

THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 741 J.R.]

BETWEEN

B.A.

APPLICANT

AND

THE REFUGEE APPLICATIONS COMMISSIONER

RESPONDENT

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 21st day of November, 2016

1. The applicant attended for interview with the Refugee Applications Commissioner in connection with his asylum claim on 9th November, 2015. Following that interview, the commissioner made enquiries with the applicant's bank and the Registrar of Civil Marriages. Those enquiries suggested that the applicant was in possession of additional personal identifying documents which he failed to disclose to the commissioner. The commissioner did not revert to the applicant for comment in relation to this new information, and then drew very significant adverse consequences from the new information so provided.
 2. The substantial grounds test applies to this leave application by virtue of s. 5 of the Illegal Immigrants (Trafficking) Act 2000, and I have had regard to the law in relation to that test including *McNamara v. An Bord Pleanála* [1995] 2 I.L.R.M. 125 as approved in *In re Illegal Immigrants (Trafficking) Bill 1999* [2000] 2 I.R. 360 at 395.
 3. I previously expressed the view in *B.W. v. Refugee Appeals Tribunal (No. 2)* [2015] IEHC 759 (Unreported, High Court, 27th November, 2015) at para. 20 (v) that where a decision maker comes into possession of new information which gives rise to "a material change, adverse to the applicant" then as a matter of generality that new information should be put. While not all failures to put information of this kind will be fatal, in the specific circumstances of the present case, substantial grounds have been made out for the contention that the conclusions adverse to the applicant drawn from the new information were so fundamental and significant that the information should have been specifically put.
 4. Under those circumstances, there are substantial grounds for contending that the present case is one of the exceptional circumstances envisaged by Hedigan J. in *B.N.N. v. Minister for Justice* [2009] 1 I.R. 719 whereby a decision of the commissioner can be challenged without the applicant having to exhaust the normal remedy of appeal to the tribunal.
 5. Mr. Shannon Michael Haynes B.L. for the applicant also had a second point regarding the role of the panel member in the investigation. As I have rejected the proposition that there are substantial grounds for this point in a judgment in *M.Y.A., M.J., I.G., X.G., & F.G. v. Refugee Applications Commissioner* (Unreported, High Court, 14th November, 2016), I also do so here for the same reasons.
- Order.**
6. Accordingly, I will give leave to the applicant to apply for judicial review for the reliefs at para. D of the grounding statement on the grounds at para. E (v) and (vi). Leave to pursue the remaining grounds will be refused.