

Between:

YASHRAJ JOOREE

APPLICANT

– AND –

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr Justice Max Barrett delivered on 21st December, 2018.

1. Mr Jooree is a citizen of Mauritius. He had successive 'stamp 2' student permissions to be here; the last permission expired in 2009. Mr Jooree left Ireland, returned and has (it seems) been unlawfully here since May 2015. By letter of 17.08.2015, he applied for 'stamp 4' permission to be here, invoking s.4 of the Immigration Act 2004. By decision of 09.08.2016, the Minister refused to deal with this application. Mr Jooree seeks, *inter alia*, an order of *certiorari* regarding that refusal.

2. The decision states, *inter alia*, that: "*Because you did not have permission when the application was received, the question of amending or extending it does not arise. Accordingly, your case will not be dealt with under section 4*". This text involves an inexact reference to s.4(7) of the 2004 Act which provides: "*A permission under this section may be renewed or varied [i.e. not 'amended or extended'] by the Minister...*". But administrative decisions do not fall to be construed like statute. What the Minister clearly (and correctly) seeks to convey is that because Mr Jooree does not hold an extant permission under s.4 there can be no "*amending or extending*" ('varying') of same: one cannot vary the non-existent.

3. In his pleadings/submissions the Minister has not provided retrospective reasons for his refusal. Even if he had, the court considers that, for the above reasons, the decision offers good reason for refusing to deal with Mr Jooree's application. The court sees no breach of the Minister's duty of candour to present.

4. The decision does not mention a decision not to renew. But Mr Jooree can have no complaint in this regard. He did not apply for renewal of anything. Renewal involves a re-issuance/fresh issuance of what duly went before. Mr Jooree has applied for 'stamp 4' permission; he has never held 'stamp 4' permission; so there can be no renewal of same.

5. The decision also refused a further student permission. The Minister cannot, not least as it would entail a patent unfairness of procedure, properly refuse what has not been sought; and a further student permission was not sought in the letter of 17.08.2015 (which is focused on Mr Jooree's being permitted somehow to remain here as a worker). However, the decision does otherwise offer good reason for refusing to deal with Mr Jooree's application under s.4.

6. To the extent that the Minister enjoys, outside s.4, a discretionary executive power to grant permission to remain, Mr Jooree's application was based on s.4; he did not ask the Minister to exercise such a power aforesaid; nor is there separate obligation on the Minister so to do.

7. Because he is illegally present in Ireland, Mr Jooree is exposed to the risk of deportation under s.3(3)(a) of the Immigration Act 1999. Under s.3(3)(b), Mr Jooree may make written representations (admittedly in the deportation context) to the Minister on any matter he considers pertinent. Under s.3(6), the Minister is required to consider all such representations and Mr Jooree's family/domestic circumstances. So there is a mechanism whereby Mr Jooree will yet get to assert why he should be permitted to remain, when/if the s.3 process proceeds.

8. The court notes that the decision notifies Mr Jooree, *inter alia*, that "*If you leave the State voluntarily...it would be open to you to apply for a D...visa from outside the State*". This is a statement of fact, not an invitation to leave.

9. The Supreme Court's decision in *Luximon & ors v. Minister for Justice and Equality* [2018] IESC 24 can be distinguished on its facts. In para.12 of his judgment, MacMenamin J. says of the respondents: "*I consider their status...up to January 2011, could best be characterised as...lawful, long duration residents*". Mr Jooree is differently placed: he is an *unlawful*, long duration resident. (In passing, the court notes that this application was for a time, with Mr Jooree's consent, listed on the so-called '*Luximon* List'. But his application still falls to be treated in accordance with applicable law; that law and its consequences are as stated herein).

10. For the reasons stated above, the court is coerced as a matter of law to refuse this application.