

**THE HIGH COURT
JUDICIAL REVIEW**

[2018 No. 51 J.R.]

BETWEEN

ZIJUN WANG

APPLICANT

AND
THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 31st day of July, 2018

1. The applicant was refused leave to land and had his Irish visa cancelled on 17th November, 2017. On 22nd January, 2018 he instituted the present judicial review proceedings challenging those decisions. He is now withdrawing the proceedings and the issue for decision is that of costs.

2. I have received submissions from Mr. Pádraig Langsch B.L. for the applicant and Ms. Sinead McGrath B.L. for the respondent.

Alleged acquiescence by the respondent

3. Mr. Langsch submitted that the respondent did not initially object to the case being withdrawn and could have asked for costs or an adjournment when the court was notified originally. That is a misconceived submission. What happened was as follows. On 9th April, 2018, the applicant informed the court that the proceedings were being withdrawn. He gave absolutely no notice whatsoever to the State of that position. The solicitor representing the CSSO who was in court when the matter was called had the presence of mind to protest somewhat at the matter being simply struck out with no order. There was then an exchange during which I wondered if there was any merit in not looking too closely at the gift horse, being the dropping of the proceedings. However, the respondent's solicitor then very prudently contacted counsel and shortly thereafter came back to court, certainly before any orders were perfected, asking that the matter be re-entered in order to deal with costs. I then adjourned the matter to 16th April, 2018 for that purpose. As the State were taken by surprise, did raise an issue straight away, came back very shortly thereafter to deal with the matter further, and asked for it to be re-entered to deal with costs, their approach was perfectly reasonable and legitimate, and it would be an absolute misconception to attribute any element of acquiescence to their conduct.

Alleged speed in withdrawing the proceedings

4. Mr. Langsch's second point was that the application was withdrawn very speedily after it had been commenced so therefore there should be no order as to costs. That is all well and good and might go to the quantum of costs on taxation but certainly not to the principle.

Complaint that further costs were incurred after it was indicated the matter would be withdrawn

5. Further affidavits were put in by the respondent after it was indicated that the proceedings were being withdrawn and after they were adjourned for the purposes of costs. Mr. Langsch submits that this artificially created more costs. However, that again is a total misconception. The additional costs were caused by the applicant in refusing to accept the inevitable order for costs against him once that order had been sought and pursued by the respondent. That necessitated the respondent being put to the trouble of swearing further affidavits in support of the costs application.

Principle that costs follow the event

6. This case has certain similarities to *G.D. (Serbia) v. Minister for Justice and Equality* [2018] IEHC 254 [2018] 4 JIC 1604 (Unreported, High Court, 16th April, 2018) where I noted at para. 6 that the proceedings in that case were not moot but rather the applicant had simply decided not to pursue them and that therefore costs follow the event, the event being that the applicants had abandoned the challenge. Exactly the same point applies here. The applicant is simply not pursuing the case. It is not moot and costs therefore follow the event.

Egregious abuse of process by the applicant

7. Even if I am wrong about all of the foregoing, it is clear that the applicant was involved in an egregious abuse of the immigration system, fraud on that system and significant non-disclosure to the court. The applicant also failed to submit a personal affidavit and failed to reply to the respondent's affidavits which alleged fraud on the system and which necessarily had the consequence that there was non-disclosure to the court. That would be a basis to award costs to the respondent in any event.

Order

8. Accordingly, the order will be:

(i) that the proceedings be struck out; and

(ii) that the applicant pay the respondent's costs including reserved costs to be taxed in default of agreement.