THE HIGH COURT

JUDICIAL REVIEW

[2017 No. 135 J.R.]

BETWEEN

P.

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Ms. Justice O'Regan delivered on the 23rd day of February, 2017

1. The applicant herein is applying for leave to seek an order of certiorari quashing the deportation order made against her by the respondent therein dated the 5th of December, 2016. The underline decision incorporates the date of the 14th of November, 2016 but was eventually approved on the 5th of December, 2016. The grounding affidavit is dated the 14th of February, 2017 with the ex parte docket and statement of grounds dated the 15th of February, 2017. In addition submissions of the 16th of February, 2017 have been furnished.

2. Application for leave was made pursuant to s. 5 of the Illegal Immigrants (Trafficking) Act 2000 As Amended. The grounds on which relief was sought is on the basis that the respondent erred in the consideration of the effects of the deportation order on the private life rights of the applicant, in particular to the extent that it was held by the respondent that the decision to deport did not constitute an interference of such gravity as to engage the operation of Article 8 of the ECHR. It is accepted by the applicant that the decision did consider the rights of the applicant however determined that these rights were not of such gravity as to require a balancing or proportionate exercise as anticipated by Article 8 (2) of the ECHR. The lack of engagement of Article 8 (2) comprises the essence of the applicant's complaint in respect of the deportation order.

3. It is accepted that the applicant received the letter of the 5th of October, 2016 advising her of the respondent's proposal to make deportation order and inviting her to make submissions. No such submissions were made.

4. At the hearing of the leave application counsel for the applicant argued that because the initial application of the applicant dated 15th of December, 2015, which comprised the first engagement, was made using a form that is used in deportation orders, this was sufficient for the Minister to be obliged to take same into account.

5. I cannot accept that because the applicant chose unilaterally to use this form in or about application for leave to remain in the State that this unilateral act in of itself creates an additional or enhanced obligation on the respondent to take these matters into account in making a deportation order over and above representations a party might make availing of a different form.

6. The above notwithstanding the reality is that the consideration afforded under s. 3 prior to the making of the deportation order did indeed take into account the representations previously made by the applicant on the 15th of December, 2015 as is apparent from page 5 of 7 of the consideration.

7. Part of the Minister's consideration incorporated:

> (i) that the applicant appeared to be in the process of undertaking a marriage of convenience prior to being approached by An Garda Síochána;
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> (ii) the applicant did not in fact attend the last course for which she has secured student permission;
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> (iii) the applicant's attendance rate at the penultimate course was 65% attendance;
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> (iv) the applicant in fact worked more than the 20 hours per week allowed to her under the student permission she had previously obtained. The applicant had a Stamp 2 student condition permission between the 9th of September 2008 and the 9th of November, 2015 by the respondent;
>
> (v) the respondent noted that a notification of the 5th of October, 2016 was dispatched to her (by registered post) as to the intention to make a deportation order however she had not submitted any representations in response to this.

8. The applicant argued that because she was present in the State as the settled migrant then it was incumbent on the respondent to undertake a balance and/or proportionate exercise under Article 8 (2).

9. In *Luximon v. The Minister for Justice and Equality* [2016] IECA 382 at para. 59 thereof the Court of Appeal accepted that a proposed decision not to renew a permission pursuant to s. 4 (7) of the 2004 Act in respect of a person who had been in the State lawfully for several years pursuant to a permission had the potential to be an interference with her right to respect for private life or family right such as is capable of engaging Article 8 of the ECHR. The Court went on to state:-

> *"The question as to whether or not the particular facts of the application, a decision not to renew the permission would have consequences of such gravity for Ms. Luximon and her daughter in relation to their alleged rights to family or private life such that Article 8 is engaged in the sense that term is used in the Razgar, C.I. and Dos Santos judgments is a matter for determination by the Minister subject only to judicial review by the courts."*

10. In *C.I. v. Minister for Justice, Equality and Law Reform* [2015] IECA 192 the Court of Appeal at para. 26 of the judgment quoted from the ECtHR in *Balogun v. United Kingdom* (2013) 56 EHRR 3 which includes the following:-

> *"Not all settled migrants will have equally strong family or social ties in the Contracting State where they reside but the*

comparative strength or weakness of those ties is, in the majority of cases, more appropriately considered in assessing the proportionality of the applicant's deportation under Article 8(2)."

11. In the light of the foregoing and the fact that the consideration did involve an assessment under the Razgar principles the Minister did consider the private life rights of the applicant as identified to the Minister (although in circumstances where the applicant did not respond to the Minister's invitation to make representations to the Minister in respect of the proposed deportation order) it appears to me that the conclusion that the interference would not have consequences of such gravity as potentially to engage the operation of Article 8 is rational and reasonable.

12. In the circumstances I am not satisfied that the applicant has demonstrated substantial grounds as required by s. 5 of the 2000 Act as amended to secure the requisite leave and accordingly the application is refused.