

THE HIGH COURT

JUDICIAL REVIEW

[2017 No. 264 JR]

BETWEEN

T. K. B.

APPLICANT

AND

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENT

JUDGMENT of Mr. Justice O'Regan delivered on the 3rd day of April , 2017

1. The applicant herein is a Mauritian national born in 1972. He came to Ireland in August 2007 and had a student visa permission to remain up until 25th February 2014.
2. The applicant made an application to the respondent for permission to remain in the State whether by extension or variation to his prior permission, on 18th March 2016.
3. The decision has not yet been made on his application and in his statement of grounds of 22nd March 2017 the applicant is seeking an order of *mandamus* compelling a decision on the application of 18th March 2016 together with costs. The grounds upon which relief is sought are:
 1. The applicant is entitled to a decision within a reasonable time and the delay of more than one year is egregious and sufficiently unjustified as to be tantamount to a refusal.
 2. Delay is manifestly unreasonable and contrary to the principles of fair procedure and good administration and the applicant is prejudiced by the delay.
4. The applicant has sworn an affidavit bearing the date 22nd March 2017 to support his application for leave for *mandamus*. At para. 8 thereof he claims that he was without permission since February 2014 and he had applied for permission over twelve months prior to the affidavit. He states that he is rendered unlawfully in Ireland and had no other option and was unable to access education, housing, social assistance or engage in employment. He made a complaint that he is unable to sustain himself.
5. The applicant did submit a P60 for the year ended 31st December 2014 in support of his claim and also included payslips of employment payments made to him for the dates 29th January 2016, 19th February 2016 and 26th February 2016. Each of the aforesaid documents also identified the gross pay made to the applicant which would support, at least in general terms, the applicant's employment up until 26th February 2016 for the year 2016 was on a full-time basis.
4. The only communication since the application was made by the applicant to the respondent is a letter 2nd February 2017 looking for a decision within a period of fourteen days. No decision was issued and hence the within application.
5. In *Nearing v. The Minister for Justice, Equality and Law Reform* [2010] 4 I.R. 211 Cooke J. was dealing with an application for *mandamus* and stated:

"Moreover, nothing in the department's response to the application and subsequent enquiries could be said to have provoked any suspicion that the application was being put on the long finger or that the division operated some arbitrary and unreliable system for processing long term residency applications. On the contrary, the replies from the division gave a coherent and transparent account of the way in which it operated and the progress that was made. Applications were processed on a strict and therefore fair order of receipt and the applicant was kept informed from time to time as to how close the applications of August 2007 were being processed".
6. The respondent did in fact reply to the demand of the applicant of 2nd February 2017 aforesaid indicating that because of the judgment in the matter *Luximon v. Minister for Justice and Equality* [2016] IECA 382 it would be necessary for the Irish Naturalisation and Immigration Service to re-examine the decision making process which exercise is underway. It was further stated that in the event of any additional information or clarification being required the respondent would write to him and advise him accordingly however in the meantime it was indicated that it could be taken that no steps would be taken by the state pending the determination of the applicant's application.
7. I am not satisfied that the application by the applicant is not arguable by reason of:
 1. The applicant sent one letter only following his application and in that demanded a response within fourteen days. The response sought was a decision however the response given was to the effect that there was a review of the decision making process underway which appears to me to be absolutely reasonable and rational given the implications of the *Luximon* judgment. Further the applicant was assured that no steps would be taken by the State pending the determination of the application and certainly the totality of the letter was to the effect that a decision would be taken on his application as opposed to ignoring him completely.
 2. The applicant was content to reside in the State from the 25th February 2014 until his application on the 18th March 2016 without any permission whatsoever.
 3. As part of the applicant's argument it is stated that the decision in *Luximon* was only fourteen pages and therefore there would be no delay in applying that. This of course ignores the reality that the decision, albeit short, did require a review of the decision making process. The decision issued in December 2016 and therefore there is no evidence of any form of delay in this review of the process.

4. The applicant has sworn that he is unable to work and yet the payslips clearly demonstrate otherwise notwithstanding that he does not have permission to work. His claim of prejudice in this regard is wholly unmeritorious.

8. Having regard to all of the foregoing therefore I am not satisfied that the application for mandamus is arguable and therefore leave is refused.