[2018] IEHC 643

THE HIGH COURT

2017 No. 815 JR.

Between:

MOEEN AKRAM

Applicant

– and –

THE MINISTER FOR JUSTICE AND EQUALITY and THE COMMISSIONER OF AN GARDA SÍOCHÁNA

Respondents

JUDGMENT of Mr Justice Max Barrett delivered on 19th November, 2018.

1. Mr Akram is a national of Pakistan. On 21.10.2017, he arrived at Dublin Airport. Although he had a travel visa, an interview with an airport immigration officer and a perusal by that officer of text messages on Mr Akram's phone led the officer to conclude that Mr Akram – who maintains he was coming here to visit his brother – in fact was coming here to enter into a 'marriage of convenience'. Pursuant to s.4(3)(k) of the Immigration Act 2004, the immigration officer refused Mr Akram permission to land. Section 4(3)(k) allows for such refusal where "*there is reason to believe that the non-national intends to enter the State for purposes other than those expressed by the non-national*". Mr Akram was handed a standard form document, signed by the immigration officer and addressed personally to Mr Akram, stating "*This is to inform the person to whom this notice is addressed*…[that] *s/he is being refused permission to land in accordance with the provisions of the Immigration Act 2004 on the following grounds: (k) that there is reason to believe that the non-national intends to enter the State for purposes other than those expressed by the non-national*". Mr Akram was then held at Cloverhill Prison until 25.10.2017. On that date he was removed from Ireland.

2. In these proceedings, Mr Akram essentially makes the following complaints. (1) He complains that the taking of his phone from him and the perusal of the text messages thereon was unlawful. (2) He claims that the Minister (through the immigration officer) (a) erred in law in failing to provide any reason for the belief that Mr Akram intended to enter the State for purposes other than those expressed by him, and (b) erred in law and/or took into account irrelevant considerations and/or failed to take into account relevant considerations in the decision to refuse Mr Akram permission to enter the State. Complaint is also made that the conditions under which Mr Akram was held at Cloverhill breached Art. 5(1) ECHR.

3. Irrelevant consideration. The notion that the immigration officer took an irrelevant consideration into account springs from a reference in his notebook to "*Brother's sham marriage*?" The notebook, the court finds, contains but a record of the immigration officer's conversation with, *inter alia*, Mr Akram, as well as thoughts (and potential/real lines of inquiry) arising. The impugned text suggests a line of inquiry that occurred to the immigration officer as he proceeded. The court does not see that any irrelevant consideration was taken into account. The notebook details, and a contemporaneous computer log (the 'Border Management Unit Entry') suggest that all (and only) relevant details were taken into account in refusing Mr Akram permission to land.

4. Section 7 of the 2004 Act. Section 7 provides, *inter alia*, in respect of any non-national landing at any place in the State, that an immigration officer or a member of An Garda Síochána may, per s.7(3)(b) "*search…such non-national and any luggage belonging to him…with a view to ascertaining whether the non-national is carrying or conveying any documents and may examine and detain for such time as he or she may think proper for the purpose of such examination, any documents so produced or found on the search*". The word "*documents*" is defined in s.7(3)(c)(iii) as including "*any information in non-legible form that is capable of being converted into legible form".* The natural meaning to be given the phrase "*search any such non-national*" includes, *e.g.* removing a phone on the person of that non-national and perusing its contents. Section 7(3)(c)(iii) puts beyond doubt that this is so: it includes within the definition of "*documents*" data that would be found on an electronic device ("*any information in non-legible form that is capable of being converted into legible form*"); so it was clearly contemplated by the Oireachtas that a search done pursuant to s.7(3)(b) would embrace, *e.g.*, removing an electronic device on the non-national's person and reading the data contained thereon. Counsel for Mr Akram notes that under s.7(4) a non-national who contravenes s.7(3) is guilty of an offence, so s.7 falls to be interpreted strictly. However, strict interpretation does not equate to strained or strange interpretation. The reading that the court gives s.7(3)(b) and (c)(iii) seems to it the natural and correct reading of those provisions. Thus the court considers that the search of Mr Akram's phone was done in accordance with s.7. (At hearing, counsel for Mr Akram argued that there is a query arising as to whether s.7 allows the retention of documents produced/found pursuant to s.7(3)(b). No such argument appears in the statement of grounds or in the written submissions prepared by counsel for Mr Akram. So no such argument can properly be made at this time).

5. Reasons for Decision. Complaint is made that more fulsome reasons for the decision to refuse admission were not provided to Mr Akram. It seems to the court to flow from the acceptance by the Supreme Court of the three *pro forma* refusals to land that featured in *Ejerenwa v. Governor of Cloverhill Prison* [2011] IESC 41 (equivalents of the notice here impugned) that the said impugned notice was adequate to inform Mr Akram of the reason why he was refused permission to land. Even if that is not so, as Hardiman J. observed in *FP v. Minister for Justice* [2002] 1 IR 164, 175, "*Where an administrative decision must address only a single issue its formulation will often be succinct*". The process involving Mr Akram was not an *inter partes* dispute where the decision-maker received contrary submissions and was required to resolve in favour of one side. Yes, in such a situation more fulsome reasons would be required. Here, Mr Akram was questioned about why he was coming to Ireland, following that questioning he was told that he was being refused permission to land, and he was handed a signed, standard-form document addressed to him and indicating that he was being refused permission because the immigration officer considered there was reason to believe that Mr Akram intended to enter the State for purposes other than those he expressed. Three reasons pervade the case-law as to why reasons are required for an administrative law decision, *viz*. that (i) the subject of a decision understands what has been decided, (ii) the subject can bring an informed challenge to same, if s/he desires, and (iii) a court can undertake an informed review. Here, none of these objectives is impeded and all are satisfied.

6. Three further points arise. (1) As Charleton J. observes in the context of the 2004 Act in *FK v. Minister for Justice, Equality and Law Reform* [2008] 4 IR 1, 17, an immigration officer is required to act reasonably, i.e. reasonableness is the applicable test; that test is satisfied here. (2) So far as complaint is made as to the standard-form nature of the written refusal, the answer to such complaint is to be found in Hardiman J.'s observation in *FP,* 175, that "*Where a large number of persons apply, on individual facts, for the same relief, the nature of the authorities' consideration and the form of grant or refusal may be similar or identical. An adequate statement of reasons in one case may thus be equally adequate in others"*. (3) By way of related point to (2), one has to have regard to the context in which the refusal to land issued, *viz*. a busy airport environment in which thousands of people are churning through each day before a finite number of immigration officers. In that context, the State has to find a means of successfully

reconciling (a) administrative law requirements and (b) practical reality in such a way that (i) those requirements are discharged and (ii) that reality is accommodated. This the Minister has done. Counsel for Mr Akram contended that this line of reasoning means that people arriving, *e.g.*, at Dublin Airport on slow days would get fairer procedures than people arriving on busy days. There is nothing in the evidence to suggest this is so. Nor, with respect, does this proposition follow logically. Ultimately, what is required is, as Hogan J. observes in Ni v. Garda Commissioner [2013] IEHC 134, para. 17, a decision that is "*bona fide…not unreasonable and…factually sustainable*". That is what Mr Akram got.

7. Conditions at Cloverhill Prison. Not a lot was made at hearing of the complaint about conditions at Cloverhill. Prison doubtless is not pleasant. But there is nothing in the evidence to suggest, nor was it especially pressed, that the conditions of Mr Akram's detention at Cloverhill breached Art. 5(1) ECHR.

8. Conclusion. The principal reliefs sought by Mr Akram are (i) an order of *certiorari* quashing the decision of 21.10.2017 refusing him permission to enter the State, (ii) a declaration that his detention was unlawful, (iii) a declaration that the search of his phone breached his rights under Art.8 ECHR (at hearing his counsel in effect turned this into the challenge to s.7 of the 2004 Act), and (iv) damages. For the reasons given above, all the reliefs sought are respectfully refused.