[2018] IEHC 641

THE HIGH COURT

2017 No. 754 JR

Between:

YULIVYA MUKOVSKA

APPLICANT

– and –

MINISTER FOR JUSTICE & EQUALITY & MINISTER FOR FOREIGN AFFAIRS

RESPONDENTS

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

1. The applicant is, it seems, a prosperous Ukrainian lady. She owns a building fit-out business in Ukraine. She owns properties in Ukraine. She has previously holidayed abroad and returned home to Ukraine. She claims that for, *inter alia*, business reasons, she wants to study English in Dublin. On 11.04.2017, she applied for a student visa to come here. That application was unsuccessful. By decision of 13.07.2017, the applicant's appeal also failed, the following reasons being given: "[1] *Need to undertake…course in this State not demonstrated or warranted*…[2] *The applicant may overstay*…[3] [T]*he visa sought is for a specific purpose and duration:- the applicant has not satisfied the visa officer that such conditions should be observed.*" Although application was made to the Irish embassy in Kiev, processing of the application/appeal happened at the Irish embassy in Moscow. Following on the failed appeal, the applicant claims: (a) the respondents acted unreasonably or in breach of constitutional fair procedures in not giving any/adequate reasons, (b) they acted in breach of constitutional fair procedures in rejecting supporting documents without expressly referencing same in the refusal, (c) they acted unreasonably as there was no logical connection between the reasons and a legitimate consideration of her application, (d) they breached the applicant's legitimate expectation by delegating immigration decision-making to the second respondent's officers, (e)(i) there is a risk of objective bias if an application/appeal are decided by the same small group of individuals, (e)(ii) this risk was aggravated by virtue of the processing being done in Moscow, given the (unfortunate) antagonism presently extant between Ukraine and Russia.

2. Items (a)-(c). Exercise of ministerial discretion in immigration matters may be judicially reviewed. However, decision-makers exercising executive power in immigration matters enjoy wide discretion. (*Olakunori v. Minister for Justice, Equality and Law Reform* [2016] IEHC 473). The observations in *AMA v. Minister for Justice and Equality* [2016] IEHC 466, para.28 ("*Reasons must be provided but…it would take exceptional circumstances…before the Minister could be said to have failed to apply the minimal level of natural justice applicable in the context of a privilege such as naturalisation*") seem to the court to apply *a fortiori* to a visa application where the applicant has no connection to Ireland (save here for an Irish bank account, which is scarcely a connection at all). Even so, as is accepted by the respondents, the applicant is entitled to reasons for a refusal. Such reasons must make sense *vis-à-vis* the evidence before the decision-maker. Here reason [1] reads "*Need to undertake…course in this State not demonstrated or warranted".* Administrative decisions do not fall to be parsed like statute-law. By reason [1] the court understands the decision-maker to mean that, viewed in the round, the decision-maker considers that the applicant's need to undertake the desired course has not been demonstrated/warranted to the decision-maker's satisfaction. That may seem to Ms Mukovska to be a harsh or unexpected conclusion. However, it is a conclusion that the decision-maker was entitled to reach on the evidence at hand. Entry to the State is a privilege governed by ministerial discretion; the onus rests on applicants at all times to satisfy the relevant minister of the day that s/he should grant the visa sought. Here the decision-maker is not so satisfied on the evidence before her or him. Even if either or both of reasons [2]/[3] are flawed, absent some deficiency in the decision-making process (and the court sees none) the Minister's decision can stand on reason [1] alone. So it is not necessary to consider reasons [2]/[3]. The court also notes, by way of separate point, that (i) there is no legal requirement that all documentation submitted in support of a visa application be expressly referenced in a decision to grant/refuse, (ii) the decision-maker states in her decision that s/he has "*taken all documentation and information provided into consideration*", there is nothing to suggest that this is untrue, and the court accepts it is true.

3. Item (d). The Moscow visa office is staffed by INIS officials working for the first respondent (who did therefore consider the applicant's application/appeal). So there is no substance to item (d), not that the court sees any basis for the claimed legitimate expectation. (It follows, incidentally, that the second respondent should not be party to these proceedings).

4. Item (e). There is no evidence of objective bias. The evidence shows that a different member of INIS staff considers an application/appeal and did so here, every appeal being considered on its merits. As for the contention that Irish officials and/or the decision-making process were somehow tainted by anti-Ukrainian sentiment, this is both offensive and unfounded. The court accepts the evidence that relations between Russia and Ukraine are of no concern to INIS officials in Moscow.

5. Three points remain. (1) As the applicant's substantive case so clearly fails, it is not necessary to consider the point raised by the respondents as to her *locus standi*. (2) The respondents contend that the applicant should have issued a pre-action letter. It is conceivable that such a letter might have been helpful in identifying what additional information/documentation Ms Mukovska might usefully provide if she wishes to make a further visa application. However, (a) despite the learned judgments in *Li and Wang v. Minister for Justice and Equality (No.1)* [2015] IEHC 638, *Leng v. Minister for Justice and Equality* [2015] IEHC 681, *Olakunori, and Krupecki v. Minister for Justice and Equality (No.2)* [2018] IEHC 538, it remains the case that there is no legal obligation to issue such a letter (absent contrary legislative provision, and here there is no such provision applicable), and (b) the court does not see how, absent some other factor presenting, it could affect its application of discretion in judicial review proceedings that an applicant did not do what she was not obliged to do. (3) The respondents complain of deficiencies in the applicant's affidavit evidence. The court is satisfied to receive same under O.40, r.15 of the Rules of the Superior Courts 1986, as amended. To proceed otherwise would impose injustice on the applicant.

6. For the reasons stated above, the reliefs sought by the applicant are respectfully refused.