

Between:

**HASEENA BEEVI BADSHAH, AHAMED ALI (a minor suing through his grandfather and next friend AKBAR BADSHAH) and  
AKBAR BADSHAH**

Applicants

– and –

**THE MINISTER FOR JUSTICE AND EQUALITY**

Respondent

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

1. Mr Akbar Badshah is an adult UK national resident in Ireland. His daughter, Ms Haseena Badshah, is an Indian national resident in the UAE. Ms Badshah's minor son, Master Ahamed Badshah, is an Indian national, living with Ms Badshah. On 25.07.2016, visa applications were made for Ms Badshah and Master Badshah under the EC (Free Movement of Persons) Regulations 2015. These were refused and subsequent appeals failed. This application seeks, *inter alia*, orders of *certiorari* in respect of, and certain declarations consequent upon, the appeals decisions.

2. The separate appeals decisions concerning Ms Badshah and Master Badshah indicate, *inter alia*, regarding: (1) both Ms Badshah and Master Badshah, that "*You have failed to prove that you qualify as a beneficiary of Directive 2004/38/EEC*"; (2) Ms Badshah, that "*You have not provided sufficient...evidence that you are financially dependent on your father...or that he can financially support you. You have not provided evidence that you are dependent on him in any other way*"; (3) Master Badshah, that "*You have not provided sufficient...evidence that you are financially dependent on your grandfather...or that he can financially support you. You have not provided evidence that you are dependent on him in any other way*."

3. The sentence "*You have failed to prove that you qualify as a beneficiary of Directive 2004/38/EEC*" is vague; however, it appears to connote that neither Ms Badshah nor Master Badshah derive any advantage under the 2015 Regulations. This is not true of Master Badshah. He is a "*qualifying family member*" under the 2015 Regulations, reg.3(5), being Mr Badshah's direct descendant and under the age of 21. That he enjoys that status places him in an at least somewhat advantaged position under the Directive. (In passing, no dependency test falls to be undertaken in respect of him, as an under-21 year old direct descendant, when assessing whether he is a "*qualifying family member*" within the meaning of reg.3(5), though it appears that such a test was applied when one has regard to point (3) above). Master Badshah is entitled to be assessed on the basis that he is a "*qualifying family member*" and thus being, to that extent, advantaged under ("*a beneficiary of*") the Directive.

4. As for Ms Badshah, the Minister contends that the reference at point (2) above to whether Mr Badshah "*can financially support you*" was relevant to determining whether there was that dependent relationship with Mr Badshah which Ms Badshah, being over the age of 21 years, must establish if she wishes to be treated as a "*qualifying family member*" within the meaning of reg.3(5). In truth, the wording quoted at point (2) suggests that an additional test separate to the issue of dependency was brought to bear ("*or that he can financially support you*" [emphasis added]). But even if it was, that does not avail Ms Badshah as the Minister has in any event concluded, and it was open to him so to conclude, that she has failed to establish her dependency on Mr Badshah, with the result that she is not a "*qualifying family member*" for the purposes of the 2015 Regulations. As to the contentions that the Minister erred when it came to the issue of Ms Badshah's dependency, these are respectfully rejected by the court for the reasons that follow. Thus it was contended that:

**(I) the Minister's decision was irrational or unreasonable.**

This submission was based essentially on the fact that voluminous submissions as to Ms Badshah's claimed dependency were made. But the volume of information provided is not determinative of dependency; a qualitative assessment must be made and it was open to the Minister properly to conclude, as he has, that he was not satisfied, on the information before him, that Ms Badshah is a dependent of Mr Badshah.

**(II) the decision did not provide adequate reasons or was otherwise lacking in clarity.**

The Minister's reasoning on appeal as to Ms Badshah's dependency is notably succinct but also clear as to (a) what was missing (sufficient documentation to show dependency), (b) how the proofs fell short (insufficient documentation to show dependency), and (c) what type of evidence should be provided if applying again (more and better documentation showing dependency). The court does not accept that the Minister has a duty to identify in detail what exact deficiencies were considered to present. Nor does the court consider that it falls to the Minister to identify what alternative documentation might or should be provided in a future application: it is for applicants to make applications and they are best placed to know what further documentary proof they can provide about themselves. (*Khan v. Minister for Justice, Equality and Law Reform* [2017] IEHC 800, paras. 84-85).

**(III) the Minister breached the audi alterem principle.**

It is contended that the Minister ought to have reverted to the applicants mid-decision-making, identified such deficiencies as he considered to present in their applications and sought their input regarding same. That is to misunderstand the visa application process: applicants apply; lawyers advise; the Minister decides. It is (see *Khan, supra*) for applicants to put the 'best foot forward' when making an application. It is not for the Minister to assist them in so doing by inviting their interim or ongoing input in the course of the decision-making process.

5. Finally, the court sees nothing to suggest that the Minister did not bring to his decision-making that "*added obligation of care*" which Clarke J. referred to in *E.D. v. Refugee Appeals Tribunal & anor* [2016] IESC 77, para. 7.5, as an obligation that a decision-maker must bring to bear when tasked with making decisions that "*if wrongly made, could have very serious consequences indeed for the rights of any individuals affected*".

6. For the reasons stated: (1) the court will grant an order of *certiorari* in respect of Master Badshah's appeal and remit that appeal to the Minister for fresh consideration; (2) Ms Badshah's application is respectfully refused.