

Between:

DHANWANTEE BUNDHOOA

Applicant

– and –

THE MINISTER FOR JUSTICE AND EQUALITY

Respondent

JUDGMENT of Mr Justice Max Barrett delivered on 5th March, 2019.

1. Pursuant to s.5 of the Illegal Immigrants (Trafficking) Act 2000, as amended, Ms Bundhooa seeks leave to appeal the decision in *Bundhooa v. MJE* [2018] IEHC 756 (the 'Decision'). Her application falls to be determined in line with *Glancré Teoranta v. An Bord Pleanála* [2006] IEHC 250, as supplemented in the immigration field by *S.A. v. MJE* [2016] IEHC 646. The court reiterates, *mutatis mutandis*, its observations in *Connolly v. An Bord Pleanála* [2016] IEHC 624, para.14; however, neither side has objected to this Court deciding this application.

2. Proposed Point A: can a person whose permission to remain has expired and was previously granted under s.4 of the Immigration Act 2004 apply to remain in the State? The Decision concerned a narrow issue arising under s.4(7) of the 2004 Act, *viz.* whether a person could seek a renewal/extension of a non-extant s.4 permission where a previous s.4 permission was obtained through fraud. Unfortunately, Proposed Point A blurs s.4(1), 4(7) and such separate discretionary power as exists for the Minister to grant permission to remain, and cannot properly be viewed as arising from the limited subject-matter/scope of the Decision, notwithstanding the court's *obiter* observation at para.4 of same.

3. Proposed Point B: Is the Minister obliged to consider an application for a permission to remain, under a residual executive discretion when that application was made only with reference to s.4 of the Immigration Act 2004? The proceedings which led to the Decision did not concern executive discretion. Leave was never granted on that point. Although the court refers to executive discretion in the Decision (para.4) that is an *obiter* observation. So Proposed Point B does not arise from the court's judgment.

4. At the leave to appeal hearing some weeks ago, Ms Bundhooa: (i) invoked (a) *Luximon & ors v. MJE* [2018] IESC 24, but without overcoming the difference of status between her and the applicants in *Luximon* (see the Decision, para.7), (b) *Sulaimon v. Minister for Justice* [2012] IESC 63, but the separate power to grant permission recognised there arises under s.5 of the 2004 Act (not at issue here); (ii) sought to elide the distinction between permission to reside on 'Stamp 2'/'Stamp 4' conditions on the basis that both issue under s.4 of the 2004 Act, but that is incorrectly to divorce a permission from its underlying conditions; (iii) submitted that her application was for a time listed in the '*Luximon* List' and that the court has limited the application of *Luximon* (and *Balchand*, also at [2018] IESC 24), but the court does not see that the listing of a case affects the application of relevant law, nor that any point of law of exceptional public importance presents in this regard. Yesterday, the parties appeared before the court and kindly referred it also to *Lin v. MJE (No.2)* [2019] IEHC 73 as a decision of possible interest; the decision in *Lin* has been considered by the court in arriving at the within judgment.

5. As the court does not see that the Decision involves any point of law of exceptional public importance, it is not necessary to consider whether it is desirable in the public interest that an appeal now be taken.

6. For the reasons aforesaid, the court must respectfully decline to grant the leave sought.