application was required, I find it difficult to see how they could have been expected to believe that there was a separate and, independent, application required in order that the matter be considered under s. 18. In those circumstances it seems to me that I must approach the legal issues in this case on the basis that the entire responsibility for the confusion that arose stems from the fact that the applicants and their legal advisor were, (albeit innocently and unintentionally) misled into a reasonable belief that the proper way to apply for permission under s. 18 was to make a visa application to Bucharest.

6. The Legal Consequences

6.1 In *Keogh v. CAB and the Revenue Commissioner* (High Court, Unreported, McKechnie J. 20th December, 2002) this court had to consider the scope of the doctrine of legitimate expectation. As noted at paragraph 17 of the judgment, the doctrine is now soundly based in Irish law following from *Webb v. Ireland* [1988] I.R. 353 and *Fakih v. Minister for Justice* [1993] 2 I.R. 406. In the latter case O'Hanlon J. considered the topic, as McKechnie J. pointed out in *Keogh*:-

> "In the context of asylum and refugee applications. In the absence of any statutory or regulatory regime to deal with such applications, the respondent Minister by letter dated the 13th December 1985, agreed with a representative of the United Nations High Commission on Refugees that in future such applications would be dealt with in accordance with the terms of that letter ("the Von Arnim letter")."

6.2 Having conducted a thorough review of those and other authorities McKechnie J. helpfully summarised the principles applicable as follows:

> "(a) The existence of a legitimate expectation that a benefit will be conferred does not, on its own, give rise to any legal or equitable right to the benefit itself which can be enforced by an order of Mandamus or otherwise. However, in cases involving public authorities, other than cases involving the exercise of statutory discretionary powers, an equitable right to the benefit may arise from the application of the principles of promissory estoppel to which effect will be given by the appropriate court order.
>
> (b) In cases involving the exercise of a discretionary power, the only legitimate expectation relating to the conferring of a benefit that can be inferred from words or conduct, is a conditional one, namely that a benefit will be conferred provided that, at the time the Minister considers it, it is a proper exercise of the statutory power, in the light of current policy, to grant it. Such a conditional expectation cannot give rise to an enforceable right should it later be refused by the Minister in the public interest.
>
> (c) In cases involving the exercise of a discretionary statutory power in which an explicit assurance has been given which gives rise to an expectation that a benefit will be conferred, no enforceable, equitable or legal right to the benefit can arise. No promissory estoppel can arise because the Minister cannot stop himself or his successors from exercising the discretionary power in the manner prescribed by parliament at the time it is being exercised."

6.3 It is therefore clear (from cases such as *Fakih*) that a legitimate expectation can exist as to the process to be followed in the consideration of conferring a benefit. Furthermore it would appear that legitimate expectation may extend to the substance of the matter provided that the issue does not involve the exercise of statutory discretionary powers.

6.4 Thus it appears necessary to analyse the matter in respect for which it is claimed that there may be a legitimate expectation to ascertain whether it is:

(a) procedural;

(b) discretionary or;

(c) substantive not involving the exercise of a discretion.

6.5 Applying those general principles to the facts of this case I am satisfied that the letter of December 2003 from the Department to the applicants solicitor created a legitimate expectation that;-

(a) an application for permission under s. 18 would be dealt with by means of same being originated by a visa application to the Irish Honorary Consul in Bucharest and;

(b) that such an application would be treated as being an application under the section so that the result of the visa application would be taken to be the result of the application under the section.

6.6 Insofar as those matters consist of a procedural expectation I have no doubt but that they are enforceable. It seems to me, therefore, that the applicants are entitled to have the application made to the Irish Honorary Council in Bucharest treated as an application under s. 18. In those circumstances I am satisfied that an application under s. 18 has been pending since that time and that the Minister is in default in not giving a decision in respect of that application in a timely fashion. The requirement sought to be imposed on behalf of the Minister that a fresh application be made once the difficulties emerged in 2005 was, in my view, and on that basis, not legitimate.

6.7 For the reasons pointed out above, a consideration by the Minister of an application under s. 18 involves, in reality, a consideration of two separate matters. The first is a matter of substance concerning whether the person in respect of whom permission is sought is a "member of the family" as defined. For the reasons analysed above that decision is not a matter in respect of which the Minister can be said to exercise any statutory discretion. Obviously the Minister may, on the facts of a particular case, not be satisfied that the person is a member of the family. However such a decision is not a matter of discretion. It is a matter of determination. The Minister can only come to a view as to whether a person is or is not a "member of the family" in accordance with public law principles. Where there is evidence which leads only to a conclusion that the person is such a member of the family (and in the absence of any competing evidence which might reasonably lead to an alternative conclusion) then the Minister is constrained to make a finding that the person is a member of the family. I am not, therefore, of the view that that aspect of the Minister's decision involves the exercise of a statutory discretion of the type identified by McKechnie J. in *Keogh*.

6.8 However, as pointed out, there is a second aspect of the Minister's consideration, being a determination as to whether there are public policy or national security issues that might lead to the refusal of permission under s. 18. That aspect of the decision clearly does involve the exercise of a ministerial discretion.

6.9 I am not satisfied, therefore, that any enforceable legitimate expectation can arise in relation to that aspect of the Minister's decision which would require him to consider whether there are national security or public policy issues which might legitimately lead to a refusal to grant permission. On the other hand I am satisfied that an enforceable legitimate expectation has arisen in respect of that aspect of the determination which involves a decision that the person in respect of whom the application is made is a "member of the family" of the refugee. On the basis of the December letter the applicants were entitled to assume that the decision on the visa application was the decision on the s. 18 application. The visa application was successful. They are, therefore, in my view, entitled, by means of the doctrine of legitimate expectation, to prevent the Minister from revisiting any aspect of the decision save to the extent that the relevant aspect of the Minister's decision involves the exercise of a statutory discretion.

6.10 In all those circumstances I am satisfied of the following matters:-

(a) the applicants are entitled to have the original visa application to the Irish Honorary Consul in Bucharest treated as an application for permission under s. 18;

(b) the applicants are entitled to have the grant of that visa treated as a grant of permission under s. 10 to the extent that the decision does not involve the exercise of any statutory discretion; and therefore

(c) the Minister is obliged to make a decision on the application in early course; and

(d) the Minister is estopped, in making that decision, from revisiting the question of whether Mr. Iatan is a member of the family of Ms. Temneanu.

6.11 For the avoidance of doubt I should make it clear that the Minister is entitled, in coming to a conclusion under s. 18, to take into account any issues of public policy or national security which are properly open to him under the provisions of s. 18(5). In the circumstances I would propose to make an order of mandamus requiring the Minister to determine the entitlement of Mr. Iatan under s. 18 and I will grant appropriate declaratory relief to give effect to the other aspects of this judgment. Furthermore it seems to me that while understanding how the relevant confusion arose and noting position of the Minister when the issue was brought to his attention, I must nonetheless conclude that the Minister is in significant delay in dealing with the application under s. 18. While that delay could not, of itself, confer substantive rights I am satisfied that it would be inappropriate, having regard to that delay, for the Minister to seek to prevent Mr. Iatan from remaining in the jurisdiction, or from working, pending a decision by the Minister as to the final outcome of the s. 18 application.

6.12 I will hear both counsel, when they have had an opportunity to consider this judgment, as to the precise form of the order which I should make.