THE HIGH COURT

JUDICIAL REVIEW

[2017 No. 259 J.R.]

BETWEEN

V. B. AND OTHERS

APPLICANTS

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Ms. Justice O'Regan delivered on the 3rd day of April, 2017

1. The above mentioned five applicants, being two parents and three children, applied for leave to seek an order of mandamus against the respondent directing the respondent to issue a decision in respect of the applicants' application for leave to remain in the State pursuant to s. 3 of the Immigration Act 1999, by virtue of an ex parte docket of 15th March, 2017.

2. The proposed statement of grounds is dated 15th March, 2017 and identifies that the parents are Mauritian nationals who were married in 2005 and came to Ireland January, 2007 both having student visas which expired 2nd March, 2012. The three children were born in Ireland.

3. Enquiries were made by the applicants as to securing a further visa in or about August, 2012 and ultimately a series of communications was entered into commencing on 2nd December, 2012. These communications to the respondent were for stamp 4 permission, permission pursuant to s. 4(7) of the 2004 Act and various requests of the respondent to issue a notice under s. 3 of the 1999 Act so as to enable the applicants to make representations to the respondent on a humanitarian basis. During the currency of this exchange evidence was afforded that the husband had a job offer (a letter of 7th October, 2015) and the delay in regularising their status had an adverse impact on the wife's health – a medical report was submitted under cover letter on 3rd March, 2016.

4. In the events the relevant s. 3 letter issued from the respondent on 25th May, 2016 and representations were made on behalf of the applicants on 15th June, 2016. Subsequently three further letters were sent each affording the Minister 28 days within which to make a decision. Included was a letter of 8th December, 2016 wherein the applicants sought priority for their application.

5. In a letter of 26th January, 2017 the respondent indicated that the applicants were among many to be considered by the respondent at that time and accordingly it was not possible to provide a specific indication as to when the applicant's case would be finalised. However the respondent indicated that the applicants could be assured that there would be no avoidable delay in having their case brought to finality.

6. The within application is covered by s. 5 of the Illegal Immigrants (Trafficking) Act 2000 (as amended) and therefore substantial grounds to secure leave is required.

7. In submissions the applicant relies on *Mahmood v. The Minister for Justice and Equality* [2016] IEHC 600 where an order of mandamus was granted. In that case the period in which a decision was expected was four weeks however five months had elapsed without a decision. Furthermore the matter in *Mahmood* concerned the application of EU law, unlike in the instant circumstances. Reference was made in that judgment to the judgment of Cooke J. in *Nearing v. The Minister* [2010] 4 I.R. 211 where it is recited that identifying what is reasonable depends on the circumstances including:

> (a) the nature of the decision sought,
>
> (b) the peculiarities of the applicant's position,
>
> (c) the impact that any delay may have,
>
> (d) the conduct of the administrative decision maker, and
>
> (e) the explanation given for the time taken.

8. Although not mentioned in written submissions, in the Supreme Court judgment *Matta v. Minister for Justice, Equality and Law Reform* [2016] IESC 45, a judgment delivered on 26th July, 2016, the Court was addressing the issue of costs where the applicant had brought an application for mandamus which had subsequently become moot. The Supreme Court approved the judgment of first instance of Clark J. and at paras. 8 and 9 of the judgment McMenamin J. quoted from Cooke J. in the Nearing decision including reference to the fact that there was no legal entitlement to long term residency - the grant of such status was entirely at the discretion of the Minister. The High Court held that mandamus should not issue against an administrative decision maker simply because there was a duty to make a decision. Cooke J. observed that the remedy lay only in order to make good an illegal default in the discharge of a public duty and consequently he held that there must have been an express or implied wrongful refusal to make a decision on the part of the Minister, or perhaps, such egregious and unjustified delay in dealing with the application as to be tantamount to a refusal in its effect. The Court indicated that it was not a judicial function to dictate how a scheme should be managed. The Court was satisfied that there was in place an orderly rational and fair system for dealing with applications and the Court had no reason to infer any illegality in the conduct of the Minister unless some specific wrongdoing or default was demonstrated.

9. The applicants in the instant matter make the argument that the time delay on the part of the Minister should be as and from 2nd December, 2012 when communications were first entertained by the applicants to regularise their status. I see no justification for adopting such a position as same would be tantamount to recognising that the applicant had an immediate entitlement, at a date of their election, to insist that the Minister would issue a s. 3 notice.

10. I am satisfied that the matter will have to be reviewed in the light of the fact that the s. 3 representations on the part of the applicants were submitted on 15th June, 2016.

11. There is no EU law dimension in the within matter and this distinguishes itself from the Mahmood judgment aforesaid. The applicant relied on *Mendizabal v. France* [2006] ECHR 34 where it was held that there was an undeniable interference with the applicant's private and family life because over a fourteen year period she secured 69 renewals in respect of her permission. I see no justification whatsoever to liken those circumstances to the instant matter.

12. Insofar as the specific prejudice (the medical issue and the job offer) is concerned it is clear that these issues arose before the s. 3 letter was dispatched or the s. 3 representations were raised and therefore it appears to me that these issues arise because of the failure of the applicants to maintain permission status while in the State as opposed to prejudice because of any asserted delay on the part of the respondent.

13. The applicants do not suggest that there is anything capricious or arbitrary on the part of the respondent in dealing with the applicants.

14. By reason of the foregoing, and applying the criteria mentioned by Cooke J. in Nearing the applicant has not demonstrated substantial grounds to secure leave on the basis that :-

(1) Any asserted delay is neither egregious or tantamount to a refusal;

(2) The decision awaited is discretionary in nature;

(3) The asserted prejudice is not as a consequence of any delay on the part of the respondent as same predates the applicants request of the 15th June, 2016;

(4) The explanation given by letter of 26th January, 2017 is reasonable and seeks to reassure the applicants;

(5) There is nothing exceptional in the applicant's position or the respondents conduct.