

## THE HIGH COURT

[2019 No. 369 JR]

BETWEEN

AMMAD MAHFOOZ

APPLICANT

– AND –

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

– AND –

AIJA NAMIKE

NOTICE PARTY

**JUDGMENT of Mr Justice Max Barrett delivered on 9th December, 2019**

1. Mr Mahfooz is a national of Pakistan. In August 2018, while he was still in Ireland, he commenced a relationship with Ms Namike, a Latvian national who has been and is lawfully present and working here. The same month saw a deportation order issue against Mr Mahfooz. On 24th January 2019, Mr Mahfooz, acting pursuant to s.3(11) of the Immigration Act 1999, submitted an application for revocation of the deportation order on the basis of his subsisting relationship with Ms Namike. As of the date of hearing (20th November 2019) this application has yet to be decided. On 20th February 2019, Mr Mahfooz applied to be treated as a permitted family member of an EU national. The Minister declined to accept the application on 26th March 2019. On 11th April 2019, Mr Mahfooz submitted a Form EU4 seeking a review of this declination. As of the date of hearing, this review has not yet been completed. On 13th June 2019, Mr Mahfooz was deported to Pakistan. On 25th July 2019, Ms Namike, having travelled to Pakistan, married Mr Mahfooz there. The marriage was registered the following day. At some point thereafter, Ms Namike returned to Ireland, where she continues to be lawfully present. She has left her biological son (Mr Mahfooz's stepson) in the care of Mr Mahfooz in Pakistan pending an intended reunification of the trio in Ireland.
2. In his statement of grounds, Mr Mahfooz pleads, inter alia, as follows:
  - "e) *Grounds upon which the relief is sought: 1. In seeking to implement the deportation order, and in failing to make a final determination in relation to the Applicant's application for revocation of the Deportation Order under s.3(11) of the Immigration Act 1999, the Respondent continues to err in law, including European Union law and/or has fettered his discretion: (i) the Respondent has failed to consider or implement the Applicant's procedural right to remain in the State pending his application for permission to remain in the State pending his application for permission to remain as a 'permitted family member' of a European Union national under Regulation 5(2) of the Regulations and/or review of the denial of that decision under Regulation 25 of the Regulations; (ii) the Respondent has failed to consider the rights of the Applicant and/or the Notice Party under Articles 40.3.1° and 41.3.1° of Bunreacht na hÉireann as well as Arts. 7, 12, 41 and 47 of the European Charter on Fundamental Rights and/or Articles 8 and 12 of the European Convention on Human Rights".*

3. A number of points fall immediately to be made: (a) the deportation order has been implemented; (b) there have been separate High Court and Court of Appeal decisions in the course of the within proceedings which have each decided that there are no procedural rights of the form referred to at item (i) above; (c) although there has been no decision in respect of the 'permitted family member' application, that application appears effectively to have been overtaken by the marriage of last July; moreover any claim of delay in this regard (and delay has not been pleaded) would be greatly weakened if not completely defeated by the fact that the applicant has at various times provided fresh information in respect of that application, which fresh information requires post-receipt to be considered; (d) as regards item (ii) above, the within application is an application to compel the making of decisions; there cannot have been a failure to consider certain constitutional rights in the course of making as yet unmade decisions; and (e) as mentioned, delay has not been pleaded and thus does not require to be considered. Having regard to these various factors, it follows that the orders of mandamus sought by Mr Mahfooz must, respectfully, be refused.
4. Even if delay had been pleaded (and it was not), Mr Mahfooz could not have succeeded in his application when one has regard to the decision of the High Court in *Nearing v. Minister for Justice, Equality and Law Reform* [2010] 4 IR 211. All else being equal the effect of that judgment is that, when it comes to delay, an order of *mandamus* will only issue in situations that might roughly be described as *in extremis*, *i.e.* offhand it does not seem to the court that many cases will present in which, to borrow from the wording of Cooke J., at p. 217, there will be "*such an egregious and unjustified delay in dealing with [an]...application as to be tantamount to a refusal in its effect*", and certainly one is not dealing with such a scenario here. These proceedings were commenced 5½ months/2 months after the revocation/review applications were commenced and fresh information has since been provided to the Minister that requires to be considered. Conceivably a level of urgency could present in any one application that such timeframes would be held to be egregious and unjustified; however, it does not present here. Additionally, the fact that such fresh information aforesaid was provided does not mean that the Minister was precluded at any previous time from making a decision by reference to the material then before him, nor would the fact of such fresh submission inexorably yield the consequence that the entirety of any (if any) previous delay in this regard fell necessarily to be overlooked/ignored. Nonetheless in all the circumstances presenting here, the court would have held against Mr Mahfooz on the issue of delay had it been pleaded (and it was not).
5. The court understands the application for the declaration to have been effectively withdrawn at the hearing, though it notes that what is being sought in this regard has effectively been the subject of previous decision by the Court of Appeal (which decision it is presently being sought to appeal to the Supreme Court). It follows that the declaration application cannot now properly be ruled upon by this court. Finally, the court notes that argument was made that Mr Mahfooz is a beneficiary of the decision of the European Court of Justice in *Chenchooliah (Case C-94/18)* [ECLI:EU:C:2019:693]. Whether he is or not is, in the first instance, a matter for the Minister as decision-maker.

6. For the reasons aforesaid, the various orders sought by Mr Mahfooz are respectfully refused.