

UNAPPROVED



THE COURT OF APPEAL

Record No.: 2018/501

Donnelly J.

Neutral Citation Number [2021] IECA 340

Ní Raifeartaigh J.

Hunt J.

Between:

**YULIYA MUKOVSKA**

**APPELLANT**

**-and-**

**THE MINISTER FOR JUSTICE**

**-and-**

**THE MINISTER FOR FOREIGN AFFAIRS**

**RESPONDENTS**

**JUDGMENT of Mr Justice Tony Hunt delivered on the 21<sup>st</sup> December, 2021**

1. The appellant obtained leave from the High Court on 9 October 2017 to apply for an order of *certiorari* by way of an application for judicial review against a decision of the first respondent (“the Minister”) refusing her application for a study visa. The High Court refused her application by judgment of 19 November 2018 and perfected order of 4 December 2018.

**Factual matters**

2. The grounding affidavit sworn for the High Court application establishes that the appellant is a Ukrainian national, then residing at Zaporizhzhya, Ukraine. As of October 2017, she carried on what she described as a successful business in Ukraine supplying fabrics and soft furnishings for high-end home or commercial fit-outs. In that context, she stated that she dealt with customers and suppliers in the English language, that her business required her to

travel extensively to a variety of other countries and that she studied English as a higher subject at university. She added that she retained a desire to improve her fluency for both business and social purposes, and that she had previously considered taking an English course in London.

3. She visited Ireland in 2016 and stated that, while here, she noticed that English colleges in Dublin were offering courses to foreign nationals which she described as “*competitively priced*”. She located a suitable college and discovered that the course duration that best suited her desire for sabbaticals also necessitated an application to the Minister for a study visa. She described her personal circumstances at that time. She owned several properties in Ukraine, and apart from her business there, she also had a daughter pursuing third-level nursing studies.

4. She enrolled in and paid for an English language course at a school in Ireland. Because the selected course was over three months in duration, she applied on 11 April 2017 to the Minister for a study visa through the Irish Embassy at Kiev. That embassy transmitted the application to the embassy at Moscow for processing. The application was refused by letter from the Irish Naturalisation and Immigration Service (INIS), based at the Visa Section of the Moscow Embassy. The letter stated that the reasons for refusal were:

“CP: - Need to undertake the course in this State not demonstrated or warranted

F: - Finances shown to have been deemed insufficient

F: - Finances: - evidence provided is deemed insufficient or incomplete

OC: - Observe the conditions of the visa - the visa sought is for a specific purpose and duration:- the applicant has not satisfied the visa officer that such conditions would be observed.”

The letter informed the appellant that this decision could be appealed within two months of the date of the letter, that such an appeal was required to be in writing, “*fully addressing all the reasons for refusal to the Visa Appeals Officer to the address shown*”, and that all additional supporting documents should be submitted with the appeal.

5. The appellant appealed the refusal by letter dated 4 May 2017. In this letter, she attempted to address in some detail each of the reasons for refusal set out in the first-instance decision. She submitted 20 documents in support of the appeal. The letter of appeal was composed on her behalf by her solicitor in Dublin. Mr Cosgrove addressed each of the reasons for refusal in sequence. The “CP” or need reason was addressed by a narrative incorporating many of the facts set out above. The finance reasons were addressed by submission of various official documents concerning her main residence, an apartment, a plot of land and country home, the proposed purchase of a commercial property (all at Zaporizhzhya), by statements relating to three bank accounts in Ukraine and one at an AIB branch at Dundrum, Dublin 14, and by a certificate from the State Fiscal Service of Ukraine confirming her annual returns of business income. These documents were accompanied by a narrative in the appeal letter concerning her banking affairs. The AIB account was opened in November 2016, when she was lawfully present in Ireland as a visitor. The statement shows several lodgements between 7 and 18 November 2016.

6. The “OC” or non-observation of conditions refusal was addressed by submission of a copy of her passport, which contained stamps relating extensive previous foreign travel. She asserted that she had always followed immigration regulations in respect of these journeys. Her letter also referred to the fact that she received a “C” (tourism) visitor visa from Ireland on 16 September 2016 which was valid for 90 days. As noted above, she appellant travelled here on that visa. Her appeal letter states that her visit ended on 20 November 2016. She referred to the copy of her passport. This clearly shows that the tourism visa was valid from 10 September to 10 December 2016, and a stamp admitting her to this State on 16 September 2016. The passport does not contain a departure stamp evidencing when she left the State. To cover that aspect of the matter, she submitted a boarding pass from Turkish Airlines for a flight from Dublin to Istanbul on 20 November 2016 (2 days after the last substantive activity on her

AIB account). The boarding pass is for flight TK 1978 in the passenger name “Mukovska Julia”. She also submitted personal documentation evidencing details relating to her adult daughter.

7. By letter of 13 July 2017, the Moscow visa section informed the appellant that her appeal had been examined by an Appeals Officer from INIS, and that the appeal had not been successful. This letter recites that in re-examining the application the Appeals Officer had taken all documentation and information provided taken into consideration and had decided that the original decision to refuse the visa should be upheld. The reasons for refusal of the appeal were stated as follows:

“CP: - Need to undertake the course in this State not demonstrated or warranted.

OC:- Condition - the applicant may overstay following proposed visit.

OC:- Observe the conditions of the visa - the visa sought is for a specific purpose and duration: - the applicant has not satisfied the visa officer that such conditions would be observed.”

8. Comparison of the two sets of reasons implies that the net effect of the appeal letter and supporting documentation was that the Appeals Officer was satisfied that the “F” (finance) reasons had been addressed adequately, because they were not repeated, but that the “CP” and the original “OC” reason had not. The Appeals Officer re-issued those two reasons in the same terms. Furthermore, the Appeals Officer reached an additional conclusion on the appeal materials. There was now a specific concern that she may overstay the visa if it was granted. No express rationale was offered for this additional and novel conclusion from the materials said to have been taken into consideration. It was not expressly stated how the information and documents reviewed provided the basis for a further finding adverse to the appellant.

## **Basis of the claim**

9. The appellant claimed in her application for judicial review that the refusal to grant her this visa was unreasonable or in breach of constitutional fair procedures in failing to give any or adequate reasons such as to enable her to know in general or broad terms of the grounds on which she had failed. The specific grounds are addressed in detail below. In summary, her complaints were that the three broad reasons for refusal did not permit her to ascertain the reasons for the decision, with reference to the volume of material submitted. As a consequence, her right to make a future visa application or ability to determine whether to apply for judicial review were rendered nugatory, because the concerns of the respondent were not clearly known. She also claimed that constitutional fair procedures were breached by reason of the rejection of her supporting documents without reference to those documents in the refusal decision. The decision was unreasonable because there was no logical connection between the reasons for refusal and any legitimate consideration of her application. She also complained of breach of legitimate expectation and objective bias arising from the fact that her application was considered in the Irish Embassy in Moscow.

### **The High Court judgment**

10. The judgment of the High Court is brief and to the point. The following are the principal points therein:

- (a) Decision makers exercising executive power in immigration enjoy wide discretion.
- (b) Even applicants with no ties to the jurisdiction are entitled to reasons for a refusal, which must make sense *vis à vis* the evidence before the decision maker.
- (c) The “CP” reason meant that it had not been demonstrated/warranted to the decision maker’s satisfaction that Ms. Mukovska had a need to undertake the desired course. The learned High Court judge observed that whereas Ms. Mukovska might find that conclusion harsh or unexpected, it was a conclusion that the decision maker was

entitled to reach on the evidence at hand. He noted that administrative decisions do not fall to be parsed like statute law.

- (d) As the learned High Court judge was satisfied that the refusal of the Appeals Officer could stand on the “CP” reason alone, it was unnecessary to consider the “OC” reasons, even if either or both of those were flawed, because he saw no deficiency in the decision-making process. He also noted that there was no requirement that all documentation submitted should be expressly referenced in a subsequent decision. He accepted at face value the statement that all documentation and information had been considered by the decision maker on appeal.
- (e) There was no legitimate expectation on the part of Ms. Mukovska that her application would be dealt with somewhere other than Moscow.
- (f) There was no evidence of objective bias in circumstances where her application and appeal were dealt with by different visa officers in Moscow. He found that the notion that Irish officials and/or the decision making process there were somehow tainted by anti-Ukrainian sentiment by the nature of relations between Russia and Ukraine to be both offensive and unfounded, and that such matters were of no concern to INIS officials in Moscow.

## **Grounds of Appeal**

**11.** These are set out in the Notice of Appeal as follows:

- 1. The trial judge erred in law and/or in fact in determining that, while the applicant was entitled to reasons for a refusal, reason 1 of the contested decision (the “CP” reason) was sufficient and reasonable in light of the documentation and information submitted by the applicant in support of her application.

2. The trial judge erred in finding that it was not necessary for the court to consider reasons 2 or 3 of the contested decision (the “OC” reasons). If any of the reasons were insufficient, the rationale of the duty to provide reasons was not met.
3. In respect of reasons 2 and 3 of the contested decision, the respondent acted unreasonably and/or in breach of constitutional fair procedures. These reasons are so terse and opaque they render it difficult for the applicant to understand the basis for the decision or to make another application.
4. Further or in the alternative, these reasons also appear unreasonable or irrational in light of the considerable supporting documentation submitted by the applicant. The finding that the applicant might not comply with the terms of a visa is made without reference to the fact that the applicant had already been granted a visit visa to come to Ireland and had complied with its terms. She had also provided evidence of travel to many other countries often as part of her successful business in Ukraine.
5. The trial judge erred in law and/or in fact in applying a subjective test for bias rather than an objective test as pleaded by the applicant. Given the difficult relationship between Ukraine and Russia, the applicant, a Ukrainian, was particularly unhappy that a visa application made in Kiev was, without any notice of permission, transferred to Moscow, Russia for processing at both first instance and at appeal stage by the visa office there. The test, it was submitted, was whether a reasonable person in the circumstances would have a reasonable apprehension that the applicant would not have a fair hearing (an objective test).

## **Submissions on the appeal**

12. In summary, the arguments in support of these grounds of appeal were as follows:
  - a) The “CP” reason could either relate to the necessity to do an English course *simpliciter* or to the necessity to do an English course *in Ireland*. The term “need”

could be applied in both a narrow and a wide definition in that context. The appellant had engaged with both issues in any event, by providing both a reason for the study of English and a reason for pursuing such studies in this country.

- b) The learned High Court judge wrongly failed to engage with the “OC” reasons provided, having satisfied himself of the adequacy and sufficiency of the “CP” reason, and had thereby “*stepped into the shoes*” of the decision-maker. Given the apparent disconnect between these reasons and the nature and extent of the information provided in respect of these matters, he should have engaged in a closer analysis of the reasonableness of the decision making process.
- c) In respect of the “sufficiency of reasons” ground of appeal, the appellant relied primarily on the High Court judgments in *T.A.R. and I.H. -v- The Minister for Justice and Equality* [2014] IEHC 385 (McDermott J.) and *Ashraf -v- The Minister for Justice* [2018] IEHC 760 (Barrett J.), and on the Court of Appeal judgments in *Borta -v- The Minister for Justice and Equality* [2019] IECA 255 (Donnelly J.), *H.M. -v- The Minister for Justice* [2015] IEHC 799 (Faherty J.) and *M.N.N. -v- The Minister for Justice* [2020] IECA 187 (Power J.).
- d) The addition of the “OC” overstay reason on appeal was both unwarranted by the evidence before the decision-maker and unsupported by any reasonable explanation.
- e) The refusal of a Ukrainian application by a Russian visa official based in Moscow was, in the circumstances that exist between those two countries, tainted by objective bias. (This ground of appeal was maintained on the specific instructions of the appellant). In this regard, counsel relied upon the test set out by Denham J. (as she then was) in *Bula Ltd. -v- Tara Mines Ltd. (No. 6)* [2000] 4 I.R. 412 at 441.



**13.** The Minister’s grounds of opposition denied the entitlement of the appellant to relief on all or any of the grounds set out above. In summary, the Minister’s case in response to these matters is as follows:

- a) The Minister receives many student visa applications annually, and the reasons offered for refusal of such visas will necessarily be concise or terse.
- b) The Minister has a particularly wide discretion in the case of an application for a long stay visa by a non-EU or non-EEA citizen. The lack of association or connection with the State makes such cases very different from, for example, naturalisation applications.
- c) The appellant was entitled to receive clear and discernible reasons for the purpose of either an appeal or judicial review.
- d) This appeal must fail because it was moot or lacked “*practical utility*” or benefit for the appellant. The events giving rise to these proceedings had been overtaken by subsequent events. The appellant had since married an Irish citizen based in Ukraine and had two young children, and she no longer had any need for a study visa. Because she had “*moved on with her life*”, study or a visa were no longer live issues.
- e) In the interim, the appellant had applied for a different type of visa for the purpose of visiting her children’s Irish grandparents with her children, and that application had been refused. This refusal was not challenged by the appellant. That refusal, both initial and on appeal, was based on reasons of insufficient or incomplete financial evidence, that no social, economic or professional ties were shown in the home country and the visa officer was not satisfied that the conditions of the visa would be observed. Therefore, the appellant had not been “*precluded*” by the previous refusal from making a further application.

- f) Counsel referred to grounds (f)1 and (f)3 in the statement required to ground application for judicial review in this regard. He submitted that these grounds showed that the application to quash was made because the appellant might wish to make a future application for a visa and was “*precluded*” from doing so unless the appeal decision was quashed. Her subsequent application for a different type of visa showed that there was no impact on her entitlement to apply. It was also asserted that the previous refusal was not held against her (despite the refusal of the application), because the reasons for the second refusal made no reference to the first.
- g) As to the provision of reasons, the Minister relied on the judgment of the Supreme Court in *Mallak -v- The Minister for Justice, Equality and Law Reform* [2012] **IESC 59**. By reference to that case, the applicable standard was “deprivation of hope of success in a future application”. In this case, there was no deprivation of hope because the appellant had been able to apply afterwards for the other type of visa.
- h) The appellant had received adequate reasons, which she was able to use for the purpose of both an appeal and judicial review. The “course profile” (CP) refusal was the linchpin of the present case. Counsel submitted that it was “*plain and simple*” from this reason that the appellant had not persuaded the Minister of her need to study English in Ireland. He stated that the appellant knew that she needed to convince the Minister as to why she should be granted a visa for an 8-month period. On that issue, it was submitted that the extremely wide discretion entitled the Minister to refuse the application on the basis that a person who simply expresses a desire to study English, and that they would “*like*” to undertake that study in Ireland, does not thereby demonstrate the requisite “*need*” to do either of

those things. Counsel professed himself to be “*puzzled*” by the appellant’s reference to the fact that many other students might be seen to have obtained visas without apparently fulfilling these criteria in the past, which was said to be irrelevant to the decision in this case. He stated that where an applicant simply expressed a desire to study in Ireland, the Minister was entitled to reject that application because the need to study here “*would not be good enough*” to demonstrate need in that situation. He pointed out that there was no challenge to the “CP” reason on the grounds of irrationality in grounds f(1) and f(3).

- i) There was no obligation on the Minister to expressly refer to specific documentation in giving his reasons. The “OC” reasons were logically intertwined with and followed on from the “CP” reason.
- j) The objective bias ground of appeal was unstateable, with particular regard to the tests set out by the Supreme Court in *Bula (No.6)* and *Kenny -v- Trinity College Dublin and Dublin City Council*, (Fennelly J., 15 October 2007).
- k) The court should not entertain an appeal where the controversy was no longer live, and the issue was academic and hypothetical. By reference to *X.X. -v- The Minister for Justice and Equality [2019] IESC 59*, it was submitted that there was no issue of exceptional public importance or special reason in the public interest to entertain this appeal, that it was confined to the particular facts and involved no systemic issue, and that the authorities relied upon by the appellant were decided on the basis of their own facts and within their individual context.
- l) There was no evidence of any other practical impediment to the appellant in her foreign travels by reason of this refusal. It would be speculative and nebulous for this Court to engage in a consideration of what might happen in relation to visa applications made at other times and in other places, there being no “*hard evidence*”

of an obligation to disclose such refusals elsewhere. If that were so, the appellant should also have brought proceedings challenging the 2019 refusal.

m) The “OC” reasons were “*clearly intertwined*” and, in the opinion of counsel, “*followed on from*” the “CP” reason, because if the decision-maker was not satisfied as to need to study in Ireland, therefore it “*followed on*” from that lack of satisfaction that visa conditions also would not be observed.

**14.** In reply, counsel for the appellant submitted that a refusal was a potential black mark against future visa applications and, if wrongful, this refusal should be quashed. With respect to the refusal of the 2019 application, he asserted that the applicant was aggrieved and upset at that refusal, but at that time had enjoyed no success with either the Irish immigration authorities or the Irish courts, had been obliged to put up security for costs in relation to this appeal and, in effect, had neither the inclination nor the resources for a further contest in those circumstances. He argued that the subsequent different visa application did not render this appeal moot.

### **Preliminary objection - Mootness/lack of utility or practical benefit**

**15.** I am satisfied that the Minister has not established that the appeal should be dismissed on this basis.

**16.** Whilst the precise purpose for which the appellant applied for a long term visa is now spent, that is solely because the Minister refused to grant her a long stay visa to enable her to pursue the language course for which she had booked and paid at that time. The fact that it is not possible to revisit or replicate the context of the refused application is not, in itself, a basis for excluding judicial review of a refusal to grant a visa. In this regard, the Minister relies strongly on the appellant’s individual circumstances, including her subsequent marriage to an Irish citizen and the birth of two young children. These circumstances are argued to negate her former desire to study English in Ireland, or the consequent need a long term study visa. For

her part, the appellant maintains that she remains interested in pursuing such a course. Even if that is so, I believe that in her altered circumstances, this need does not now have the same priority as it might have had in 2017.

**17.** Much was also made by counsel on behalf of the Minister of the subsequent visa application. The absence of adverse consequences from the 2017 refusal is said to be demonstrated by the fact that she was able to apply two years later for a different visa. As set out above, it was submitted by reference to grounds (f)1 and (f)3 that the appellant's case revolves around preclusion from future applications, and that this case was moot because the 2019 process showed as a fact that there was no impact on her entitlement to apply for visas. I will set out these grounds, because this is not a fair summary the appellant's case. They are as follows:

“ (f)1. The [Minister], in making the decision on appeal of 13 July 2017 refusing to grant the applicant a student visa, acted unreasonably or in breach of constitutional fair procedures in failing to give any or adequate reasons such as to enable the applicant to know in general and broad terms of the grounds on which she had failed.

- i. In solely providing three broad statements as reasons for the refusal decision, in particular light of the volume of information furnished, the applicant is not in a position to ascertain the reasons by which the [Minister] came to its determination. This renders both her right to make a future visa application and her entitlement to determine whether judicial review is warranted nugatory in circumstances where she does not know how to address the concerns of the [Minister] or whether those concerns are lawful and fair.
- ii. In failing to provide any or any adequate reasons for the said refusal decision, [the Minister] has jeopardised any future visa applications the

applicant might make in circumstances where the disclosure of any prior refusal of a visa and the reasons therefor is generally required for visa applications made to both the Irish authorities and to the authorities of other States. [...]

f(3). The [Minister], in making the decision on appeal of 13 July 2017 refusing to grant the applicant a student visa, acted unreasonably in there was no logical connection between the reasons as advanced for the refusal and any legitimate consideration of the application...”

**18.** There is no reference in these grounds to preclusion, or any synonym thereof. It is perfectly clear that the appellant’s complaint is that that future applications would be jeopardised or rendered nugatory, not that she was “*precluded*” from making an application. “*Nugatory*” signifies something that is useless or futile. This is a reasonable description of what happened in 2019, from the appellant’s point of view. She exercised her right to apply for a visit visa, as the mother of young Irish citizens, by submitting a form, information and the appropriate fee. She was entitled to have it considered in those circumstances. I fail to understand how consideration of another application in those circumstances speaks to the effects of the previous application and refusal. In fact, the 2019 application was met with the same fate, as it was refused on broadly similar grounds. The Minister clearly believes that previous visa refusals are relevant, in the light of the emphasis in the general advice to visa applicants on the necessity of disclosing such matters in their application.

**19.** I also do not accept the Minister’s argument that the refusal of a visa application is, in effect, a matter of no future consequence for the appellant. Counsel for the Minister stated that there was no hard evidence as to the practice of other countries in this regard. This observation is not consistent with the affidavit evidence and is not correct. The appellant’s grounding affidavit states at paragraphs 18 to 20 as follows:

“On the INIS website, [...] it is stated that a consideration that is taken into account in determining a visa application is whether the applicant has been refused a visa in the past and the reasons for this [...] The relevant section of the INIS website sets out as follows:

“Previous Visa Refusals

If you have been refused a visa in the past for any country, you must provide the details, there might be some explanation no matter how unreasonable.

The original letter issued to you by the authorities of that country must be provided with your application.

Not disclosing any previous visa refusals will result in your application being refused.”

I have noticed similar notices on websites in respect of these applications to other States. I am very concerned that this visa refusal decision and the bare statement of reasons set out will jeopardise my chances of obtaining a visa to enter Ireland or another stage in the future. I will have to declare on future visa applications to other countries that I have been refused a visa to Ireland. I will be left in the invidious position of having no reasonable explanation as to why my visa application was refused. In the absence of any explanation as to why a decision was made which is contrary to all the evidence submitted, my visa applications to other countries will be severely prejudiced by this decision of the Irish embassy in Moscow.”

**20.** The appellant did not provide specific evidence as to the practice in other jurisdictions in this regard. She deposed to observing similar notices on the websites of other States. The stamps in her passport bear out her assertion that she has travelled far and wide. The Minister did not contradict these averments, and no doubt that this was for the reason that common sense

and experience suggests that other states attach similar importance to previous refusals when considering visa applications.

**21.** This uncontradicted evidence shows the importance and relevance of visa refusals to the immigration authorities in this State. I do not think that the norms of the sophisticated immigration regime of this State are international outliers. I also believe that warnings of the kind issued by INIS suggest that previous refusals are unlikely, in general terms, to be a positive factor in a visa application. At a minimum, the reasons for a refusal will be closely scrutinised, and will require careful explanation by an applicant. In itself, this underlines the need for some degree of clarity and cogency when reasons for refusal are issued. The affidavit evidence convincingly refutes the suggestion that there is no practical effect in this appeal for the appellant.

**22.** If the appellant applies for a visa here or elsewhere in future, she will have to disclose the letter relating to the impugned decision. The appellant's assertion that she could be prejudiced if a letter of refusal is subsequently examined by immigration authorities elsewhere is undoubtedly correct. The potential for prejudice is sharpened if the refusal letter is not expressed accurately, clearly and cogently or if the underlying decision is irrational or unreasonable. In my view, the realistic potential for future adverse consequences entitle her to relief if she establishes the legal defects contended for by her, irrespective of her changed circumstances.

**23.** I therefore reject the Minister's submission that this is a "*hypothetical or academic*" matter. I also reject the submission that there is some significance in this respect arising from the appellant's failure to challenge the 2019 refusal. By that time, her experience of the Irish immigration system was one visa granted, followed by two refusals, two unsuccessful appeals and one unsuccessful judicial review application. This was later followed by provision of security for costs by her to permit her to continue with this appeal. I am not surprised that she



did not initiate further proceedings in these circumstances, and I do not infer that her failure to do so indicates that she was happy or content with the 2019 decision. Once again, common sense would suggest otherwise.

## **Ground of appeal #5 - Objective bias**

**24.** I am satisfied that the appellant has not established this ground of appeal (no. 5 above) and that the decision of the learned High Court judge on the bias allegation is correct.

**25.** As was pointed out by the Minister, the processing system for visa applications is organised around seven regional centres worldwide. In those circumstances, there can be no reasonable or legitimate expectation that a visa application will necessarily be dealt with in the country of residence of the applicant. I do not accept that a case of objective bias has been made out in the particular circumstances contended for by the appellant in this case. The test to be applied was set out by Denham J. (as she then was) in the case of *Bula Ltd. -v- Tara Mines Ltd. (No. 6)* at p. 441, when, having considered several authorities from other jurisdictions, she observed as follows: -

*“The submissions in relation to the test to be applied roved worldwide. However, there is no need to go further than this jurisdiction where it is well-established that the test to be applied is objective, it is whether a reasonable person in the circumstances would have a reasonable apprehension that the applicants would not have a fair hearing from an impartial judge on the issues. The test does not invoke the apprehension of the judge or judges. Nor does it invoke the apprehension of any party. It is an objective test - it invokes the apprehension of the reasonable person”.*

**26.** I do not think that the reasonable observer of the decision-making process in this case would apprehend that the appellant was refused a visa either at first instance or on appeal because staff in the visa section of the Irish embassy in Moscow were suffused with anti-Ukrainian prejudice arising from international tensions in that region. Perhaps a different issue

would arise if the appellant could point to evidence that suggested that applications from Ukraine were rejected at a rate that raised an inference of actual bias. There is no evidence of any kind to support an allegation of bias of either variety. The allegation of objective bias against the INIS officials in Moscow should not have been made or maintained.

## **Visa applications - General considerations**

**27.** The starting point is that the granting of visas, including study visas, is primarily a function of the Executive, as part of the right and duty of the State to control and regulate immigration for the common good: see Denham J. in *Laurentiu -v- The Minister for Justice* [1999] 4 I.R. 26 at p. 60. Immigration policy is therefore a matter for the Minister. As a consequence, she undoubtedly enjoys an extremely wide discretion in dealing with visa applications by non-EU or non-EEA citizens who have a limited or non-existent previous connection with this country. This has the consequence that the Minister is entitled to, for example, take a restrictive view of the circumstances in which it is appropriate to issue long stay visas for the purpose of study. Various considerations must be balanced in this regard. There is undoubtedly a positive economic benefit from the presence in the country of language and other students. Equally, as with any limited-purpose visa, there is a danger that such visas might be abused by, for example, using them as a cover for taking up unauthorised employment, overstay, illegal entry or other improper purposes. The grant of this type of visa is a privilege and not a right. It is also established that there is no requirement on the Minister to refer to particular documents when giving reasons, and that reasons can be terse, in short-form, broad and/or general.

**28.** None of those basic principles are in issue in this appeal. The Minister has decided to give reasons for her decision, having accepted that the appellant is entitled to reasons, so as to facilitate consideration by her of an appeal or judicial review. Where reasons are proffered for a purpose, they must have efficacy in that context or, put another way, be clear and cogent.

Clarity and cogency are the primary issues in this appeal, particularly in relation to the “CP” reason. The rationale for the provision of reasons is expressed by Murray C.J. in *Meadows -v- The Minister for Justice* at p.732:

*“An administrative decision affecting the rights or 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.”*

In the deportation context, Murray C.J. held at paras. 100-101 of his judgment that the broad and general reason given by the Minister in that case (“the interests of immigration control”) was sufficient in that setting.

**29.** I do not understand this finding to detract from the general principle that reasons, even if terse, short-form, broad and/or general, must nonetheless disclose the essential rationale of a decision, whether it is discretionary, or concerned with a benefit or privilege rather than a right or obligation. The level of detail that must be set out in reasons is dependent on and influenced by the nature of the decision in each case. The issue here is how this test is to be applied to the context of, and reasons given in this case. Relying on the decision of the Supreme Court in *P. -v- The Minister for Justice and Equality* [2019] 3 I.R. 317, the Minister’s written submissions assert “...the reasons provided are adequate in the light of the broad Executive discretion vested in (the Minister) having regard to the fact that broad and general reasons are sufficient.”

**30.** The appellant’s submissions challenge that assertion, with particular emphasis on the *T.A.R.* judgment cited above. I am satisfied that the approach of McDermott J. to the reasons given in that case illustrates the correct approach to assessment of the efficacy of reasons where they are given. The facts of that case are somewhat different, but not materially so. The basic situation is remarkably similar. The applicants were nationals of Iraq whose son was a

naturalised Irish citizen residing in Ireland since 2006. He was employed, married and had four Irish citizen children who were the grandchildren of the applicants. The applicants wished to travel to the State for a period of four weeks in order to visit their son and grandchildren and applied in 2013 for a visitor's visa to do so. They were informed that their application had been refused for five of the standard bank of reasons, being:

- a) Insufficient or incomplete financial evidence,
- b) Insufficient documentation in support of the application,
- c) Insufficient obligations to return to home country,
- d) Possible overstay,
- e) No clear link to reference shown.

**31.** The applicants appealed, submitting a detailed 7-page letter and 43 pages of accompanying documentation by which they sought to address the reasons for the refusal insofar as they could be ascertained. Just as in this case, it is clear that some of the initial objections were successfully addressed, in that the refusal on appeal was limited to the reasons of “*obligations to return to home country not deemed sufficient*” and that “*the applicant may overstay following the proposed visit*”. McDermott J. referred to extracts from information concerning applications for short stay (C) visas demonstrating that there was no right to a visa, nor was there one set of documents or circumstances that would guarantee the approval of an application. He also noted that the information available particularly emphasised that the obligation to return to the country of permanent residence must be demonstrated.

**32.** McDermott J. was satisfied that the applicants had established that the decision of the Minister was fundamentally flawed and he granted an order of *certiorari* of the appeal decision. He concluded that the reasons furnished to the applicants in the refusal were inadequate. He applied the threshold for unreasonableness as formulated by Henchy J. in the *The State (Keegan) -v- The Stardust Victims Compensation Tribunal* [1986] I.R. 642, which requires

the court to consider whether the impugned decision plainly and unambiguously flies in the face of fundamental reason and common sense. McDermott J. stated that this high threshold was not satisfied by the court concluding that it would have reached a different decision on the basis of the information available, and that it was also necessary to consider the nature and extent of the discretion being exercised by the Minister in granting non-nationals liberty to enter the country on a limited visa. However, at paragraphs 24 and 25 of his judgment he stated: -

*“[24] The shortness of the reasons given render it difficult for the court to understand the basis for the decision and, therefore, to exercise its jurisdiction as to whether the determination was unreasonable within the meaning of the Keegan test. There is no evidence available from the decision-maker as to how or why the extensive evidence advanced on behalf of the applicants fell short of proof on the balance of probabilities that they would return home after their visit. Attempts to identify potential inadequacies that may have formed part of that decision highlight the lack of clarity in the reasons given and render it extremely difficult for the court to exercise its jurisdiction to determine whether the decision was unreasonable or irrational. In particular, it is not possible on the basis of the course of correspondence or the material submitted to ascertain from the course of dealing between the parties or the context in which the decision was made, what the shortcomings in proofs were and consequently, whether the conclusion reached in respect of the applicants was reasonable. I am, therefore, not satisfied that adequate reasons were furnished to the applicants in this case sufficient to enable the court to exercise its jurisdiction by way of judicial review. In making this determination, the court is not to be taken as condemning the use of a short form reason in such decisions as evidenced in the affidavit submitted by the*

*respondent. The sheer volume of applications submitted for visas suggests that such an approach may well be prudent in most cases.*

*[25] It is well established that the reasons given for a particular decision must be clear and cogent. They should give the applicants such information as is necessary to enable them to consider whether they have a reasonable chance of appeal or judicially reviewing the decision. The decisions should enable the applicants to arm themselves for such a hearing or review and understand whether the decision-maker had directed his mind adequately to the issue which he had to consider or was obliged to consider, and also to enable the courts to review the decision. The respondent repeatedly emphasised that it was open to the applicants to reapply with additional evidence for a visa. However, in order to know how they might address any suggested deficiencies in their proofs, they would need to know how they fell short of establishing their case if they were to have any prospect of future success. In order to submit a further application, a more detailed explanation of the evidential shortfall would be required if the applicants were to have any prospect of establishing an intention to return home to the standard of probability required by the respondent ...”.*

### **Ground of appeal #1 - Course Profile (“CP”) reason**

**33.** This reason was expressed as *“Need to undertake the course in this State not demonstrated or warranted.”* In my view, the reason given for refusal on this ground is inadequate and I therefore disagree with the conclusion of the High Court judge that the reason offered by the Minister was adequate. It informs the appellant of the conclusion that need was not demonstrated, but not the essential rationale for that conclusion. It was not expressly suggested in this case that any of the documents submitted or any of the submissions made by or on behalf of the appellant are other than truthful, so the basis for the reason given must lie elsewhere.

**34.** As McDermott J. noted in *T.A.R.* (at paragraph 51), there will be cases where the sheer weight of the evidence will motivate in favour of a particular finding. There may also be a context which allows the recipient of this reason to infer the essential rationale from the reason expressed. Analysis of the Minister’s submissions on this point shows that no such body of evidence or context exists in this case. The written submissions state at para. 37 as follows:

“As regards reason no.1, the Appellant did not demonstrate to [the Minister] any particular need to undertake a course of study in Ireland. In fact, whilst the appellant provided details as to why she needed to improve her English skills, the only express reference from her (in all of her representations and submissions) as to why she wants to undertake a course in this State was that the courses here were “competitively priced”. The suggestion is not demonstrative of any need, particularly in respect of an individual who is well educated, successful, well-travelled and lives what she describes as a luxurious lifestyle in Ukraine.” (Emphasis in original).

**35.** These submissions express the essential rationale for the decision in a way that the original reason did not. It is clear that the Minister defines “need” in this context in the narrow sense that connotes necessity, as opposed to want or desire, and that this narrow concept applied to both the study course and the venue thereof. It is apparent that the fact that the appellant merely wanted to take an English course, and that she viewed the rates charged for courses in this country as competitive with those charged elsewhere, did not suffice to meet the dual criteria of “need” set by the Minister for such applications. The appellant could have been given a two-sentence exposition of this rationale which would have left her in no doubt as to why the material submitted by her did not result in the grant of a study visa. The absence of notice of this requirement and interpretation meant that there was no other context or course of dealing from which a proper understanding of the essential rationale might have been inferred from the terms of the reason offered.

**36.** The initial letter of refusal left the appellant in no position to properly address in her appeal the requirement and interpretation applied by the Minister. As her counsel put it, what is meant by “need” in this context was difficult for her to understand. At no time was she informed of the application and definition of this term by the Minister. Had she known this, she might have concluded that her appeal never had any prospect of success given the approach taken to this application. Had she been informed of the precise basis of the adverse decision she might have chosen not to pursue an appeal, but to judicially review the initial refusal based on absence of notice, unreasonableness or other grounds. Instead, she was left largely in the dark as to the threshold for success for the appeal, and she did not know that her extensive efforts to address the initial reasons were likely to prove to be futile.

**37.** Further concern arises from a suggestion by counsel for the Minister that the situation might have been different had the appellant presented a range of financial quotes from other countries to back up her assertion that she found English language course in this country to be competitively priced. This odd suggestion hardly squares with the assertion that the primary criterion for this type of visa is fulfilment of a narrow definition of need to take a course, accompanied by a need to take the course in Ireland. The price of courses elsewhere would not be determinative of need in many such cases. It is difficult to see what difference it would have made in this case, where it is said that the appellant failed because she “*wanted*” rather than “*needed*” to study English in this country. It is also strange that the Minister requires proof that Irish businesses offering language courses are competitive internationally.

**38.** Alternatively, the “CP” reason given in this case could have been understood adequately if the appellant had some advance notice of the actual requirements that would apply to either her initial application or her appeal. The context or course of dealings between the parties are relevant to the assessment of the adequacy of reasons. Those requirements could have been explained concisely and directly in two clear sentences in either of the refusal letters,



or by way of information given in advance to all applicants. The Minister is perfectly entitled to give terse reasons for refusal of a study visa, and to rely on stock or standard reasons where these are apt to communicate the essential rationale of the decision. Where they are inapt, a different (but still concise) formula must be devised. In this case, the “CP” reason offered did not adequately express that essential rationale, particularly in the absence of prior notice to visa applicants that this was a matter that they would need to address.

39. The observations of the High Court (Donnelly J.) in *Olaneye -v- The Minister for Business, Enterprise and Innovation* [2019] IEHC 553 are pertinent to the importance of analysing the full spectrum of information made available to an applicant. That case concerned a claim that the Minister had failed to give adequate reasons for a refusal to grant an employment permit. In dismissing the claim, Donnelly J. observed:

*“[46] In my view, the process undertaken all leads to the inevitable conclusion that in considering the extent of the reasons given, the court has to be cognisant of the level of information made available to an applicant. This conclusion is based upon a number of factors. The application form directed an applicant towards the relevant permit information available at the department’s website. The form asked for details of the job in question that went significantly beyond the title of the job. Separate sections asked about the main functions of the job, the qualification, skills, knowledge or experience required for the job and finally the relevant qualifications, skills, knowledge and experience of the foreign national. The form also directed attention to Schedule 3 and 4 in the Regulations as being relevant to issues about the granting of “Critical Skills Employment Permits.”*

*[47] In those circumstances, the applicant was aware that in considering whether he came within the list set out in Schedule 3, the Minister took into account whether the role he performed met the criteria, that the classification system in*

*Schedule 3 referred to applicable levels in SOC 2010, and that those levels were described in the Minister's website. The decision indicated to him that all his documentation was considered in reaching the decisions. In those circumstances, the decision communicated to the applicant made him aware that the role he performed did not meet the classification set out in Schedule 3 and as such his role did not meet the applicable levels set out in SOC 2010."*

**40.** In this case, if the applicability and interpretation of "need" had been addressed somewhere in publicly available information to visa applicants, then the essential rationale for the "CP" decision would have been apparent from a combination of that information and the reasons given. The deficit in this case arose from an insufficiency in the totality of the information available to the applicant.

**41.** Therefore, this reason was deficient because it placed the appellant in an unfair position. The first time that the fact that "need" was an important consideration was disclosed was on the refusal of the initial application. This did not reveal the essential rationale of the decision because the precise sense in which this criterion was applied did not emerge until after the applicant sought judicial review. The initial refusal letter gave no clarity as to the applicable standard. She had no other information to assist her in understanding that decision. The identical reason given for refusal of her appeal left the appellant none the wiser, and understandably puzzled at the result. What is now crystal clear is that the reason given on both occasions did not properly communicate the essential rationale of either decision. Just as in the case of the applicants in *T.A.R.*, she did not know how or why the extensive evidence submitted fell short of establishing the necessary need in this context. The "CP" reason furnished on both occasions is insufficient to enable a proper exercise of the power of judicial review in the precise context of this case.

## **Ground of appeal #2 – failure of the trial judge to consider the “OC” reasons**

42. I am satisfied that this ground of appeal is also made out, having regard to the deficiencies identified in relation to the second set of “OC” reasons, and to the assertion by counsel for the Minister that *“the decision has to be read as a collective ... if there is no need (established) the Minister might take the view that (the applicant) will overstay.”* This assertion rather undermines the Minister’s argument (accepted by the High Court judge) that a valid “CP” reason would be sufficient support for the decision in this case. As I am persuaded by the appellant’s case that the “CP” refusal was not supported by adequate reasons, I therefore disagree with the conclusion of the High Court judge that it was unnecessary to analyse the “OC” reasons in the light of his conclusion that the “CP” reason offered by the Minister was adequate. In either event, the appellant’s case also challenged “OC” reasons, and she was entitled to have her case considered and decided.

43. Moreover, I do not accept that it follows that a conclusion that an applicant who fails to meet a very narrow conception of need in the “CP” field can be used to justify a further inference that such an applicant will necessarily turn into an overstayer or will breach some other visa condition. That is a defective chain of reasoning. There will be many honest and genuine applicants who would fail a narrow “need” test who would have no intention of engaging in such misbehaviour. This is another reason to condemn the decision-making process in this case.

44. Accordingly, I respectfully differ from the conclusion of the learned High Court judge that satisfaction on one issue rendered it unnecessary to examine the rest of the appellant’s case. In fairness to him, it is not apparent that he was told, as this Court was, that the “CP” and “OC” reasons were interdependent in this way, or he might well have taken a different approach. A fuller examination of the case and all of the reasons adduced for refusal was

necessary. That being said, I do not think that I could accept the appellant's argument that the infirmity of one reason must always result in the decision being condemned. There may well be cases where a decision is based on valid and properly expressed reasons which would allow a decision to stand, notwithstanding defects in some other aspect of the decision-making procedure.

### **Grounds of appeal #3 & #4 - Observe Conditions ("OC") reasons**

45. Although the finding in favour of the appellant on the "CP" reason is sufficient to dispose of this appeal, I believe that the appellant is also entitled to a decision in this appeal on the merits of her challenge to the "OC" reasons. All of the issues in the case should be decided, having regard to the possibility of further review, although what follows may be regarded as *obiter dicta* so far as other cases are concerned.

46. These reasons were expressed as "*Condition – the applicant may overstay following proposed visit*" and "*Observe the conditions of the visa – the visa sought is for a specific purpose and duration; the applicant has not satisfied the visa officer that such conditions would be observed.*" The original "OC" reason was upheld by the Appeals Officer (that the appellant would not comply with the terms of a visa). Moreover, despite the furnishing of additional information as previously noted, a new finding adverse to the appellant was added, namely the conclusion that she may overstay the term of any visa granted.

47. In her appeal against the initial refusal, the appellant had, understandably, attempted to address the original single "OC" reason by reliance on to the fact that she had previously been granted a short stay visa, and had left the jurisdiction on or before the expiry of the term of that visa. In my view, it was reasonable for her to believe that evidence of compliance with the terms of an Irish visa might have been a highly relevant positive factor in the consideration of an application for a subsequent visa. As noted above, the appellant submitted her boarding pass for a flight from Dublin to Istanbul on 20 November 2016. She also relied on the entry in

her passport showing admission to Thailand on 26 November 2016. (There is also a departure stamp dated 11 December 2016). Against that background, the appellant was understandably unhappy with the conclusions of the Appeals Officer.

**48.** The “OC” reasons are dealt with at paras. 60 to 66 of the Minister’s submissions as follows:

“60. These reasons are linked.

61. The appellant was also advised that [the Minister] was not satisfied that she would observe the conditions of her visa. It is worth highlighting that it is not incumbent on [the Minister] to prove that the appellant will, in fact, breach the terms of her visa. It is for the appellant to satisfy [the Minister] in her application that she is likely to abide by same. On this occasion, she was not so satisfied.

62. Indeed, the appellant made various representations about her travels to other jurisdictions and suggested that ‘she departed from all these nations within the allotted time scale of her immigration status.’ Clearly this is not directly verifiable by [the Minister]. However, in respect of the appellant’s previous visitor visa to travel to Ireland she admits she failed to receive a departure stamp. This factor is of central importance in an application for a student visa in circumstances where the appellant had previously been granted a visitor visa for 90 days and had failed to demonstrate, by the appropriate evidence, that she had actually abided by this (Emphasis added). [The Minister] is under no duty to grant the appellant a visa.

63. In relation to this “failure”, in her submissions to [the Minister] the appellant stated:

‘she did not receive a departure stamp... When she left the State she was under the impression that there was no passport control on exit. She had been advised

by someone (in the travel/immigration business) that she should retain her boarding pass for her return flight as proof of exit.’

64. The boarding pass, dated 20 November 2016, submitted by the appellant in relation to a flight from Dublin to Istanbul is in the name Julia Mukovska although the name on the Appellant’s passport is Yuliya Mukovs’ka. The entry stamp on the appellant’s passport in respect of entry to Thailand on 27 November 2016 is illegible.

65. ... Much of the general information regarding the appellant’s international travel is irrelevant as to whether (the Minister) is satisfied on the evidence that she will not overstay her visit.

66. This reason is intimately linked to reason number two and the observation set out herein apply equally.”

**49.** These submissions appear to respond to a series of propositions that were not made by the appellant. Nobody in this case has ever suggested that the Minister was under a duty to grant a visa; that the Minister had to prove that an applicant would, in fact, breach the terms of a visa; or that the appellant did not bear the burden of satisfying the Minister by her application that she was likely to abide by same. In fact, the appellant acknowledged that she bore the burden of proof by the extensive efforts that she made to address the reasons given for the initial refusal of her application.

**50.** The Minister makes the point that some of the appellant’s assertions were not directly verifiable. I am not sure how this differentiates the appellant from any other visa applicant. I imagine that much of the material submitted across the broad range of visa applications is not directly verifiable, and that a certain amount may have to be taken on trust. As counsel for the appellant put it, almost any visa applicant will carry some degree of risk of overstay or other non-compliance with conditions. Therefore, the central task of the visa officer is to apply their experience and expertise to the information submitted to evaluate the risks, and to make an

informed and rational judgement. This is all within the broad discretion and deference afforded to immigration authorities in decisions on visa applications.

**51.** Although, as noted above, it was not expressly suggested in this case that any of the documents submitted or any of the submissions made by or on behalf of the appellant are other than truthful, the Minister's submissions raise a concern that the Appeals Officer may have not have taken that benign view of the appellant or the information submitted by her. The fact that a second "OC" reason was added on appeal suggests that there was something in the information submitted on appeal that justified a new concern that appellant would overstay the visa sought. This information referred to the travels of the appellant and specifically to departure from Ireland prior to expiry of the term permitted by her previous visitor visa.

**52.** The appellant submitted this information to allay the concerns expressed in the original "OC" reason. The effect of this information was not only that the original concern was not allayed, but a further specific apprehension appeared. This can only be because an adverse view was taken of the information submitted, an inference borne out by examination of the written submissions, particularly para. 62 (quoted above). When considered in context, the submission that the appellant failed to receive appropriate evidence of her previous departure is odd. "*Failure*" connotes neglect or omission of an expected or required action. There is no evidence that possession of a departure stamp issued by INIS falls within this definition.

**53.** Paragraph 63 of the Minister's submissions (also quoted above) cites the appellant's impression that there are no formal immigration formalities on departure from Dublin Airport. If this impression is incorrect, the Minister did not produce corrective evidence of a system whereby a departing traveller might obtain the "*appropriate evidence*" referred to in the Minister's submissions. There is no evidence that Dublin Airport has any organised immigration departure formalities where a departure stamp might be obtained or received, on the assumption that it has the "*central importance*" attributed to it by the Minister in the

submissions in this case. Therefore, I do not see how the Appeals Officer could deem it relevant that “*she did not seek to present herself*” to receive such a stamp, as it was put by counsel for the Minister. If this was part of the reasoning behind the “OC” refusal, there is substance in the appellant’s complaints that this decision was unreasonable, irrational and based on an irrelevant factor. This might explain why the conclusion of the Appeals Officer bore no apparent relationship to the positive evidence submitted by the appellant for their consideration.

**54.** As revealed by the written submissions, the treatment of this evidence by the Appeals Officer was also unsatisfactory. Emphasis is laid on a difference in spelling as between the boarding pass submitted and the appellant’s passport, without expressly clarifying the relevance of this factor to the ultimate decision. It appears to me to be a minor linguistic difference. It is put forward by the Minister to justify the overstay decision, without elaboration. There has never been any clear explanation of why this document was not accepted at face value, apart from the hint contained in the submissions. If it was regarded as dubious or false, and rejected for that reason, the appellant should have been informed of that, so she could challenge a conclusion reflecting on her integrity. If it was of no significance to the decision-maker, why then did it appear in the Minister’s submissions? Unless it was interpreted as proof that the appellant had submitted dubious passport and travel documents, it is not a factor which a reasonable or rational decision-maker could use to justify an inference of previous non-compliance with a visa. Given the lack of evidence of a system for issuing departure stamps, the advice that the appellant says she received to retain her boarding card as proof of departure is rational and sensible. If accepted at face value, the boarding pass is reasonably and rationally capable of proving that the appellant departed from the country on the flight and date to which it refers.



**55.** Equally, I cannot accept that the Thai passport stamps could have been rejected because they were “*unclear*” or “*illegible*”. It is not alleged that they are false stamps or that they did not originate from that country. The dates on the two stamps are perfectly clear and if taken at face value show entry by the passport holder on 26 November 2016, followed by departure on 11 December 2016. They are also evidence that could reasonably and rationally be taken as proof of the fact that the appellant was not in Ireland after 20 November 2016 and had therefore complied with the terms of her 90-day visa by departing from the State well before her right to stay expired. Incidentally, they also illustrate an immigration system which routinely provides a departure stamp, clearly indicating to visa authorities whether or not the passport holder has complied with the terms of previous visas.

**56.** If the conclusion of the Appeals Officer was in fact based on a view that the appellant was a visa overstayer who had also submitted dubious travel documents in support of her appeal, then the interlinked “OC” reasons offered were patently inadequate to express the essential rationale for the proffered reasons. In those circumstances, the appellant was entitled to know, by the provision of not more than two appropriate sentences, precisely why she had been refused. A different or additional sentence or two would have been sufficient to set out the real concerns that would have arisen, if that was the rationale for refusal.

**57.** On the other hand, if I am wrong in my interpretation of the considerations put forward in the written submissions, on an application of the *Keegan* test as set out above, it is difficult to see how a rational and reasonable decision-maker could have concluded on the evidence submitted that the appellant presented a realistic threat of overstay or other non-compliance. I assume that the boarding card and passport stamps genuinely refer to the appellant, as there is no express assertion to the contrary, notwithstanding the hints in the written submissions. That being so, I can see no rational or reasonable basis to find that the appellant may become an overstayer. The credible evidence presented all pointed in the other direction.

**58.** The overstay conclusion is likely to have been heavily influenced by the non-issue of the departure stamp, as is apparent from reliance on this matter in the written submissions. If that is so, the decision was equally irrational and unreasonable. Whatever way the overstay conclusion is examined, it could never have amounted to a reasonable, rational or permissible conclusion on the evidence before the Appeals Officer. The conclusion is all the more puzzling, because the same Appeals Officer was apparently satisfied that the appellant had satisfactorily addressed the first-instance financial concerns. This also ought to have weighed heavily against the finding that the appellant was a likely overstayer.

**59.** Even if I accepted the sufficiency of the “CP” reason set out above (which I do not), I am satisfied that the unreasonableness and irrationality of the approach to the “OC” reasons infected the entire decision-making process on the appeal in this case.

## **Conclusion**

**60.** This appeal is not devoid of purpose or effect such that it is rendered moot. The refusal of a visa application is a significant and consequential step. As such letters will often be considered in future by other immigration authorities, with possible adverse consequences, it is necessary that there is reasonable accuracy and clarity in such letters. All of the reasons given in this case were inadequate for the purposes of judicial review and/or for any further application for a visa by the appellant. The “OC” reasons were unreasonable and irrational. As the decision is said by the Minister to be one that must be taken as a whole, it follows that all of the constituent parts and the entire appeal decision must be quashed.

**61.** These proceedings do not encompass the initial decision appealed, and the order proposed below does not go beyond the relief claimed. Nonetheless, I am satisfied that the reasons for the initial decision were also inadequate for the purpose of assessing whether to appeal or to make an application for judicial review. Moreover, if the appellant in this case had been provided with adequate, cogent and accurate reasons for what was an apparently harsh

and unexpected outcome, she might not have drawn unfounded inferences of objective bias on the part of INIS staff in Moscow.

**62.** This conclusion must be seen as particular to the facts of this visa applicant. It is accepted that the Minister receives a large number of such applications in the ordinary course of business. However, the overall number of applications received is not the relevant number, as presumably a significant proportion of such applications are successful. What is relevant is the lesser number of cases where reasons justifying a refusal are required. This number was not given to the Court. It is also accepted that this number is likely to be such that the nature and extent of the response required must, in the first instance, be conditioned by practical considerations. That is one of the aspects of the broad discretion enjoyed by the Minister in such matters. Individualised reasons or a response that contains extensive reference to documentation submitted in support of an application will not be necessary to adequately explain most visa refusals, and recourse to a bank of standard reasons will be appropriate. This bank will have developed over time, and the phrasing will reflect considerable departmental experience as to the accumulated reasons for refusal of such applications. It is also necessary to consider from time to time, whether, in the light of experience, and the context of the information available to applicants, the existing stock of standard reasons requires addition or amendment.

**63.** Where the Minister provides reasons for the refusal of an application, there will inevitably be a small number of cases where either the facts or the documents concerning an application are such that one or more of the suite of standard reasons will not adequately explain a refusal. This case involved an appeal where voluminous and detailed information was marshalled and submitted to meet the first instance refusal. The context, the standard reasons proffered and the other information available to the appellant did not suffice to discharge the obligation on the decision-maker to act fairly and rationally by providing reasons which

accurately conveyed the essential rationale behind the decision made. If a stock reason is not adequate to the task, an additional or an amended sentence or two will suffice. In this context, no more is required than basic and general compliance with the “essential rationale” requirement.

**64.** It is also necessary to state that this judgment does not purport to step into the Minister’s shoes, to dictate or substitute the outcome of sensitive immigration decisions, or to say that the Minister could never use a restrictive definition of “need” as the essential rationale for the grant or refusal of a long-stay study visa. The wide discretion conferred on the Minister clearly permits that approach. Whether that approach has been adhered to consistently in the past is not a matter that is for decision here. Furthermore, it does not require that reasons for refusal in such cases should be parsed as if a statutory provision, be lengthy, elaborate or couched in complex language, or refer to other material submitted. All that is required is meaningful communication of the essential rationale of the decision. That should be both concise and accurate. It endorses the use of concise, standard-form reasons where appropriate. It encourages ongoing review of the formulation of such reasons, which can be expanded or amended in the light of experience.

**65.** The “OC” reasons were manifestly unreasonable and irrational, having regard to the thrust of the evidence and material submitted, the entirely inappropriate reliance on non-possession of a departure stamp to justify those conclusions, and the suggestion that a risk of overstay or non-compliance necessarily followed from a conclusion that an visa applicant failed to meet a narrow conception of “*need*” in their application.

## **Orders**

**66.** I propose an order allowing the appeal, setting aside the judgment and order of the High Court, and granting *certiorari* by way of judicial review quashing the decision of the Appeals Officer of 13 July 2017 on the separate grounds identified above. As to the question of costs,

I propose an order vacating the security for costs lodged in connection with this appeal and awarding the appellant the costs of the High Court proceedings and of this appeal against the first respondent, to be assessed in default of agreement by a legal costs adjudicator.

*As this judgment is being delivered electronically, both Donnelly J. and Ní Raifeartaigh J. have indicated their concurrence with it and the orders proposed.*