THE HIGH COURT

JUDICIAL REVIEW

[2018 No. 946 J.R.]

BETWEEN

F.Z. (PAKISTAN)

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

(No. 2)

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 15th day of July, 2019

1. In *F.Z. (Pakistan) v. Minister for Justice and Equality (No. 1)* [2019] IEHC 368 (Unreported, High Court, 12th April, 2019) I dismissed the applicant's judicial review against the decision of the International Protection Office under s. 49(9) of the International Protection Act 2015 refusing permission to remain in the State on review dated 8th August, 2018 and against a deportation order made on 19th November, 2018. The applicant now seeks leave to appeal and I have received helpful submissions from Mr. Eamonn Dornan B.L. for the applicant and from Mr. Alexander Caffrey B.L. for the respondent.

2. The law in relation to leave to appeal has been set out in previous cases, particularly *Glancré Teoranta v. An Bord Pleanála* [2006] IEHC 250 (Unreported, MacMenamin J., 13th November, 2006), *Arklow Holidays v. An Bord Pleanála* [2008] IEHC 2, per Clarke J. (as he then was), *I.R. v. Minister for Justice and Equality* [2009] IEHC 510 [2015] 4 I.R. 144 *per* Cooke J. I have also discussed these criteria in a number of cases, including *S.A. v. Minister for Justice and Equality (No. 2)* [2016] IEHC 646 [2016] 11 JIC 1404 (Unreported, High Court, 14th November, 2016) (para. 2), and *Y.Y. v. Minister for Justice and Equality (No. 2)* [2017] IEHC 185 [2017] 3 JIC 2405 (Unreported, High Court, 24th March, 2017) (para. 72).

Applicant's first question

3. The applicant's first proposed question of exceptional public importance is "*Did the Respondent confuse the nature of the assessment which he must conduct under s.49(3) of the International Protection Act 2015 with a stricter Art. 8 ECHR test in stating that* "…it is not open to [the Applicant] to seek and rely on Article 8 to circumvent the immigration rules..."?"

4. The formulation of the question is totally fact-specific. Asking did the decision-maker confuse two matters is asking did he do so in the present case. That is primarily a question of fact and the premise of the argument, that there may have been such confusion, was rejected having regard to the wording of the particular decision. The mere fact that there is a distinction between s. 49(3) and the narrower terms of art. 8 of the ECHR, as applied by the European Convention on Human Rights Act 2003 (not referred to in the proposed question), is not particularly in dispute but in and of itself that does not get the applicant anywhere. The point I made at para. 29 and 30 of the judgment is that the decision quotes s. 49(3) of the 2015 Act and it also refers to art. 8 of the ECHR. The conclusion makes clear that both matters were considered. I rejected the notion that there was any confusion on the facts of the present case.

5. The applicant's written legal submissions also argue that there should be clarification of whether the decision in *G.K. v. Minister for Justice, Equality and Law Reform* [2002] 2 I.R. 418 [2002] 1 I.L.R.M. 401 applies to the Minister's statutory obligations under s. 49(3) of the 2015 Act. That is not a matter of exceptional public importance warranting clarification by the appellate courts. The test in *G.K. v. Minister for Justice, Equality and Law Reform* has been set out definitively by the Supreme Court and applied on innumerable occasions. It is unquestionably one of the leading cases in the whole field of immigration and asylum law and nobody has yet put forward any reason as to why that decision should be revisited. Indeed, the necessity for that decision is demonstrated on an almost continuous basis, the latest instance of that being the present case. In those circumstances then, not only is there no basis for the question on the facts but there is no basis for leave to appeal because points that have already been clarified at appellate level do not require endless reclarification.

Applicant's second question

6. The applicant's proposed second question of exceptional public importance is "*In conducting a s.49(7) review, may the Minister consider additional documents and evidence from an applicant's international protection file, which have not been proffered by the applicant, without providing the applicant with any opportunity to respond or to comment?"*

7. As even a cursory reading of the No. 1 judgment would illustrate, the factual premise of this question is simply inaccurate. The material considered by the Minister to which the question refers is not material that had "*not been proffered by the applicant*". Rather it consisted of letters that had been sent specifically on behalf of the applicant notifying the Minister of various changes of address in order to comply with the statutory obligation to do so under s. 16(5) of the 2015 Act.

8. I made the point at paras. 16 to 21 of the No. 1 judgment that not only was this complaint unsustainable but, the observation by the Minister about the applicant's address was not central and was simply noted as part of the record of facts. It was not something on which the decision pivoted. Secondly, all these matters were within the applicant's own knowledge. Thirdly, the applicant has not disputed the correctness of the matters referred to in the Minister's decision. Fourthly, the applicant has not said what his answer would have been had the point been put to him. Further these matters were matters which the Minister was obliged to have regard anyway.

9. The applicant's written legal submissions for present purposes contained a significant inaccuracy and misunderstanding at para. 49 that: "*the only information which the Minister was entitled to consider under s. 49 (7) review process is information provided by an applicant".* That unfortunately is a complete misreading of s. 49. Mr. Dornan seemed to major his argument on the terms of s. 49(8) of the Act, which says that: "*Subsections (2) to (5) shall apply to a review under subsection (7), subject to the modification that the reference in subsection (2)(a) to information submitted by the applicant under subsection (6) shall be deemed to include information submitted under subsection (9) and any other necessary modifications*."

10. The point here, however, is that the reference to information submitted by the applicant only arises in the context where the

applicant does in fact submit information. If the applicant does so, that information needs to be considered by the Minister under s. 49(2) and if the applicant submits information triggering a review under subs. (9) that information should also be considered. But the Minister is not only not limited to considering the information submitted by an applicant but it is plain from the section that the Minister is required to consider the applicant's family and personal circumstances generally. Subsection (3) says: "*In deciding whether to give an applicant a permission, the Minister shall have regard to the applicant's family and personal circumstances and his or her right to respect for his or her private and family life,* ...".

11. That is a separate and distinct additional duty to that to consider the information actually submitted by the applicant, which is the point that subs. (8) is referring to. Thus Mr. Dornan's point under this heading is unfortunately a complete and fundamental misunderstanding of the meaning of the statutory provision. The final point I made at para. 21 of the No. 1 judgment is that I would have refused the application on a discretionary basis on this point anyway because the applicant has failed to put forward any explanation on affidavit as to how he was able to sustain himself in private accommodation, while simultaneously complaining that the Minister had regard to the fact that he lived in private accommodation.

Order

12. The points raised are a combination of rudimentary misunderstandings of the meaning of statutory language, fact-specific confusion, falsely-premised assertion and tendentious argument. Unfortunately, they do not surmount the threshold for leave to appeal and accordingly the application is dismissed.

13. One other matter of concern was that I noted in the No. 1 judgment the serious question marks over the genuineness of a document in the form of a job offer that had been put forward by the applicant. Despite not having offered any explanation or clarification of the suspicious features of that document, the applicant has instead come back to court leading with his chin by looking for leave to appeal. In the circumstances, this questionable document should be properly investigated, so I will direct the respondent to deliver the papers to the Garda Síochána to enable all appropriate inquiries to be made.