

THE HIGH COURT

2018 No. 324 JR

Between:

S

Applicant

– and –

MINISTER FOR JUSTICE AND EQUALITY

Respondent

JUDGMENT of Mr Justice Max Barrett delivered on 29th January, 2019.

1. Mr S, a national of India, came to Ireland lawfully as a student in April 2013. In February 2015 he married a Latvian national. Permission to remain was then granted to him as an EU national's spouse. Mr S claims he suffered domestic abuse from his wife. In August 2016 she left Ireland and remains abroad. After she left Mr S applied for permission to remain under the Victims of Domestic Violence Immigration Guidelines. His application was refused in December 2017. There is no appeal mechanism under the Guidelines. On request the Minister 're-examined' the initial decision. In March 2018, an affirming decision issued. Mr S seeks, *inter alia*, orders of *certiorari* quashing both decisions.

2. By way of preliminary remark, any fair-minded reading of the Guidelines shows that their *raison d'être* is to provide an 'escape route' for a vulnerable immigrant who is in a close adult relationship marred by defined domestic violence.

3. Mr S contends that the following issues present:

Issue 1. The Minister breached Mr S's legitimate expectation as to the application of the Guidelines by applying conditions beyond those stated. The Guidelines do not fetter the Minister's inherent discretion; he is entitled when exercising his discretion to have regard, as he did, to the above-mentioned *raison d'être*.

Issue 2. The affirming decision is irrational/internally inconsistent. The decisions accept that Mr S's immigration status is dependent on his spouse, yet appear to refuse his application because he is not dependent. But any ostensible inconsistency is explicable by the fact that the Minister also brought financial dependence into consideration (a relevant issue) and so was considering different aspects of dependency.

Issue 3. There was a breach of Arts. 3/8/14 ECHR (interpreted in light of Art.59 of the Istanbul Convention). Mr S cannot rely directly on the referenced Articles. Mr S does not contend that his right to respect for family life has been interfered with. There is no gender discrimination presenting. (The Guidelines are gender neutral and there is no evidence of gender discrimination by the decision-maker). As for immigration status, it is clear from the Guidelines that in respect of any applicant all surrounding facts will be considered. As to the alleged failure to positively protect from domestic violence, this ignores the fact that at the time of Mr S's application his wife had left Ireland. This factor also plays into application of the Istanbul Convention. It is contended that difficulty could present under that Convention if the Guidelines only apply to immediate/urgent domestic abuse. But there is no such general limitation in the Guidelines and all applications are treated on a case-by-case basis.

Issue 4. The decisions involve an unjustified/disproportionate breach of Mr S's constitutional rights to privacy/dignity/equality. The said rights are not absolute and do not confer a right to obtain permission to remain. There is no evidence that these rights were breached.

Issue 5. The Minister erred in law and/or acted in breach of constitutional fair procedures in failing to provide adequate reasons sufficient to convey the essential rationale of the decisions. No such failure presents.

Issue 6. The Minister acted unreasonably and/or failed to take into account relevant material and/or acted in breach of Mr S's legitimate expectation that the terms of the Guidelines would be followed as regards supporting documentation. The Minister considered all material provided. The weight he attached to particular material provided is for him. The decisions are clear as to how submitted material was treated and why Mr S was found not to have submitted adequate evidence to support his application. The court does not see the alleged unreasonableness, failure or breach of legitimate expectation to present.

Issue 7: the Minister acted in breach of constitutional fair procedures in failing to have an independent, transparent appeal process with clear rules in respect of applications under the Guidelines. Mr S was afforded the re-examination. No authority was cited to support the proposition that there must be an appeals process. It is not for this Court to opine on what might or might not be desirable in this regard.

4. For the above reasons the court respectfully declines to grant the reliefs sought. Mr S has the very considerable sympathy of the court if it is the case that he suffered domestic abuse in the past: no person should have to suffer so.