

**THE HIGH COURT**  
**JUDICIAL REVIEW**

[2012 No. 96 J.R.]

**BETWEEN****F.A. (PAKISTAN)****APPLICANT****AND****REFUGEE APPEALS TRIBUNAL (CONSTITUTED OF BEN GARVEY, B.L., TRIBUNAL MEMBER) AND****MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM****RESPONDENTS****JUDGMENT of Mr. Justice Eagar delivered on the 17th day of December, 2015**

1. On 28th July, 2015, this Court gave judgment on an application for judicial review by the above applicant and granted an order of *certiorari* quashing the decision of the first named respondent dated 24th January, 2012, remitting the appeal of the applicant for a de novo consideration by a separate member of the Refugee Appeals Tribunal (hereinafter referred to as "the Tribunal").

2. Nearly five months later, the respondent now applies under s. 5(3)(a) of the Illegal Immigrants (Trafficking) Act 2000 (hereinafter referred to as "the Act of 2000"), for a certificate of leave to appeal to the Court of Appeal, on the basis that the judgment "involves a point of law of exceptional public importance" and that "it is desirable in the public interest" that such an appeal be taken. The criteria to be applied by this Court in ruling on the application for a certificate under s. 5(3)(a) is not in dispute.

3. Following from the decision of MacMenamin J. in *Glancre Teoranta v. An Bord Pleanála & Anor* [2006] IEHC 250, the decision of Cooke J. in *I.R. v. Minister for Justice, Equality and Law Reform & Anor* [2009] IEHC 510, and the decision of Clarke J. in *Arklow Holidays v. An Bord Pleanála* [2007] 4 I.R.112, the following principles appear to apply:-

(i) The requirement goes substantially further than a point of law which emerges in or from the case, it must be one of exceptional importance being a clear and significant additional requirement.

(ii) The jurisdiction to certify such a case must be exercised sparingly.

(iii) The law in question stands in a state of uncertainty and it is for the common good that such law be clarified so to enable the courts to administer that law not only in the instant but in future such cases.

(iv) That it is desirable in the public interest that an appeal should be taken to the Court of Appeal. The uncertainty as to the point of law must be genuine and not merely a difficulty in predicting the outcome of the appellant's arguments. The point of law must arise out of the decision of the High Court and not some discussion or consideration of a point of law during the hearing.

(v) The requirements regarding "exceptional public importance" and "desirable in the public interest" are cumulative requirements which may overlap to some extent and require separate consideration by the court.

(vi) The importance of the point must be public in nature and must, therefore, transcend well beyond the individual facts and parties of a given case.

(vii) "Uncertainty" cannot be "imputed" to the law by an applicant simply by raising a question as to the point of law. Rather, the authorities appear to indicate that uncertainty must arise over and above this, for example, in the daily operation of the law in question.

(viii) Some affirmative public benefit from an appeal must be identified. This would suggest a requirement that a point to be certified be such that it is likely to resolve other cases.

(ix) Finally, the requirement that the court be satisfied that it is desirable in the public interest and an appeal should be taken to the Court of Appeal is a separate and independent requirement from the requirement that the point of law is one of exceptional importance. On that basis, it can be argued that the court may not, on the basis, *inter alia*, of time or costs consider that it is an appropriate case to certify the case to the Court of Appeal.

4. I have considered both the written and oral submissions of counsel for the respondent and counsel for the applicant.

5. The respondents are applying for a certificate on the number of issues:-

(i) Whether the learned judge was correct in concluding that the failure to provide a transcript or record of the evidence heard by the Tribunal constituted a "failure to comply with the clear statements made by the Supreme Court in relation to the determination of administrative decisions" and the judicial review of such decisions and whether in the light of the Supreme Court's decisions in *Meadows v. Minister for Justice* [2010] IESC 3 and *Rawson v. Minister for Defence* [2012] IESC 26, the learned judge erred by concluding that he lacked "sufficient information" to determine the lawfulness of the Tribunal's decision in each material respect in the context of the judicial review application before him.

(ii) Whether the learned judge was incorrectly influenced by his view of what the *Rawson* ruling requires for the information to be furnished to the High Court in judicial review applications under s. 5 of the Act of 2000, when reaching his decision and making the findings summarised at para. 51 of his decision:-

(a) Why, it is submitted, wrongly concluding that the Tribunal's determination of the credibility of the applicant's description of an alleged prior assault was unreasonable and/or unreasoned.

(b) Why, it is submitted, misinterpreting the Tribunal to have based its decision on a material degree on the applicant's demeanour as a witness and on that basis finding (a.) an absence of sufficient information to determine the lawfulness of the decision and (b.) an absence of reasons explaining the Tribunal's decision in that regard.

(c) Why, it is submitted, misinterpreting the Tribunal to have found that discrimination does not amount to prosecution.

(d) Why, it is submitted, misinterpreting the Tribunal to have omitted to consider the forward risks of persecution.

6. The first ground is misconceived as this Court stated clearly at para. 50 of this Court's judgment that the Court has not decided the case on the basis of the failure of the Tribunal to provide for copies of the evidence in chief and cross examination together with any questions posed by the Tribunal.

7. In the course of the judgment, the Court did express concern about lack of information about the evidential hearing before the Tribunal. However, this Court notes that in decisions prior to 2012, and in many cases subsequent to 2012, this Court has had the pleasure of reading, not by way of transcript evidence, but by way of presentation of the applicant's claim, the questions posed by the presenting officer that the issue raised by the Court in its judgment relates in the main to a number of cases around 2012. In these circumstances, having regard to the decision of the Court not to decide the case on this basis, the Court is satisfied that this ground fails the first principle, set out above, in that it is not a decision of exceptional importance, being a clear and significant additional requirement. This Court is also satisfied that the law in question does not stand in a state of uncertainty. For these reasons, the Court does not consider the first ground to be an appropriate case to certify the case to the Court of Appeal.

8. In relation to the second ground which is broken into four grounds, this Court held that the duty to give reasons was a requirement of the jurisprudence and this is well settled law and the court relied on two decisions of the Supreme Court. This Court is not prepared to certify a question to the Court of Appeal as to whether the Supreme Court decisions were correctly decided by the Supreme Court as a matter suitable for a certificate of appeal.

9. It appears to this Court that the respondent is seeking to re-litigate the issues already determined by this Court and in those circumstances I do not believe that this an appropriate ground for a certificate of leave to appeal. This Court is absolutely satisfied that the matters raised are not of exceptional public importance and the court is also cognisant of the requirement that the jurisdiction to certify such a case must be exercised sparingly.

10. For these reasons, the court refuses the application for a certificate in both of the grounds suggested by the respondents.

Counsel on behalf of the applicant, Sunniva McDonagh, S.C., and John Noonan, B.L., instructed by KOD Lyons Solicitors.

Counsel on behalf of the respondent, John Healy, S.C., and Peter Leonard, B.L., instructed by the Chief State Solicitor