

## THE HIGH COURT

## JUDICIAL REVIEW

[2017 No. 291 J.R.]

## IN THE MATTER OF SECTION 5 OF THE ILLEGAL

## IMMIGRANTS (TRAFFICKING) ACT (2000) (AS AMENDED)

BETWEEN

M.C.

AND

S.D.

APPLICANTS

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENT

**JUDGMENT of Ms. Justice O'Regan delivered on the 22nd day of May, 2017**

1. The above applicant has sought leave to maintain judicial review proceedings for the purposes of quashing the respondent's decision made on 27th February 2017. In that decision the earlier decision refusing the first named applicant's application for permission to remain in the State on the basis of his marriage to an Irish citizen, the second named applicant, was refused.
2. The grounds upon which the decision is challenged is on the basis that the respondent erred in basing her decision on "serious concerns" that the applicant's marriage may have been one of convenience rather than making a definitive finding in that regard. The relevant grounds are set out in para. E of the Statement of Grounds and are included under five different reasons however central to each is the issue of the respondents asserted serious concerns vis-à-vis the genuineness of the applicant's marriage.
3. In January 2014 the first named applicant came to the State and applied for asylum based upon his asserted homosexuality and consequential fear of returning to his native Albania. This application was rejected.
4. According to the grounding affidavit of the first named applicant the second named applicant became a naturalised Irish citizen on 23rd April 2013. The parties met in the summer of 2015 and married on 6th July 2016 in the Civil Registry Office in Dublin. In July 2016 the application to enable the first named applicant to remain in the State based upon his marriage to an Irish citizen was processed. The application was refused in a letter dated 26th October 2016 and this decision was appealed in a letter dated 12th December 2016. By letter of 27th February 2017 the respondent communicated her decision to affirm the decision to refuse the application for permission to remain.
5. In the second page of the three page initial letter of refusal of the 26th October 2016 one of the grounds of refusal is as follows:  

"The Irish National sponsor, Serena Dervishi, does not meet the financial criteria as set out in the Minister's policy document of non EEA Family Reunification to sponsor a non EEA national to enter the State to reside with you."
6. In the three page letter of appeal of 12th December 2016 there is no reference whatsoever to the financial criteria of the relevant policy document.
7. In the impugned decision of the 27th February 2017 the decision of 26th October 2016 is affirmed and reference is again made to the failure to meet the financial criteria as set out in the relevant policy document.
8. As a failure to meet the financial criteria is a sufficient stand alone ground to refuse the application and this aspect of the decision was not challenged in the appeal of the 12th December 2016 nor raised in the statement of ground herein, there is no merit in affording the applicant leave. Even if the applicant is successful in the matters set out in the grounds upon the relief is sought nevertheless the decision of the 27th February 2017 would survive because of the financial criteria issue.
9. When matters referred to in the next preceding paragraph were put to the applicant's Counsel, notwithstanding that no argument was raised on the financial criteria issue including in the Statement of Grounds, grounding affidavit or indeed in submissions, the applicant argued that nevertheless leave should be afforded so as to address the serious concerns expressed in the decision as to the nature of the applicant's marriage. It is argued that such a finding will continue to haunt the parties. However in this regard ground E (i) complains that the respondent expressed serious concerns rather than making a definitive finding in that regard and therefore on the one hand in the statement of grounds the applicant complains that there wasn't a definitive finding however in submissions it is argued that there was a definitive finding which will continue to haunt the applicants.
10. It is not accepted as contended for on behalf of the applicant that notwithstanding the fact that the financial aspect of the matter is sufficient to allow the decision to stand, that leave should in any event be granted because of "serious concerns" expressed by the respondent.
11. In the circumstances leave is refused.