THE HIGH COURT

[2022] IEHC 578

[Record No. 2020/1040]

BETWEEN

S.

APPLICANT

AND

MINISTER FOR JUSTICE

RESPONDENT

JUDGMENT of Ms. Justice Bolger delivered on the 17th day of October 2022.

1. The applicant is an Indian citizen who was granted a work permit by the Minister for Business, Enterprise and Employment on 18 June 2020. He applied to the Minister for a travel visa but was refused. His appeal was also refused. The applicant seeks an order of *certiorari* of the respondent Minister's appeal decision of 15 October 2020 to refuse his appeal. For the reasons set out below I am granting an order of *certiorari* quashing that decision.

Background

2. The applicant applied in March 2020 for a work permit to take up a position as tandoori chef/chef de partie at the Bombay Palace restaurant in Castlerea, County Roscommon. This application required the applicant to submit various information and documents and for his prospective employer to fill out an application in which they identified the main functions of the job as making speciality tandoori bread requiring skill and expertise in using the tandoori oven and preparing marinades, sauces and doughs for bread. There was no mention of any requirement to cook any chicken dish. The prospective employer confirmed the applicant's many years of experience working as a tandoori chef and their confidence that the applicant had the right experience and skills.

3. The Minister for Business, Enterprise and Employment granted a work permit pursuant to s.8 of the 2006 Work Permit Act on 18 June 2020. To do so the Minister had to be satisfied, pursuant to s.3(a) that the applicant "has the required knowledge and skills for the employment". The permit relates to employment only and is not a residence permit or a permission to enter Ireland.

4. On 2 July 2020, the applicant applied online for a long stay visa to enable him to take up the job for which he had been granted the employment permit. The application process was delayed due to insufficient documentation. His solicitor wrote on 13 July 2020 submitting various documents and referred to having noted the list of supporting documentation for visas on the website of the Department of Justice and asked the visa officials to contact them if there were any clarifications or additional documentation

needed. Further correspondence followed confirming receipt of the documentation and making arrangements for an interview and at no time was the applicant or his solicitor advised of any further documentation that was required.

5. The applicant was interviewed by telephone on 18 August 2020. He was asked what type of food he would be cooking in Ireland to which he replied 'Indian breads'. He was asked about cooking other dishes including chicken tikka and replied that this part of the cooking was not part of his job as a tandoori chef but that he did have a basic knowledge of this type of cooking, although he was not required by his employers to know this.

6. By letter dated 11 September 2020, the Minister refused the applicant's application for a visa stating as follows:

> "I regret to inform you that your application for an Irish Visa has been refused by the Irish Naturalisation and Immigration Service for the following reasons:
>
> ID:- Insufficient documentation submitted in support of the application:- please see link to "Documents required" as displayed on our website-www.inis.gov.ie
> INCO:- Inconsistencies e.g. contradictions in the information supplied
> OC:- Observe the conditions of the visa- the visa sought is for a specific purpose and duration:- the applicant has not satisfied the visa officer that such conditions would be observed.
>
> You have not provided sufficient evidence that you have appropriate skills, knowledge or experience for taking up this position in Ireland. The employer in Ireland has not provided sufficient evidence that they sought skilled candidates from Ireland prior to offering the job to you. Visa officer is not satisfied that you would obey the conditions of the visa if you were issued with one".

7. The letter confirmed the applicant's right of appeal. The applicant appealed the decision by way of a letter from his solicitor dated 16 September 2020 and email of 17 September 2020. His appeal took issue with the finding that insufficient documentation had been submitted without stating what documentation was missing from the visa application, criticised the refusal letter for not giving sufficient reasons and confirmed that the applicant's solicitors had examined the website which listed documents required to be submitted and could not see any document there that had not been provided. The letter asked the visa appeals officer to explain by return what further documentation was required. They also asked for clarification as to why the visa officer believes that the applicant may not observe the conditions of his visa and highlighted that the applicant had been granted a general employment visa by the Department of Business, Enterprise and Innovation. The applicant's solicitor sent a further email on 14 October 2020 asking that if the office needed anything to let them know. By reply, the visa office confirmed receipt of the appeal and stated that it was under process. None of the replies to the applicant solicitor's correspondence provided either clarification in relation to documentation that was missing or required or details of what part of the application was

inconsistent or why it was believed that the applicant may not observe the conditions of his visa.

Appeal officer's decision

8. By letter dated 15 October 2020 the Minister refused the appeal on a similar but not identical basis as the first instance decision. References to the employer's advertisement in the first decision do not appear in the appeal. The "ID", "INCO", and "OC" grounds were restated (as quoted at paragraph 6 above) and the letter then expanded:

> "You have not addressed the refusal reasons listed on the refusal letter. You have not provided sufficient evidence of the recruitment process and how you got the job. You have not submitted sufficient evidence that you have the required skills and experience for this position. When you were interviewed by the visa office, you could not provide sufficient details about your previous experience or about the new job in Ireland. You were unable to provide basic details for basic recipes which you claimed you had cooked and that you would be required to cook in the restaurant in Ireland".

The Legal Issues

9. The applicant identifies the legal issues as follows:

   i. Did the Minister fail to take relevant factors into account or take irrelevant factors into account in coming to the decision of 15 October 2020 to refuse the applicant's visa application?

   ii. Was the Minister's decision irrational/unreasonable?

   iii. Did the Minister fail in his duty to give reasons for his decision in respect of the applicant in the decision?

   iv. Is the Minister entitled to supplement the reasons for the impugned decision by affidavit?

10. The Minister identifies the legal issues as follows:

   i. Did the applicant's general employment permit amount to incontrovertible evidence that (a) the applicant possessed the requisite qualifications and experience for the intended job in the State and as to (b) the recruitment process and how the applicant got the position?

   ii. Irrelevant considerations – did the Minister take irrelevant considerations into account when she was not satisfied that the applicant had provided sufficient evidence that (i) the applicant possessed the requisite qualifications and experience for the intended job in the State and as to (ii) the recruitment process and how the applicant got the position? (Grounds 1 and 2)

   iii. Irrationality – are the Minister's findings that (i) the applicant had not submitted sufficient evidence that he has the required skills and experience for the

employment he was due to take up, (ii) the applicant had not submitted sufficient evidence of the recruitment process and how he got the position he was due to commence in the State and (iii) the applicant had been unable to provide basic recipes he claimed he had cooked and would be required to cook in Ireland, irrational and/or unreasonable? (Ground 3)

iv. Inadequate reasons – did the Minister fail in her duty to give adequate reasons for (i) the conclusion that there were inconsistencies or contradictions in the applicant's application and (iii) the conclusion that the applicant would not observe the conditions of the visa? (Ground 4)

The affidavit evidence

11. The applicant's statement to ground application for judicial review is grounded both on his own affidavit and on the affidavit sworn by his solicitor. The Minister's brief statement of opposition (pleading that the allegations and grounds upon which relief is sought are denied) is grounded on the affidavit of Melissa Brennan which the Minister submits provides "context for the decision". The applicant condemns it as an unlawful attempt to supplement the reasons for the decision by way of hearsay evidence. The decision maker did not swear an affidavit. I examine below the relevant averments made, the basis for the deponents' source of knowledge to make them and my concerns therefrom.

12. The applicant's averments and/or of his solicitors are based on the documents he and his solicitors furnished, the correspondence, and his account of his telephone interview. The Minister's affidavit is sworn by Ms. Brennan and in her means of knowledge she states that she is a higher executive officer and makes the affidavit from, *inter alia*, an examination of the Minister's books and records for the purpose of "setting out matters of evidence relevant to the within proceedings". Later in her replying affidavit she sets out her means of knowledge and her involvement in this case as follows:

> "3. With regards to my means of knowledge, I am currently the head of both the EU Treaty Rights Visa Processing Unit (which includes both first instance decisions and appeals) and the General Appeals Unit, having been appointed as the Higher Executive Officer over these units in 2017. I am also responsible for dealing with all judicial review proceedings that are initiated against visa decisions (both relating to EU Treaty Rights and General) and dealing with complex cases that arise in both units.
>
> 4. With regard to the specific facts of this case, I have reviewed the file extensively as I do in all cases. Further, I am aware that in reaching decisions, visa officers do so on the basis of the specific facts of the particular application. To assist them, there are a number of useful links utilised by the visa officers, such as the employment permit eligibility criteria set out on the DBEI website, as well as information contained on our own website.
>
> 5. It is from my role within the Immigration Service Delivery (ISD), as set out above, and my knowledge of the procedures and approaches to visa decision

making that I am in a position to aver of my own knowledge as to the procedures which apply to visa applications, including those relating to employment permits and knowledge of jurisprudence in related cases, and where applicable to this application. It is in short from my review of the applicant's application file, albeit informed by my knowledge of the applicable procedures, that I have made both my first affidavit and now this affidavit".

13. Ms. Brennan's review of the file and the knowledge she has gained from the procedure and approach to visa decisions might be useful information in relation to the context of this case but insofar as it relates to the assessment of the applicant's application by the decision maker and to conclusions drawn from what was noted by the interviewer, Ms. Brennan's contribution comes from indirect rather than direct knowledge. The applicant's knowledge about the interview is first hand. Therefore, any dispute on that evidence may require to be determined in favour of the applicant's direct averments.

14. Ms. Brennan sets out some general practices in relation to processing visas. She does not say these were applied to the applicant. An examination of those practices as averred by Ms. Brennan exposes inconsistencies with what actually happened here, according to the applicant and his solicitor. Ms. Brennan states the following at paragraph 10 of her affidavit:

> "Each interview is conducted on a case by case basis, and is relevant only to the application before the officer concerned. Consequently, any interview that is conducted is only conducted after the officer has reviewed the entire application, including:
>
> - The Application Form and submitted documentation
> - The Supplementary Form that is required for employment applicants.
> - Research on the Irish employer's business, in this case, in order to access the menu, which contains meals in which the perspective employee would be required to cook.
> - Checks are also conducted in relation to any references given by the application of his/her current and past work experience.
> - The Employment Permit Application Form, to ascertain what the main duties would be for the applicant in the business.
> - Job advertisements in Ireland.
> - Employment references".

15. Not all of those practices could have been applied to the applicant for the following reasons: -

(1) Ms. Brennan refers to the supplementary form that is required but no such form was submitted by the applicant or ever requested of him.

(2) Ms. Brennan refers to checks being conducted on employment references. This was not done because Ms. Brennan claimed in her affidavit there was no website

available on the references for them to be checked and that there were only mobile numbers which were not contacted.

(3) Ms. Brennan said that the officer would review the job advertisement but here no advertisement had been submitted, as observed by Ms. Brennan at paragraph 28 of her replying affidavit.

16. Ms. Brennan does confirm the practice of reviewing the work permit application form in processing a visa application. Such a review should have confirmed the employer's requirements for the job and their satisfaction with the applicant's previous experience working as a Tandoori chef.

17. Ms. Brennan sets out the interview process at paragraph 13 of her affidavit:

> "The following is the process applied by the Visa Office when conducting an interview in respect of a general employment permit for a chef position:
>
> First, the staff member will check the details about their new employment in Ireland and their previous employment.
>
> They will check to see what recipes the applicant is expected to cook and will only ask questions taken from the menu of their prospective job.
>
> They will check the website for the proposed restaurant to see whether the menus correspond with what the applicant has stated on their application form.
>
> The applicant is always requested to speak in English for the interview and if they are unable to do so they will be asked why they can't conduct the interview in English and this is noted on the form.
>
> Then they are asked about the employment in Ireland – general information which would be from the work permit and the contract.
>
> Then they are asked about the recruitment process – how they got the job.
>
> Once all this has been established they will be asked about the menu and the recipes for dishes which are set out in the menu of the proposed restaurant which they should know. <u>They will only be asked questions about the food on the menu which they will be expected to cook</u>. [My emphasis]
>
> Before the end of the interview, all applicants are asked if they have anything else they would like to add. A note is made of any additional information they provide at the interview and this sometimes can lead to more questions being asked if necessary".

Ms. Brennan also confirmed that information in relation to their employment in Ireland will be obtained from the work permit and the contract. Had the applicant's interviewer followed this process, the questions should have been on food the applicant would be expected to

cook (which he and his prospective employer had identified as Indian breads) and on the work identified by the applicant's prospective employer in the application for a work permit, namely using the tandoori oven to make tandoori bread and preparing marinades, sauces and doughs for breads.

18. At paragraph 14, Ms. Brennan states the information for anyone applying for an employment visa that is available on a website that she identifies. While she describes the website as the visa office website, the online address she provides is from a Department of Foreign Affairs (DFA) website. Ms. Brennan then addresses the applicant's visa application. She refers to his two employment references and claims at paragraph 18 that neither business had a web presence, and both only had mobile numbers which, she says, meant the references could not be verified. This was not mentioned in the appeal decision and this averment is the first time the Minister identified any issue with the applicant's employment references. There are two difficulties with this averment. Firstly, the applicant submitted at hearing that one of the references did have a website and whilst the copy of the reference was too poor for the court to confirm that the letters identified was a website address (it was not clear that it was or was not), the claim that there may have been a website address on the reference was not challenged by the Minister. I therefore accept that one of the employment references may have had a website address. Secondly and more significantly, there was never any explanation why the references could not be checked by ringing the mobile telephone numbers that were provided.

19. At paragraph 19 Ms. Brennan makes a further criticism of the applicant's application that was not scoped out in the same detail in the impugned decision, namely a failure to provide any documentation such as payslips or tax returns or any formal qualifications in relation to working or training as a chef. The applicant had confirmed in his application that he had not been working for some time and had confirmed in his work permit application that he had no qualifications and that his experience was from having worked previously as a tandoori chef. That experience was accepted both by his prospective employer and by the Minister for Business, Enterprise and Innovation in granting him a work permit.

20. Ms. Brennan's next criticism of the applicant's application at paragraph 20 was his failure to submit a supplementary form which is another detail not mentioned in the appeal decision or during the application process. Ms. Brennan exhibits a copy of the supplementary form which states that if there are significant omissions that the application "may be returned to you without a decision or refused for failing to supply sufficient information". She also refers to the "VSS Checks and Verify Services" as an *ad hoc* service allowing visa facilitation VSS staff to perform pre-checks and initial validation on supporting documents, a service that applicants can avail of when they apply online. The applicant's counsel submitted that any information required by that form had already been furnished in the existing documentation.

21. Next, Ms. Brennan analysed the interviewer's note of the interview and states the following as being evident from that note:

"At Question 8, the Applicant was asked what types of food he will be cooking in Ireland, and in reply he stated Indian breads.

At Question 9, the Applicant was asked to name 3 or 4 dishes from the menu of the restaurant in Ireland, and in reply the Applicant named starters chicken tikka and tandoori butter chicken, and tandoori naan, butter naan, garlic naan and keema naan as main courses.

At Question 10, the Applicant was asked to provide details details of Chicken Tikka, this being one of the dishes which was on the menu of the restaurant in Ireland and had been identified by the Applicant also. The Applicant replied by stating 'was the chicken- put some oil – garlic/coriander/ and fry it.' The interviewer noted that it was the wrong recipe and very basic.

At Question 12 the Applicant was asked for how long he had worked in Dimpy Restaurant and he replied 2013-2016.

At Question 17, the Applicant was asked what foods he had cooked in the past in India, and in reply the Applicant informed the interviewer that he had cooked Indian breads (Tandoori Naan; Keema Naan), Tandoori Fish and Tandoori Chicken.

At Question 18, the Applicant was asked to provide the recipe for tandoori chicken, this being a basic tandoor dish which he said he had cooked in the past, and that he replied 'take chicken wash it – put spices – and grill'. The interviewer noted that the Applicant didn't know the recipe for the tandoori chicken and that he stated that 'he will cook what they will ask him to cook'".

Ms. Brennan notes that the applicant was asked about chicken tikka which was a dish on the menu of the Irish restaurant. However he was not asked which of the dishes on the menu he would be required to cook, and he never said he would be required to cook chicken tikka. Given the interview process as outlined by Ms Brennan (set out at paragraph 17 above) it is unclear why he was asked for the recipe of that dish given that he had only identified Indian breads as the type of food he would be cooking in Ireland.

22. The applicant said at paragraph 12 of his affidavit that he explained to the interviewer that "cooking curry was not part of the job of a Tandoori Chef which is to cook special breads and marinated meats in the Tandoor oven and that it would not be part of my role to make curries and sauces". Those comments by the applicant are not recorded in the interviewer's note but have not been disputed by Ms. Brennan although she does say at paragraph 10 of her replying affidavit: "All the Applicant stated to the telephone interviewer is that he would be making Indian bread". She says further at paragraph 11

> "I would like to emphasise that the Applicant was not questioned about curries. The Applicant's job in the State was as a Tandoor Chef and on that basis the Applicant was only questioned about Tandoor cooking".

23. At para. 26 of her affidavit Ms. Brennan states

> "For the avoidance of doubt, I would like to clarify that a Tandoor chef is a type of Indian chef in India who cooks with a special tandoor oven. It's a very skilled position which requires the chef to cook in very high temperatures. However, a tandoori chef does not only cook naan bread. A tandoor chef will also cook a range of tandoor food (such as chicken tikka and tandoori chicken), in the tandoori oven".

Ms. Brennan does not confirm whether and if so how, she is qualified to aver to what a tandoori chef does. Her stated means of knowledge does not include any expertise in culinary matters. Even if she is correct that a tandoori chef does not only cook naan bread (and I do not see any basis for accepting what is a disputed point from a deponent who has given no means of that knowledge), this is exactly what the applicant's prospective employer had said would be required of the applicant in his job and what the applicant had clearly stated during his interview.

24. It would appear that Ms. Brennan did not consider the interviewer's questions about how to cook chicken tikka to be a question about cooking curries. The applicant clearly took a different view. In so far as there is a conflict between the evidence of the applicant and Ms. Brennan as to what is or is not a curry, I prefer the applicant's evidence.

25. The applicant's prospective employer swore an affidavit to reply to certain matters averred to by Ms. Brennan. The contents of this affidavit are of limited relevance because at least some of these matters were not before the appeal. However I do note at paragraph 7 that the prospective employer states as follows:

> "I say that our restaurant has one Tandoori oven and the only role the Applicant is being hired for is to work at that station. I say that insofar as the memorandum of interview appears to suggest that the Applicant is unable to cook the recipes he will be required to cook I do not agree with this assessment. I say that I interviewed the Applicant and was well satisfied with his skill level and knowledge. Furthermore, I say that the style of Indian food cooked in our restaurant is quite different to that the Applicant would be familiar with as our food caters for western tastes and has different spices etc. to what the Applicant would be familiar with cooking".

Those averments of the prospective employer's satisfaction with the applicant's skill level and knowledge and the very specific role he was being hired for, are consistent with the prospective employer's work permit application, which was part of the documentation submitted for the visa application. His comments in relation to what the applicant would be required to cook are consistent with what the applicant says he told the interviewer at paragraph 9 of his grounding affidavit and at paragraph 5 of his replying affidavit, which he previously had learned from his interview with his prospective employer.

26. Ms. Brennan stated at para. 13 of her replying affidavit:

> "In respect to paragraph 9 in particular, I wish to highlight that the telephone interview of 18th August 2020 related to the Applicant's proposed employment in the State and nothing more. It is clearly laid out on the ISD website what

applicants have to provide to the visa office in support of their application. The onus rests on the applicant at all times to provide the relevant information and documentation to the visa office

http://www.inis.gov.ie/en/INIS/Pages/Employment%20Atypical%20Working%20Scheme. Specifically it states:

> ***'Evidence of your obligations to return to your country of permanent residence.***
> *As you are applying for a short stay visa for Ireland (which permits visits of less than 90 days), it is important that you provide evidence that you have strong family, social or economic ties to your country of residence.*
> *This is necessary in order to satisfy the Visa Officer that you will leave Ireland on, or before, your intended date of departure from Ireland.*
> *It is your responsibility to provide this evidence. All of the information that you provide must be in the form of documentary evidence which can be verified by the Visa Officer.*
> ***Suggestions on how to show evidence your obligations to return***
> ***Details of any family members*** *living in your country of residence – if you are married or have any dependent children, you should submit your marriage certificate and birth certificates for the children.*
> ***Evidence of any property you own/rent*** *e.g. Title deed/tenancy agreement.*
> *All letters submitted should be on official company headed paper and give full contact details so that they can be verified. These must include a full postal address, name of contact, position in company/college, telephone number (landline), website, and email address (email addresses such as Yahoo or Hotmail are not accepted).'"*

The applicant's visa application form had given details of his wife and dependent child including their names, dates of birth, address and the fact they were not going to travel to Ireland with him. This is information that was available to the appeals officer as it was included in the documentation and information to which he said he had considered.

The appeal decision

27. The appeal decision identifies the following reasons:

i. Insufficient documentation

ii. Inconsistencies

iii. Observe the conditions of the visa

iv. The applicant's failure to furnish evidence.

I will address each below but I want to firstly look at the format of the decision. The appeal decision is very brief. It identifies the same three reasons as were identified in the

earlier decision vis a vis insufficient documentation, inconsistencies and observation of the conditions of the visa but the subsequent narrative differs from the first instance decision in not including the finding that the employer in Ireland had not provided sufficient information that they sought skilled candidates in Ireland prior to offering the job to the applicant. The applicant had appealed the first instance decision and had furnished a three page written submission dated 17 September 2020 through his solicitors which raised a number of points including the insufficiency of the reasons. These points are not engaged with at all in the brief appeal decision.

28. Whilst brevity in a decision may well be praiseworthy, the recipient of a decision is entitled to understand the decision and reasons for it such as to inform themselves whether and if so how it can and should be challenged; *Connolly v An Bord Pleanala* [2018] ILRM 483, approved more recently by the Supreme Court in *Naisiunta Leictreach (NECI) v Labour Court* [2021] IESC 36. The format of the decision at issue here rendered it very difficult for the applicant (and indeed for this Court) to understand why and on what basis the decision was made. As well as its brevity the decision suffers from providing three reasons followed by a narrative containing multiple purported bases for those reasons. The reasons and narrative provided are so interlinked that I do not consider they can be severable in the event that some, but not all, are found to be vitiated by an error of law or fact or both (*Mallak v Minister for Justice Equality and Law Reform* [2013] 3 IR 297; *A.P. v Minister for Justice and Equality (No. 2)* [2014] IEHC 241; *T.A.R. v Minister for Justice, Equality & Defence* [2014] IEHC 385; *Oates v District Judge Brown* [2016] IESC 7). I follow the dicta of McDermott J. in *T.A.R.* (at para 24 and 25):

> "24. The shortness of the reasons given render it difficult for the court to understand the basis for the decision and, therefore, to exercise its jurisdiction as to whether the determination was unreasonable within the meaning of the Keegan test. There is no evidence available from the decision-maker as to how or why the extensive evidence advanced on behalf of the applicants fell short of proof on the balance of probabilities that they would return home after their visit. Attempts to identify potential inadequacies that may have formed part of that decision highlight the lack of clarity in the reasons given and render it extremely difficult for the court to exercise its jurisdiction to determine whether the decision was unreasonable or irrational. In particular, it is not possible on the basis of the course of correspondence or the material submitted to ascertain from the course of dealing between the parties or the context in which the decision was made, what the shortcomings in proofs were and consequently, whether the conclusion reached in respect of the applicants was reasonable. I am, therefore, not satisfied that adequate reasons were furnished to the applicants in this case sufficient to enable the court to exercise its jurisdiction by way of judicial review. In making this determination, the court is not to be taken as condemning the use of a short form reason in such decisions as evidenced in the affidavit submitted by the Minister. The sheer volume of applications submitted for visas suggests that such an approach may well be prudent in most cases.

25. It is well established that the reasons given for a particular decision must be clear and cogent. They should give the applicants such information as is necessary to enable them to consider whether they have a reasonable chance of appeal or judicially reviewing the decision. The decisions should enable the applicants to arm themselves for such a hearing or review and understand whether the decision-maker had directed his mind adequately to the issue which he had to consider or was obliged to consider, and also to enable the courts to review the decision. The Minister repeatedly emphasised that it was open to the applicants to reapply with additional evidence for a visa. However, in order to know how they might address any suggested deficiencies in their proofs, they would need to know how they fell short of establishing their case if they were to have any prospect of future success. In order to submit a further application, a more detailed explanation of the evidential shortfall would be required if the applicants were to have any prospect of establishing an intention to return home to the standard of probability required by the Minister. In that regard, the court should be circumspect about allowing material gaps in the decision to be filled by evidence or the submissions of counsel made on judicial review (see *Mulholland v. An Bord Pleanála (No.2)* [2006] 1 I.R. 453 and *R. v. Westminster City Council* [1996] 2 All. E.R. 302 per Hutchinson L.J. at pp. 309 and 312)".

i. Insufficient documentation

29. The appeals decision does not state what documentation was missing from the applicant's application. No missing documentation was identified during the application or appeal process and it was not until the Minister's deponent swore an affidavit in these proceedings taking issue with the applicant's failure to submit a supplementary form that the applicant was informed that this form was required by the Minister. The deponent also cites missing payslips, tax forms and evidence of experience or qualifications for the first time. The applicant, through his solicitors in his appeal, had identified documentation required by the visa office website and had asked for other required documents to be identified. It seems from Ms. Brennan's affidavit that the supplementary form is mentioned in other websites. The manner in which those websites were identified was confusing, as set out at paragraph (18) above. The supplementary form identifies on its face that it may be returned without a decision or refused for failing to supply sufficient information. In any event much of the information required by the form seems to have been made available by the applicant in other documents, in particular his visa application form. It is not clear to this court how the completion of the missing supplementary form would have provided the Minister with additional or necessary information.

30. I am not satisfied that it was not reasonable for the decision maker to condemn the applicant for not providing documentation for the following reasons:

(1) The stated non-mandatory returning of a failure to provide sufficient information in the form.

(2) The confusing reference to different websites in the Minister's affidavit which the deponent claims advises an applicant of that requirement.

(3) The Minister's failure to advise the applicant of the need for the form in spite of their solicitor's appeal letter listing off all of the documents they have identified on the visa's office's website and their request that the Minister advise them of any further documents required.

(4) The fact that all information required in the form in relation to dependent family members was already provided by the applicant in the documents furnished which included details of the applicant's wife and dependent child who were remaining in India.

ii. The applicant's failure to furnish evidence

31. It was unreasonable for the decision maker to dismiss the applicant's two work references because of an absence of a website and a claimed inability to check them, in circumstances where one of the written references may have included a website and certainly both included mobile numbers which were not checked by the Minister. No explanation was ever given why the Minister maintained that this meant the references could not be verified and could not, therefore, be relied on by them.

iii. Inconsistencies

32. It is not clear from the appeal decision what the inconsistencies, for which the applicant was refused a visa, actually were. In the narrative the decision maker concluded from the interview that the applicant could not provide detailed recipes which he would be required to cook in Ireland, I do not consider this was a reasonable conclusion for the decision maker to reach. The applicant's work permit made it clear that his job in Ireland was to make specialty tandoori bread which requires skill, technique and the experience in using the tandoori oven, which the applicant's prospective employer was satisfied he had obtained in his previous work experience. Whilst the applicant identified chicken tikka during the interview, it was in answer to a question about what was on the menu in the restaurant in Ireland. The applicant never claimed he would be required to cook chicken tikka or chicken tandoori in Ireland. There was therefore no need to question him about his experience of cooking either dish. There was no basis in the information and documentation that was before the decision maker, which he confirmed he had considered, for him to conclude that the applicant was unable to provide details for basic recipes that he "would be required to cook in the restaurant in Ireland" (as stated in the decision). It is common case between the parties that the only dish identified by the applicant at interview that he would have to cook in Ireland was Indian breads (see the discussion on the contents of the affidavits at paragraph 25 above). This is also consistent with the prospective employer's application form for the work permit, a document that was also before the decision maker and which he says he had taken into consideration in reaching his appeal decision.

33. I am not satisfied that the decision maker had any or any sufficient basis for finding that the applicant was unable to provide details of basic recipes he would be required to cook in the restaurant in Ireland.

iv. Would not observe the conditions of the visa

34. The Minister's decision states that the applicant had not satisfied the visa officer that the conditions of the visa would be observed. There are no reasons or explanation for this and the conditions that the decision maker seemed to consider might not be observed by the applicant are not identified. The Minister's deponent criticised the absence of a supplementary form which she said would contain details of his family in India. The Minister's concern about this absence was not advised to the applicant in the decision and presumably would not have ever been afforded to him had he not decided to institute the within proceedings. I do not consider that to be appropriate or sufficient to ensure that the decision complies with the applicant's entitlements to reasons. Whilst the Minister accepts that the applicant is so entitled, she contends that her wide discretion in determining whether to grant a non-national visa entitles her to provide a broad and general level of reasoning and relies on the dicta of the Clarke C.J. in *A.P. v Minister for Justice and Equality* [2019] IESC 47 at para. 5.9:

> "First, it is clear from the *Mallak* case law that there may well be situations where it is not, in practice, possible to give any detailed reasons for the administrative decision concerned may involve the exercise of a very broad discretion by the decision maker which may not, by nature of the decision itself, be susceptible to detailed reasoning. Where the decision itself is based on a broad general discretion, then it may be that the reasons which can be given are themselves broad and general".

35. Even that requirement of broad and general reasons is not satisfied in the impugned decision which contains nothing at all to explain how the applicant had not satisfied the visa officer that the conditions of the visa would be observed. The only source of anything resembling a reason or an explanation for this aspect of the Minister's decision is to be found in Ms Brennan's affidavit where the absence of a supplementary form is highlighted, which the deponent says would contain details of his family in India. Insofar as this is the Minister identifying reasons subsequent to the decision, there is ample authority to confirm this cannot be done; Charleton J. in *City of Waterford VEC v Secretary General of the Department of Education and Science*:

> "Sometimes, in straightforward matters, reasons may be terse. In difficult or technical matters, more than that may be needed. Reasons are to be stated there and then, not added later upon challenge. Where reasons stated within a written decision are shown to be manifestly flawed, these cannot be supplemented by better reasons, or correct reasons, at any stage after the decision is made. Sometimes evidence can be admitted to elucidate a reason which is laconically expressed or, exceptionally, where a mistake occurs, to correct a mistake. Elucidation may, in guarded circumstances, be accepted but not alteration; *R. v. Westminister City Council, ex parte Ermakov* [1996] 2 All ER 302".

iv. The relevance of the work permit.

36. The applicant urged the court to follow the decision of Barrett J. in *Asshas v Minister for Justice and Enterprise* [2018] IEHC 760 where Barrett J. held that the work permit "is a form of evidence of experience". This, according to the applicant, meant that the Minister

cannot look behind the grant of the permit or require an applicant for a visa to show that they are qualified to do the job for which they were granted that permit. A different approach was taken by Keane J. in *Ashtar v Minister for Justice and Equality* [2019] IEHC 411 *Elnebayad v Minister for Justice and Equality* [2019] IEHC 412 which were followed by Burns J. in *Luqman v Minister for Justice* [2021] IEHC 496.

37. I do not consider the work permit constitutes the type of *prima facie* evidence that is contended for by the applicant. However, neither do I accept that it can be ignored. The decision maker asserts that the decision was arrived at having taken all documentation and information into account. That assertion is to be accepted as having occurred unless it is reasonable to believe otherwise, in line with the dicta of Hardiman J. in *GK v Minister for Justice* [2002] 2 I.R. 418 where he said:

> "a person claiming that a decision making authority had, contrary to its express statement, ignored representations which it had received needed to produce some evidence, either direct or inferential, of that proposition before he could be said to have an arguable case", (at p426-7).

38. The application form filled out by the prospective employer seeking a permit for the applicant included firstly a clear description of the function of the job which focussed on making tandoori bread and using the tandoori oven and not on cooking any chicken dish and secondly their satisfaction with the on job training that the applicant had secured in his previous employment. They were relevant matters that were included in the documentation and information that the decision maker says he considered.

39. I am not satisfied that the decision maker had any or any sufficient basis for finding that the applicant had not submitted sufficient evidence that he has the required skill and expertise for the position.

v. Failure to give Reasons

40. The reasons set out in the appeal decision are very brief. That may suffice in some situations but here the reasons are so brief and devoid of detail that it is not possible to determine what they mean, what they relate to or the basis for them. I rely on the dicta of McDermott J. in *T.A.R.* at para. 27:

> "I am satisfied that though reasons were given, it is not possible to determine accurately what the reasons meant in the context of the particular case. It was not possible for the applicants to readily determine from the terse nature of the reasons or the materials submitted in the course of the application why it had been refused… The reasons given were inadequate for the purposes of judicial review and any further application for a visa by the applicants".

41. Much of the explanation for the reasons were furnished to the court by the judicial review papers and not by the content of the decision. The Minister's affidavits go beyond merely providing context. The fact that the Minister's deponent saw fit to expand on the reasons for the decision and identify issues that were never mentioned in the appeal decision and

exhibit and rely on documentation that was not available to the applicant within the appeal process (including the note of the interview) in itself demonstrates the absence of sufficient reasons in the decision. It is well established law that a decision maker cannot supplement their reasons in this way, as set out by Charleton J. in *Waterford VEC* at para. 16:

> "The function of a school board in deciding on the expulsion of a pupil is to consider what is relevant to that decision. This does not include whether other placements may be available in the immediate area should the expulsion take place. Instead, the decision focuses on the behaviour of the pupil and the context within which that behaviour occurred. The appeals committee is in precisely the same position. The issue before it, therefore, is whether the behaviour of the pupil, taken within the proper context, warrants the expulsion. In the course of this judicial review, an affidavit was sworn by a member of the appeals committee giving a reason for the decision to overturn the expulsion of Delta Beta, which was otherwise absent from the decision. This reason was that the behaviour of the pupil did not warrant expulsion. It is clear that the law on administrative and judicial tribunals does not encompass the addition of reasons beyond the document wherein the decision is officially set out. Were such a procedure to be allowed, afterthoughts would replace the reliability which the parties to a tribunal are entitled to expect that the decisions of any judicial or administrative tribunal will encompass".

42. The reasons set out in the impugned decision fall well short of what is required, as identified by Baker J. in *V.K. & ors v Minister for Justice and Equality & Anor* [2019] IECA 232:

> "109. … A person receiving correspondence communicating a decision is entitled to know the basis for the decision and to be apprehensive if the decision appears to be based on a negative rather that positive approach to the test to be applied.
>
> 110. Further, it appears to me that the application of the test must be done in a rational manner and the decision maker must give reasons that are transparent and involve an objectively reasonable engagement with the facts".

Conclusion

43. The appeal decision is legally flawed for the following reasons: -

(1) It fails to properly identify sufficient reasons for the decision and a basis for same. It is inappropriate for reasons to be supplemented at a later stage in judicial review proceedings.

(2) It fails to rationalise the findings that the applicant would not observe the conditions of his visa, or that the applicant had not provided sufficient evidence that

he had appropriate skills, knowledge or experience for taking up this position in Ireland.

(3) It fails to give proper consideration to documents submitted, in particular the application form for a work permit filled out by the applicant's prospective employer in which the function of the applicant's job and the satisfactory nature of his experience and skills were identified.

(4) It failed to rationalise the claimed inability to take account of the applicant's work references because they could not be checked despite the possible presence of a website address and the definite presence of mobile phone numbers.

(5) It unreasonably criticised the applicant for not submitting documentation that was not identified to him in spite of a clear request to do so, that was confusingly identified on affidavit as being contained in a number of different State websites, and which did not require any significant new information over and above what had previously been furnished.

(6) It claimed inconsistencies in the information furnished by the applicant, the only identified detail of which was, "contradictions", which were not identified until affidavits were sworn in these proceedings. The court is not satisfied that any such contradictions could properly or fairly have operated to rationalise the decision. In particular the decision unfairly claims that the applicant was unable to provide details for basic recipes which he would be required to cook in Ireland. It is common case that the applicant only identified having to cook Indian breads in Ireland and that the prospective employer did not require him to cook any chicken dish.

44. I therefore grant the applicant an order for *certiorari* quashing the decision of 15 October 2020 refusing the applicant appeal for a visa and remitting the matter to a different officer of the Minister for reconsideration.

Indicative view on costs

45. As the applicant has succeeded in his application, my indicative view is that costs should, in accordance with s.169 of the Legal Services Regulation Act, follow the cause and the applicant is entitled to his costs against the Minister.

46. I will list the matter for mention before me at 10:30 a.m. on 1 November to allow the parties to make such further submissions on costs as they wish to make and to hear whatever submissions the parties wish to make on the final orders to be made. I am not requiring written submissions but if the parties do wish to make them they should be lodged with the court at least 24 hours before the matter is back before me.