THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 16 J.R.]

BETWEEN

HAMMED SALEEM AND LOUISE TOMPKINS

APPLICANTS

AND

MINISTER FOR JUSTICE AND EQUALITY,

HEALTH SERVICE EXECUTIVE AND

COMMISSIONER OF AN GARDA SÍOCHÁNA

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 15th day of February, 2016

1. In this application, the applicants seek leave to apply for judicial review to quash two separate administrative decisions to which objection is taken. Firstly, the first named applicant objects to a variation of his permission to remain in the State, endorsed on his passport on 9th December, 2015. The variation essentially reduced the duration of his entitlement to stay in the State so that it would expire on 9th January, 2016.

2. Secondly, the applicants object to a decision of the Civil Registration Service of the Health Service Executive (HSE), which they say was made "*on or about 10th December, 2015, refusing to solemnise the intended marriage of the applicants".*

Does s. 5 of the Trafficking Act apply to this application?
3. Section 5 (1)(e) of the Illegal Immigrants (Trafficking) Act 2000 applies to "*a refusal under s. 4 of the Immigration Act 2004"*. Section 4 (6) of that Act allows an immigration officer to "*amend*" the conditions attached to a permission. Amendment and refusal are two separate things. It may be somewhat irrational for s. 5 to apply to refusal to renew a permission, but not to apply to an amendment which shortens the duration of a permission, but I must apply the section as enacted. Perhaps this among other anomalies may at some stage lead to a proper review of the section so as to achieve a more consistent and logical scheme.

4. On the basis of the foregoing, s. 5 does not apply to this leave application.

The decision to amend the first named applicant's permission
5. The first named applicant was originally given permission to be in the State for study purposes up to 31st August, 2016. On 9th December, 2015, this was amended so that the permission would expire on 9th January, 2016. I am told by Mr. Paul Comiskey O'Keeffe B.L., for the applicants, that the ostensible reason for the change was a failure to attend his college courses. The papers include letters from Cork City College, one dated 13th October, 2015, indicating that his attendance levels "*have not been satisfactory*", and further on 27th November, 2015, informing him that he has been "*deregistered*" from the programme of study.

6. It was also suggested that there was some form of ulterior motivation for the amendment to the permission, but no evidence capable of supporting that large claim appears from the papers. It seems to me that the decision to amend the first named applicant's permission was manifestly justified given the foregoing circumstances. It does not appear to me possible on which to identify in the evidence (such as it is) a ground by reference to which it would be arguable that this decision was so unreasonable, still less, as submitted, so perverse and improperly motivated as to warrant an intervention of the court by way of judicial review.

The postponement of the proposed wedding of the applicants
7. The applicants originally intended to get married on 11th December, 2015, at the Registrar's Office, Nenagh, Co. Tipperary. An objection to the proposed marriage was lodged by the Garda National Immigration Bureau in accordance with s. 58(1) of the Civil Registration Act 2004, on the grounds that the proposed marriage would constitute a marriage of convenience.

8. By letter dated 11th December, 2015, which apparently confirmed a phone call of 10th December, 2015, the HSE notified the applicants that they would be notified of a date and time for interview with regard to the objection, and until such time as the process had been completed, the solemnisation of the proposed marriage would not proceed.

9. First of all, it will be observed that contrary to what is pleaded in the statement of grounds, this is not a refusal to solemnise the marriage, but rather a notification that the marriage is on hold pending the inquiries contemplated by s. 58, so at most it is a refusal to solemnise it at the moment pending the completion of those inquiries.

10. Mr. Comiskey O'Keeffe placed reliance on ss. 58(4A) and (4B) and the related provision at sub-s. (4)(cc). However, those provisions relate to the spontaneous formation of an opinion by the registrar concerned and have no relevance to an objection of the kind made here, which is the investigation of a third party objection. Subsection (4) provides that a notification to parties at issue here will be sent "*if the registrar who receives an objection under subsection (1) believes that more than a minor error or misdescription exists in the relevant notification under section 46 and that the possibility of the existence of an impediment to the intended marriage concerned needs to be investigated.*"

11. The kernel of the application for judicial review under this heading is that the H.S.E. should have expressly stated that it believed that more than a minor error existed and that the possibility of an impediment needed to be investigated. This confuses fundamentally the distinction between consideration of an issue and narrative discussion. The absence of narrative discussion is not evidence of a

failure to give due consideration (see the judgment of Hardiman J. in *G.K. v. Minister for Justice* [2002] 2 I.R. 418; and also my decision in *R.A. v. Refugee Appeals Tribunal* [2015] IEHC 686).

12. In the present case, there is nothing to suggest that these relatively light statutory prerequisites have not been complied with. Indeed the whole tone and tenor of the letters to the applicants is only consistent with the registrar being of the view that an issue which is more than minor exists and that the possibility of an existence of an impediment needs to be investigated. There is simply no substance to the challenge under this heading.

Discretion
13. Independently of the foregoing, even if I consider that there were grounds for granting leave in this case, which I do not, I would have refused leave to the first named applicant in relation to the permission issue as a matter of discretion, in any event, in view of the fact that he is currently unlawfully in the State, having failed to comply with the terms of the permission granted to him on behalf of the Minister (see my decisions in *Li v. Minister for Justice and Equality* [2015] IEHC 638 and *Leng v. Minister for Justice and Equality* [2015] IEHC 681). There is nothing in the papers to suggest that the challenge to the amendment of his permission (if there were grounds for it, which I do not accept) could not have been properly processed by the court by lawyers on behalf of the first named applicant, without his personal presence in the State, if he were to return to Pakistan, his country of origin.

14. Finally, the grounding affidavits in this case do not properly support the applications. The affidavits by the two applicants are essentially "*one line*" affidavits verifying the statement, and the more substantive affidavit of the applicants' solicitor, without further description, "*beg[s] to refer to a true copy of the correspondence referred to in the statement*". Admittedly some basis for a "one line" verifying affidavit could be derived from a literal reading of the Rules of the Superior Courts (Judicial Review) 2011, but I would consider it necessary and appropriate that the court should be given some form of narrative statement of the material facts by way of an affidavit, in principle from the applicant or applicants, in order to properly ground such an application.

Order
15. I will therefore order:

(i) that the application for leave be refused; and

(ii) that the applicants' solicitors serve the CSSO with a copy of this judgment within 7 days from the date of its delivery.