THE HIGH COURT

JUDICIAL REVIEW

[2017 No. 491 JR]

BETWEEN

QAISER MEHMOOD

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr. Justice David Keane delivered on the 26th June 2019

Introduction

1. This is the judicial review of a decision by the Minister for Justice and Equality ('the Minister'), dated 11 April 2017 ('the decision'), under Regulation 25 of the European Communities (Free Movement of Persons) Regulations 2015 ('the 2015 Regulations'), to uphold on review a first instance decision of 3 March 2016 to refuse the application of Qaiser Mehmood, a national of Pakistan, for a residence card as a permitted family member of his brother Khalid Mahmood, a British - and, hence, European Union – citizen, exercising free movement rights in the State.

2. The 2015 Regulations were made, in exercise of the powers conferred on the Minister by s. 3 of the European Communities Act 1972, to give effect to Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the rights of the citizens of the Union and their family members to move and reside freely within the territory of the Member States ('the Citizens' Rights Directive'). They came into operation on 1 February 2016.

3. In essence, the reason the Minister gave for the decision is that Mr. Mehmood failed to establish that he is a 'permitted family member' of Mr. Mahmood, within the meaning of that term under Regulations 2(1), 3(6) and 5(1) of the 2015 Regulations (transposing the requirements of Article 3(2) of the Citizens' Rights Directive concerning 'other family members'), because he failed to establish that in the United Kingdom (as the country from which he had come), he was either: (a) a dependant of Mr. Mahmood, as a Union citizen; or (b) a member of the household of Mr. Mahmood, as a Union citizen.

Procedural history and grounds of challenge

4. The application is based on a statement of grounds dated 19 June 2017, grounded principally on an affidavit of Mr. Mehmood, sworn on 8 June 2017, accompanied by an affidavit of an Urdu translator, sworn on the same date. Having omitted to exhibit the decision under challenge (*i.e*. the single most important document in these proceedings) to his original grounding affidavit, Mr. Mehmood swore a supplemental affidavit for that purpose on 15 June 2017. No translator's affidavit accompanied Mr. Mehmood's supplemental affidavit but that may be just as well since, as Cooke J made clear in *Saleem v Minister for Justice* [2011] 2 IR 386 (at paras. 31 – 35), such affidavits are not appropriate. Each of Mr. Mehmood's two affidavits was sworn without any certificate in the jurat of the kind required under O. 40, r. 14 of the Rules of the Superior Courts. No attempt was made to have Mr. Mehmood swear an affidavit in Urdu. It seems clear, therefore, that neither of those affidavits was sworn in accordance with the correct procedure for adducing evidence on affidavit from a witness who speaks neither English nor Irish, as explained by Cooke J in that case. Wholly exceptionally, I propose to overlook that difficulty in this case, principally because the matters at issue between the parties turn on the correspondence between them in circumstances where the nature and contents of that correspondence are not in dispute. My decision in that regard is not intended as a precedent of any kind. The normal course, where the correct procedure has not been followed, is to rule the contents of any such affidavit and any exhibits to it inadmissible.

5. By Order made on 19 June 2017, O'Regan J granted Mr. Mehmood leave to seek the certain of the reliefs identified in his statement, on the grounds specified in it. Principal among those reliefs is an order quashing the Minister's decision of 11 April 2017.

6. The relevant order sought in the original statement of grounds and, hence, the order Mr. Mehmood was granted leave to seek is one 'quashing the unsuccessful review of the negative decision by the [Minister] on [Mr. Mehmood's] application under the European Communities (Free Movement of Persons) Regulations 2006 and 2008 ['the 2006 Regulations'], communicated by letter dated 11 April 2017.' That is erroneous because, as the decision recites on its face, it was made in accordance with Reg. 25 of 2015 Regulations. Under Reg. 31(28) of the 2015 Regulations, the 2006 Regulations continued to apply to a review sought before those Regulations came into operation on 1 February 2016, but in this case the first instance decision was made on 3 March 2016 and the Minister received Mr. Mehmood's request for a review of it on 21 March 2016. However, nothing turns on it.

7. Leaving aside boilerplate grounds of the unhelpfully broad or general type deprecated by the Supreme Court in *A.P. v Director of Public Prosecutions* [2011] 1 IR 729 (at 732-3) and by this Court in *Lofinmakin (a minor) v Minister for Justice & Ors* [2011] IEHC 38, (Unreported, High Court (Cooke J), 1st February, 2011) (in this case, unspecified want of legality and fairness, failure to consider unspecified relevant facts, and consideration of unspecified irrelevant facts), the three ground upon which Mr Mehmood impugns the decision are the following. First, the Minister erred in law in failing to set out reasons for his determination that Mr Mehmood had failed to establish that he was a member of the household of Mr Mahmood in the country from which he had come. Second, the Minister erred in law in failing to set out the test to be applied in determining whether Mr Mehmood was a member of the household of Mr Mahmood in the country from which he had come. And third, the Minister erred in law because the manner in which he approached the determination of whether Mr Mehmood qualified as a permitted family member of Mr Mahmood under Regulations 2(1), 3(6) and 5(1) of the 2015 Regulations (transposing the requirements of Article 3(2) of the Citizens' Rights Directive concerning 'other family members'), deprived that provision of European Union law of its effect, thereby breaching the principle of effectiveness.

8. The Minister delivered an undated statement of opposition, joining issue with Mr. Mehmood on each of the grounds he has raised. It is supported by an affidavit, sworn on 10 November 2017 by Sinead Murphy, a higher executive officer in the Irish Naturalisation and Immigration Service, which is part of the Department of Justice and Equality.

Background

9. In his grounding affidavit, Mr. Mehmood provides the following account of his immigration history.

10. He was born in Pakistan on 7 September 1991 and is a Pakistani citizen. His brother, Khalid Mahmood, was born in Pakistan on 10 March 1976 and is a naturalised British citizen. Mr. Mehmood entered the United Kingdom on a student visa on 24 January 2011. Mr. Mahmood had by then been living in the UK for 20 years, where he was married with four children. Mr. Mehmood lived with his brother as a member of his household until, for whatever reason, they travelled to Ireland together on 10 May 2015, where Mr. Mahmood obtained employment as a carpenter the following month.

11. The remainder of Mr. Mehmood's immigration history is not in dispute, although – for reasons that will be apparent shortly – his present solicitors may not have been aware of all of it.

12 Mr. Mehmood applied for a residence card on 29 June 2015 as '*the dependant and a household member of the EEA national*', submitting an application form dated 30 June 2015 with certain supporting documentation. By letter dated 5 October 2015, the INIS acknowledged receipt of that application on behalf of the Minister and requested certain additional documentation including, under the heading 'Evidence of relationship with the EU citizen', the following:

> *'For other family members*
>
> - Evidence of dependence on the EU citizen, including dependence prior to residing in the State OR further evidence of membership of the EU citizen's household prior to residing in the State….'

13. On 3 March 2015, the INIS wrote on behalf of the Minister to Mr. Mehmood, noting that his application for a residence card had been assessed in accordance with the provisions of the 2006 Regulations, under the transitional provision in Reg. 31(3)(a) of the 2015 Regulations. That letter went on to state, in material part:

> 'I am to inform you that the Minister has decided to refuse your application on the basis that she is not satisfied that you are a permitted family member of the EU citizen, Khalid Mahmood, in accordance with the provisions of the Regulations. This is for the following reasons:
>
> You have failed to submit satisfactory evidence of the following:
>
> - dependence on the EU citizen, including dependence prior to residing in the State,
>
> - evidence of membership of the EU citizen's household prior to residing in the State,
>
> ...
>
> It is not evident from the documentation submitted that you were living within the household of the EU citizen in the United Kingdom. There is insufficient evidence on file to show how many persons were living at that address, their relationship to you or the duration of [the] period that both you and the EU citizen were residing there. There is also no evidence to show if the property was leased or owned or who it was leased or owned by. It is noted that both you and the EU citizen are renting the property at the above address [in the State]. It is not accepted therefore that you are/were a member of the household of the Union citizen.
>
> Furthermore, it is not accepted that you have submitted sufficient evidence to show that you are a dependent of the Union citizen. You submitted bank statements for yourself showing [s]tanding [o]rders as evidence of dependence on the EU citizen. However, these documents show minimal information and do not show a degree of dependency, such to render independent living at subsistence level by you impossible if that financial and social support were not maintained. You have not submitted any other evidence by way of proof that you are totally dependent, or the extent to which you are dependent, on the EU citizen for financial support.'

14. By letter dated 16 March 2016, an entity styling itself 'EU Immigration Advisory Services', with an address on Achill Island, County Mayo, submitted an application for a review of the Minister's decision on Mr. Mehmood's behalf, on the stated grounds that he was both a dependant of Mr. Mahmood and a member of Mr. Mahmood's household in the United Kingdom, as the country from which he had come. Only the issue of Mr. Mehmood's membership of Mr. Mahmood's household is relevant to the questions raised in the present proceedings. The letter stated, in material part:

'(i) Member of EU Citizen's household prior to residing in the State

> The conclusive evidence to prove that the applicant is member of the same household before arriving in Ireland is set out as follows:
>
> 1- The applicant arrived in the UK as a full-time student on 3rd March 2011 and occupied the same house in 101 Cranbrook Street, Oldham, OL4 1QH, from the same day of his arrival in UK. The evidence is set out as follows:
>
> [There follows a list of documents including bank statements for Mr. Mehmood and Mr. Mahmood at that address, as well as a copy of a tenancy agreement]
>
> Whilst he was studying in UK and residing at 101 Cranbrook Street, Oldham, OL4 1QH, his education and day to day living expense was funded by the EU citizen.
>
> No objection letter was obtained from the Landlord/Agent that Mr. Qaiser Mahmood is permitted to occupy the same house. The tenancy expired on 1st June of 2011, the new tenancy contract was signed which clearly included the applicant as one of the tenant (*sic*). The property occupied is a 4-bedroom house which was rented out from the landlord/agent named Sidhu Legal and Financial Services for a period of 1 year assured short hold tenancy.
>
> At the same time we also submit evidence of the EU citizen occupying the same address with his wife and four children. These documents are set out as follows:
>
> [There follows a list of documents including an earlier tenancy agreement and various bank statements]
>
> From the payment of bills and expenses for day to day running of the expenses evident from the aforementioned documents, [it is clear] that both the applicant and the EU citizen occupied the same house and therefore [were]

member[s] of the same household.'

15. On 14 April 2016, the INIS wrote to Mr. Mehmood's immigration advisers on the Minister's behalf, indicating – perfectly understandably – that they could not deal with an unaccredited third party purporting to act on Mr. Mehmood's behalf. There, it would seem, that entity's involvement in the matter ceased. On the same date, the INIS wrote to Mr. Mehmood directly, acknowledging his application for a review of the decision to refuse him a residence card. The Minister's letter pointed out that Mr. Mehmood would have to demonstrate that he was, in the country from which he had come, either (in material part) a dependent or member of the household of the Union citizen Mr. Mahmood, and that it was open to him to submit any additional supporting documentation he may wish to be considered for that purpose. It may or may not be significant that, in doing so, the INIS letter did not acknowledge receipt of the significant volume of supporting documentation that the immigration advisers had furnished to it on Mr. Mehmood's behalf.

16. On 5 January 2017, Mr. Mehmood's present solicitors wrote to the INIS stating that they had been instructed to act on his behalf for the purpose of the review; making a lengthy legal submission on his behalf; and enclosing some additional documentation. Those solicitors wrote again on 17 January 2017, making a further legal and factual submission on his behalf and enclosing some more documents.

17. Three points arise from a brief perusal of those submissions. The most significant is that, while they address at length the issue of Mr. Mehmood's membership of Mr. Mahmood's household in the UK, as the country form which he had come, they do not reference any of the extensive documentation, claimed to evidence it, that the immigration advisers who were then purporting to represent Mr. Mehmood had furnished to the Minister the previous March. For reasons that will become apparent, the submission of that material in support of Mr. Mehmood's application for a review of the Minister's first instance decision is of central significance to the resolution of this case.

18. The second point is that they address at some length what they perceive to be the Minister's error of law in requiring Mr. Mehmood to establish both dependence upon Mr. Mahmood *and* membership of his household, in the country from which Mr Mehmood had come, rather than simply requiring him to establish either of those things in the alternative. Thus, the Minister felt obliged to rebut the claim that he had ever taken that view of the law or imposed any such requirement, at equivalent length, on affidavit and in his written submissions. Mr Mehmood did not attempt to stand over that claim at the hearing of the application and there is nothing in the evidence before the court to suggest, much less establish, any such error on the part of the Minister.

19. The third point is that those submissions advance an eccentric argument on the proper interpretation of the term 'membership of the household of the Union citizen'. Although, as a term of European Union law, it must be interpreted according to the principles for the construction of European Union legislation (see Case 283/81 *CILFIT* [1982] ECR 3415), and although the courts and tribunals in England and Wales have endeavoured to do so in a train of cases (see, for example, *KG (Sri Lanka) and AK (Sri Lanka) v Secretary of State for the Home Department* [2008] EWCA Civ 13; *Bigia & Ors. v. Entry Clearance Officer* [2009] EWCA Civ 79; *Secretary of State for the Home Department v MR & Ors* [2010] UKUT 449 (IAC); *Moneke v Secretary of State for the Home Department* [2011] UKUT 341; and *RK v Secretary of State for the Home Department* [2010] UKUT 421), the submissions of those solicitors abjure reliance on – or, indeed, reference to – any of that jurisprudence, suggesting instead that the Minister should interpret the European Union law term 'membership of the household of the Union citizen' as co-extensive with that of the quite distinct term 'living ... in the same household' in s. 2(5) of the UK Divorce Reform Act 1969, as interpreted by the England and Wales Court of Appeal in *Santos v Santos* [1972] 2 W.L.R. 889 at 899 (*per* Sachs LJ), or that of the similarly distinct term 'members of the same household' forming part of the definition of the term 'couple' in para. 6(1)(f) of Schedule 1 to the UK Welfare Reform Act 2007, as interpreted by the Administrative Appeals Chamber of the Upper Tribunal in *MA v Secretary of State for Welfare and Pensions* [2016] UKUT 0262 (AAC). I will confine myself to the observation that I do not accept that argument.

20. On 11 April 2017, the INIS wrote to Mr. Mehmood on behalf of the Minister, notifying him that his application had not been successful on review, for the following tersely stated reasons:

> 'On the basis of the documents supplied, the Minister has determined that you do not fulfil the criteria in respect of permitted family members as set out in Regulation 5(1) of the Regulations.
>
> You have failed to submit satisfactory evidence in order to demonstrate that in the country from where you travelled to this State you were a dependent family member of the EU citizen, a member of the EU citizen's household or that you strictly require the personal care of the EU citizen for serious health reasons.'

The law

21. Article 1 of the Citizens' Rights Directive lays down, amongst other things, the conditions governing the exercise of the right of free movement and residence within the territory of the Member States by Union citizens and their family members. Article 2 of the Citizens' Rights Directive defines both a 'Union citizen' and the 'family member' of a Union citizen for the purposes of the exercise of those rights. Under Article 2(2), a 'family member' is defined as: (a) the spouse; (b) the registered partner (in certain defined circumstances); (c) the direct descendants under the age of 21 or a dependant of the Union citizen, spouse or partner (so defined); and (d) the dependent direct relatives in the ascending line of the Union citizen, spouse or partner (so defined). As Article 3(1) of the Citizens' Rights Directive confirms, these are the persons who are the designated beneficiaries of the rights the exercise of which it conditions.

22. Article 3(2) states:

> 'Without prejudice to any right to free movement and residence the persons concerned may have in their own right, the host Member State shall, in accordance with its national legislation, facilitate entry and residence for the following persons:
>
> > (a) any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen;
> >
> > (b) the partner with whom the Union citizen has a durable relationship, duly attested.

The host Member State shall undertake an extensive examination of the personal circumstances and shall justify any denial of entry or residence to these people.'

23. Article 10 provides, in material part:

'1. The right of residence of family members of a Union citizen who are not nationals of a Member State shall be evidenced by the issuing of a document called "Residence card of a family member of a Union citizen" no later than six months from the date on which they submit the application. A certificate of application for the residence card shall be issued immediately.

2. For the residence card to be issued, Member States shall require presentation of the following documents:

…

(e) in cases falling under Article 3(2)(a), a document issued by the relevant authority in the country of origin or country from which they are arriving certifying that they are dependants or members of the household of the Union citizen…;

…'

24. As has frequently been noted, Recital 6 in the preamble to the Citizens' Rights Directive states:

'In order to maintain the unity of the family in a broader sense and without prejudice to the prohibition of discrimination on grounds of nationality, the situation of those persons who are not included in the definition of family members under the Directive, and who therefore do not enjoy an automatic right of entry and residence in the host Member State, should be examined by the host Member State on the basis of its own national legislation, in order to decide whether entry and residence could be granted to such persons, taking into consideration their relationship with the Union citizen or any other circumstances, such as their financial or physical dependence on the Union citizen.'

25. The Citizens Rights Directive is now transposed in Ireland by the 2015 Regulations.

26. Under the heading 'Interpretation', Regulation 2(1) of the 2015 Regulations provides that:

'"family member" means a qualifying family member or a permitted family member;

…

"permitted family member" means, in relation to a particular Union citizen, a person who is, under Regulation 3(6), a permitted family member of the Union citizen;

"qualifying family member" means, in relation to a particular Union citizen, a person who is, under Regulation 3(5), a qualifying member of the Union citizen

….'

27. Regulation 3 states, in material part:

'(1) This paragraph applies to—

(a) Union citizens entering or remaining in the State in accordance with these Regulations, and

(b) a family member of a Union citizen referred to in subparagraph (a) who—

(i) enters the State in the company of the Union citizen,

(ii) enters the State for the purpose of joining the Union citizen, or

(iii) becomes a family member while in the State and seeks to remain with the Union citizen in the State.

…

(5) For the purpose of these Regulations, a person is a qualifying family member of a particular Union citizen where—

(a) subparagraphs (a) and (b) of paragraph (1) apply, respectively, to the Union citizen and the person, and

(b) the person is—

(i) the Union citizens spouse or civil partner,

(ii) a direct descendant of the Union citizen, or of the Union citizens spouse or civil partner, and is—

(I) under the age of 21, or

(II) a dependent of the Union citizen, or of his or her spouse or civil partner, or

(iii) a dependent direct relative in the ascending line of the Union citizen, or of his or her spouse

or civil partner.

(6) For the purposes of these Regulations, a person is a permitted family member of a particular Union citizen where—

(a) subparagraphs (a) and (b) of paragraph (1) apply, respectively, to the Union citizen and the person, and

(b) the Minister has, in accordance with Regulation 5, decided that the person should be treated as a permitted family member of the Union citizen for the purposes of these Regulations, which decision has not been revoked pursuant to Regulation 27.'

28. Regulation 5 states, in pertinent part:

'(1) This paragraph applies to a person who—

(a) irrespective of his or her nationality, is a member of the family (other than a qualifying family member) of a Union citizen to whom paragraph (2) applies and who in the country from which the person has come—

(i) is a dependant of the Union citizen, [or]

(ii) is a member of the household of the Union citizen….

(2) Where a Union citizen has entered or is residing in the State in accordance with these Regulations or is proposing to do so, a person to whom paragraph (1) applies may apply to the Minister for a decision that he or she be treated as a permitted family member for the purposes of these Regulations and shall, for the purposes of such an application, produce to the Minister—

(a) (i) where the applicant is a national of a Member State, a valid passport or national identity card, or
(ii) where the applicant is not a national of a Member State, a valid passport,
(b) evidence that he or she is a member of the family of the Union citizen,

and

(c) one of the following:
(i) documentary evidence from the relevant authority in the country of origin or country from which he or she has come, that he or she is a dependant, or a member of the household, of the Union citizen;

….

(3) Upon receipt of the evidence referred to in paragraph (2), and on being satisfied that the applicant is a person to whom paragraph (1) applies, the Minister shall cause to be carried out an extensive examination of the personal circumstances of the applicant in order to decide whether the applicant should be treated for the purposes of these Regulations as a permitted family member of the Union citizen concerned.

(4) For the purposes of his or her decision under paragraph (3), the Minister may require the applicant to produce such additional evidence as the Minister may reasonably require.

(5) The Minister, in deciding under paragraph (3) whether an applicant should be treated as a permitted family member for the purposes of these Regulations, shall have regard to the following:

(a) where the applicant is a dependant of the Union citizen concerned, the extent and nature of the dependency and, in the case of financial dependency, the extent and duration of the financial support provided by the Union citizen to the applicant prior to the applicant's coming to the State, having regard, amongst other relevant matters, to living costs in the country from which the applicant has come, whether the financial dependency can be satisfied by remittances to the applicant in the country from which the applicant has come and other financial resources available to him or her;

(b) where the applicant is a member of the household of the Union citizen concerned, the duration of the period during which he or she has been living within the household of the Union citizen;

…

(e) whether the relationship described in subparagraph *(a), (b), (c)* or *(d),* as the case may be, was brought about with the objective of obtaining permission to remain in the State or a Member State;

(f) the capacity of the Union citizen concerned to continue to support the applicant in the State in the event that the applicant is to be treated as a permitted family member under these Regulations.

(6) The Minister, following an examination under paragraph (3), shall—

(a) where he or she decides that an applicant should be treated as a permitted family member for the purposes of these Regulations, notify the applicant in writing of the decision, or

(b) where he or she decides that an applicant should not be treated as a permitted family member for the purposes of these Regulations, notify the applicant in writing of the decision and of the reasons for it.

….'

29. Regulation 7 provides:

'7. (1) A family member who is not a national of a Member State –

(a) may, within 3 months of the relevant date, apply to the Minister for a residence card, and

(b) shall, where an application under paragraph (a) has not been made within the period specified in that paragraph, before the expiry of 4 months after the relevant date, apply to the Minister for a residence card.

(2) In paragraph (1), the "relevant date" means –

(a) in the case of a qualifying family member, the date on which he or she-
(i) entered the State as a qualifying family member, or

(ii) having already been in the State, became a qualifying family member,

and

(b) in the case of a permitted family member—
(i) the date on which he or she first entered the State as a permitted family member, or

(ii) where he or she was present in the State on the date on which the Minister decided that he or she should be treated as a permitted family member, that date.

(3) An application under paragraph (1) shall contain the particulars specified in Schedule 2 and shall be accompanied by such additional information requirements provided for in that Schedule as are applicable.

(4) The Minister shall cause to be issued a notice acknowledging receipt of an application under paragraph (1).

(5) The Minister shall, within 6 months of the date of receiving an application under paragraph (1)—

(a) where he or she is satisfied that it is appropriate to do so, issue a residence card containing the particulars set out in Schedule 3 to the family member concerned, or

(b) notify the family member concerned that his or her application has been refused, which notification—

(i) shall be accompanied by a statement of the grounds for the refusal, and

(ii) may be accompanied by a notification under Regulation 21(1) or 23(3), or both.

(6) An applicant under paragraph (1) may remain in the State pending a decision on the application.'

30. Regulation 25 states, in material part:

'(1) A person who has, or who claims to have, an entitlement under these Regulations to enter or reside in the State may seek a review of any decision concerning such entitlement or claimed entitlement.

(2) An application for review under this Regulation shall be submitted to the Minister within 15 working days of the receipt by the person concerned of the decision and shall set out in writing the grounds for review and the particulars specified in Schedule 4.

(3) The Minister may, where he or she is satisfied that it is warranted in the particular circumstances, extend the period referred to in paragraph (2) within which a review must be submitted.

(4) A review under this Regulation of a decision under paragraph (1) shall be carried out by an officer of the Minister and who—

(a) shall be a person other than the person who made the decision, and

(b) shall be of a grade senior to the grade of the person who made the decision.

(5) The officer carrying out the review shall have regard to the information contained in the application and may make or cause to be made such enquiries as he or she considers appropriate and may—

(a) confirm the decision the subject of the review on the same or other grounds having regard to the information contained in the application for the review, or

(b) set aside the decision and substitute his or her determination for the decision.'

Analysis

31. As a matter of law, I am satisfied that the Minister did not err in law in failing to set out the test to be applied in determining whether Mr. Mehmood was a member of the household of Mr. Mahmood in the country from which he had come.

32. The term *'the household of the Union citizen'* is a term drawn directly from the Citizens' Rights Directive and, hence, a term of European Union law. In *CILFIT*, already cited, the European Court of Justice summarised the principles governing the interpretation of

Community law in the following way:

> '18. To begin with, it must be borne in mind that Community legislation is drafted in several languages and that the different language versions are all equally authentic. An interpretation of a provision of Community law thus involves a comparison of the different language versions.
>
> 19. It must also be borne in mind, even where the different language versions are entirely in accord with one another, that Community law uses terminology which is peculiar to it. Furthermore, it must be emphasized that legal concepts do not necessarily have the same meaning in Community law and in the law of the various Member States.
>
> 20. Finally, every provision of Community law must be placed in its context and interpreted in the light of the provisions of Community law as a whole, regard being had to the objectives thereof and to its state of evolution at the date on which the provision in question is to be applied.'

33. Under Regulation 5(2)(c) of the 2015 Regulations, reflecting the requirements of Article 10(2) of the Citizens' Rights Directive, in claiming that status on the basis upon which he did, Mr. Mehmood was obliged to produce to the Minister documentary evidence from the relevant authority in the country from which he had come that he was a member of the household of Mr. Mahmood. In reality, Mr. Mehmood was entirely at large on the issue of both the evidence he chose to present in support of his claim and the means whereby he chose to adduce it; Case C-215/03 *Oulane* [2005] ECR I-1215 (at para. 53), Case C-1/05 *Jia* [2007] 1 CMLR 41 (at para. 41). Nonetheless, whatever evidence he did submit was always going to be subject to qualitative assessment.

34. Thus, it is clear that the relevant obligation upon Mr. Mehmood – or, differently put, the relevant test he had to meet – was to satisfy the Minister by cogent evidence that was in part documented and could be tested that he had been a member of Mr. Mahmood's household in the United Kingdom, as the country from which he had come.

35. I am also satisfied that the interpretation of the term 'member of the household of the Union citizen' adopted by the Minister does not deprive Art. 3(2) of the Citizens' Rights Directive of its effectiveness, in the manner deemed impermissible by the ECJ in Case C-127/08 *Metock and Others* [2008] ECR I-6241 (at para. 84). That is precisely the argument that was made to, and rejected by, the England and Wales Court of Appeal in *Bigia & Ors. v. Entry Clearance Officer* [2009] EWCA Civ 79 and the Upper Tribunal there in *RK v Secretary of State for the Home Department* [2010] UKUT 421. I adopt the reasoning that underpins each of those judgments and I reject that argument.

36. Having carefully reviewed the papers, I have come to the conclusion that the extensive argument in the parties' written and oral submissions on the more abstruse issues of the purported obligation on the Minister to posit a test for 'membership of the household of the Union citizen' and the extent to which the approach he has adopted to the interpretation of that term does or does not comply with the principle of effectiveness in EU law, has operated to obscure the real and obvious difficulty with the Minister's decision in this case.

37. In my judgment, the decision under challenge is bad in law because it does not comply with the well-established principles on the duty to provide reasons.

38. The statement in the decision that Mr. Mehmood had failed to submit satisfactory evidence to demonstrate that he was a member of the household of his brother Mr. Mahmood in the United Kingdom as the country from which he had come is simply the expression of a conclusion, unaccompanied by any reasons. In submitting his application for review through his 'immigration advisers', Mr. Mehmood had furnished a significant quantity of additional documentation to repair the deficiencies that the Minister had identified in the evidence he had provided in support of his application at first instance. Whether he had done so successfully is primarily a matter for the Minister and not the court. But Mr. Mehmood was entitled to reasons for the Minister's decision that he had not.

39. The following clear reasons were provided in the Minister's first instance refusal to grant a residence card:

> 'It is not evident from the documentation submitted that you were living within the household of the EU citizen in the United Kingdom. There is insufficient evidence on file to show how many persons were living at that address, their relationship to you or the duration of [the] period that both you and the EU citizen were residing there. There is also no evidence to show if the property was leased or owned or who it was leased or owned by. It is noted that both you and the EU citizen are renting the property at the above address [in the State]. It is not accepted therefore that you are/were a member of the household of the Union citizen.'

40. It is also useful to compare the reasons the Minister provided in the review in this case with those that the Minister provided in the equivalent review that was the subject of a challenge in *Rehman v Minister for Justice and Equality* [2018] IEHC 779, (Unreported, High Court (Keane J), 21st December, 2018) (quoted at para. 20):

> *'(ii) a member of the household of the EU citizen*
>
> Prior to entering the State you have supplied some documentation to show that you were residing at [the Conway Street address]. In support of this you have supplied a number of documents including medical reports, a letter from your GP regarding your registration, and utility bills in respect of Yorkshire Water along with a British Gas bill for yourself. In respect of the EU citizen you have submitted a number of Virgin Media bills dated between November 2014 and April 2015, the British Gas bill is in joint names and also the letter from the GP names the EU Citizen as a patient.
>
> In support of your application, you have submitted a number of documents in respect of both yourself and the EU citizen however, the majority of the documentation provided is in respect of you the applicant. There is no tenancy agreement or mortgage statement in respect of the property. Whilst it is noted that there are a number of documents provided in respect of the residence of yourself and the EU citizen in the UK, there is no evidence to suggest that the household was that of the EU Citizen and that you were a member of that household.
>
> Having examined the documentation supplied I am satisfied that you have failed to provide sufficient documentation to show that you were a member of the household of the EU citizen prior to entering the State.'

41. No comparable reasoning is evident in the review decision under challenge. There is just the bare recital that, in material part:

> 'You have failed to submit satisfactory evidence in order to demonstrate that in the country from where you travelled to

this State you were ... a member of the EU citizen's household....'

42. The existence and scope of the requirement to give reasons for an administrative decision affecting the rights and obligations of persons is by now a well-settled aspect of the administrative law of the State. In *Meadows v. Minister for Justice, Equality and Law Reform* [2010] 2 I.R. 701 at 732, Murray CJ explained:

> '[93] An administrative decision affecting the rights and obligations of persons should at least disclose the essential rationale on foot of which the decision is taken. That rationale should be patent from the terms of the decision or capable of being inferred from its terms and its context.
>
> [94] Unless that is so then the constitutional right of access to the courts to have the legality of an administrative decision judicially reviewed could be rendered either pointless or so circumscribed as to be unacceptably ineffective.'

43. In *Rawson v Minister for Defence* [2012] IESC 26, (Unreported, Supreme Court, 1st May, 2012), Clarke J observed (at para. 6.8):

> 'While the primary focus of a number of the judgments cited, and indeed aspects of the decision in [*Meadows*] itself, were on the need to give reasons as such, there is, perhaps, an even more general principle involved. As pointed out by Murray C.J. in [*Meadows*] a right of judicial review is pointless unless the party has access to sufficient information to enable that party to assess whether the decision sought to be questioned is lawful and unless the courts, in the event of a challenge, have sufficient information to determine that lawfulness. How that general principle may impact on the facts of an individual case may be dependent on a whole range of factors, not least the type of decision under question, but also, in the context of the issues which this court is concerned on this appeal, the particular basis of challenge.'

44. As Clarke J summarised the position in *EMI Records (Ireland) Ltd & Ors. v Data Protection Commissioner* [2013] 2 IR 669 (at 739):

> '[67] It follows that a party is entitled to sufficient information to enable it to assess whether the decision is lawful and, if there be a right of appeal, to enable it to assess the chances of success and to adequately present its case on the appeal. The reasons given must be sufficient to meet those ends.'

45. Moreover, national authorities are required to give reasons for decisions which affect adversely European Union law rights as an aspect of the right to effective judicial review; Case C-222/86 *UNECTEF v Heylens* [1987] ECR 4097. In the words of the ECJ in that case (at para. 15):

> 'Effective judicial review, which must be able to cover the legality of the reasons for the contested decision, presupposes in general that the court to which the matter is referred may require the competent authority to notify its reasons. But where, as in the this case, it is more particularly a question of securing the effective protection of a fundamental right conferred by the Treaty on Community workers, the latter must also be able to defend that right under the best possible conditions and have the possibility of deciding, with a full knowledge of the relevant facts, whether there is any point in their applying to the courts. Consequently, in such circumstances the competent national authority is under a duty to inform them of the reasons on which its refusal is based, either in the decision itself or in a subsequent communication made at their request.'

46. As Advocate General Fennelly explained in his Opinion in Case C-70/95 *Sodemare and Others v Regione Lombardia* ECLI:EU:C:1997:55 (at para. 17):

> 'The obligation to give reasons for national decisions affecting the exercise of Community-law rights does not arise from any extension of Article 190 [of the Treaty of Rome, later Article 253 EC, now Article 296 TFEU], but from the general principle of Community law, flowing from the constitutional traditions of the Member States, that judicial remedies should be available to individuals in such cases.'

47. As against the foregoing principles, it must not be overlooked that, in *Mallak v Minister for Justice* [2012] 3 IR 297, Fennelly J acknowledged that there may be circumstances in which the provision of express reasons is not necessary, when he stated (at 322):

> '[68] ... The most obvious means of achieving fairness is for reasons to accompany the decision. However, it is not a matter of complying with a formal rule: the underlying objective is the attainment of fairness in the process. If the process is fair, open and transparent and the affected person has been enabled to respond to the concerns of the decision-maker, there may be situations where the reasons for the decision are obvious and judicial review is not precluded.'

48. Applying those principles to the decision under challenge, I conclude that the Minister did not disclose the essential rationale for his decision that the evidence submitted by Mr. Mehmood failed to establish that he was a member of the household of Mr. Mahmood in the United Kingdom. That rationale is not patent from the terms of the decision, nor is it capable of being inferred from its terms and its context. Nor is this a case in which the reason for that conclusion is obvious.

49. Hence, the Minister's decision cannot stand.

Conclusion

50. I will grant an Order of *certiorari* quashing the decision.

51. I will remit the matter to the Minister for reconsideration in accordance with the principles I have identified.

52. I will hear the parties on any appropriate ancillary order and on the consequential orders that should follow.