

**THE HIGH COURT  
JUDICIAL REVIEW**

**[ 2019 No. 542 J.R.]**

**BETWEEN**

**JULIA OLIVERA RODRIGUEZ**

**APPLICANT**

**AND**

**THE MINISTER FOR BUSINESS, ENTERPRISE AND INNOVATION  
RESPONDENT**

**JUDGMENT of Mr. Justice Heslin delivered on the 25th day of March 2020**

**Background**

1. The applicant is a Venezuelan national who holds a BSc. Degree in public accounting which she obtained in Venezuela and a certificate in business accounting which she obtained in Ireland through CIMA (Chartered Institute of Management Accountants) and which she obtained in May 2018. The applicant seeks to quash a decision by the respondent, dated 15th July, 2019 to refuse her an Employment Permit arising out of an application for same which was made on behalf of the applicant on 20th November, 2018 in respect of the position of "Trainee Accountant". A decision to refuse the 20th November, 2018 application was made by the respondent on 26th February, 2019. A statutory review was requested and the review decision, dated 15th July, 2019, was to refuse the application. It is the latter decision which the applicant challenges.

**Relief sought**

2. By order made 29th July, 2019 (Noonan J.) the applicant was granted leave to seek judicial review in respect of the reliefs set out at para. D of her statement of grounds and on the basis of the grounds set out at para. E. The following is the relief sought at para. D in the statement of grounds:

- "1. *An order of certiorari quashing the decision of the respondent of 15 July, 2019 refusing to grant the applicant an employment permit;*
2. *A declaration that the respondent erred in law in the decision of 15 July, 2019 in refusing to grant the applicant an employment permit on the basis that the position of employment (Trainee Accountant) was on the list of ineligible categories of employment referred to in reg. 29(1), and specified in Schedule 4, of the Employment Permits Regulations, 2017 (S. 1. No. 95 of 2017), specifically Soc Code 4122, in the premises that Trainee Accountant is not included or categorised under Soc Code 4122, being properly categorised within Soc Code 2421;*
3. *A declaration that the respondent erred in law and/or breached the applicant's right to fair procedures and natural and constitutional justice in the decision of 15 July, 2019 refusing to grant the applicant an employment permit on the erroneous basis that the position of Trainee Accountant was categorised under Soc Code 4122, instead of 2421, in the premises that the respondent had regard to factors which ought not properly have been included in the consideration and failed to have regard to factors which should properly have been considered;*

4. *An order pursuant to O. 84, r. 27 (4) of the Rules of the Superior Courts, remitting the matter to the respondent with a direction to reconsider it and reach a decision in accordance with the findings of this honourable court;*
5. *Further or other order;*
6. *Liberty to apply;*
7. *Costs."*

**Grounds upon which the relief is sought**

3. The following are the grounds upon which the applicant seeks relief, as appears from para. E of the statement of grounds:

- "1. *The applicant is a Venezuelan national, who was lawfully resident on a stamp [2] at the time of the application for an employment permit – made on 20 November, 2018 by her employer, in respect of the position of trainee accountant. Her status subsequently lapsed. The first instance decision was made on 26 February, 2019. The impugned review decision, made on 15 July, 2019, set out the basis of refusal in the first instance decision and upheld that decision on the basis that: 'it is considered that the occupation of trainee accountant is included under Soc Code 4122';*
2. *The Employment Permits Regulations, 2017 (S.I. No. 95 of 2017) utilises the Standard Occupational Classification system (Soc 2010). Code 4122, in Schedule 4 of the Regulations of 2017, covers 'book-keepers, payroll managers and wage clerks'. Trainee accountants are not referred to;*
3. *Further, under Soc 2010, trainee accountants are coded to the relevant occupation or profession for which they are in training – this is confirmed in the Soc 2010 volume 2: the structure and coding index: 'job titles prefixed by words which indicate a position in a hierarchy, for example, 'apprentice', 'assistant', 'chief', 'departmental', 'deputy', 'head', 'principal', 'trainee', 'under', are normally coded as though the prefix words were not present. Therefore, the position of trainee accountant is properly categorised under 2421. The UK body (Office for National Statistics) responsible for classifications and enquiries under the Soc 2010 have confirmed this categorisation/coding, stating that: 'all persons in training for an occupation or profession are coded to the relevant occupation or profession for which they are in training. Therefore, based on the information provided we would advise Soc 2010 Unit Group 2421.';*
4. *Consequently, the respondent has erred in law and/or had regard to factors which ought not properly have been included in the consideration and failed to have regard to factors which should properly have been considered;*
5. *The applicants reserve the right to advance any further arguments that this honourable court so permits."*

## **The Employment Permits Acts, 2006-2014**

4. The preamble to the Employment Permits Act, 2006 states:

“AN ACT TO PROVIDE FOR THE GRANT OF EMPLOYMENT PERMITS TO CERTAIN FOREIGN NATIONALS FOR THE PURPOSE OF PERMITTING THEM TO BE IN EMPLOYMENT IN THE STATE, TO ENABLE THE MINISTER FOR ENTERPRISE, TRADE AND EMPLOYMENT TO MAKE, HAVING HAD REGARD TO CERTAIN CRITERIA, REGULATIONS IMPOSING A LIMIT ON THE NUMBER OF SUCH PERMITS THAT MAY BE GRANTED IN A PARTICULAR PERIOD AND IMPOSING CERTAIN OTHER RESTRICTIONS WITH REGARD TO THE GRANT OF SUCH PERMITS, TO OTHERWISE REGULATE THE EMPLOYMENT OF CERTAIN FOREIGN NATIONALS IN THE STATE AND PROVIDE CERTAIN PROTECTIONS FOR FOREIGN NATIONALS IN EMPLOYMENT IN THE STATE, TO AMEND THE EMPLOYMENT PERMITS ACT 2003 AND TO PROVIDE FOR RELATED MATTERS.”

5. Section 14 of the Employment Permits Act, 2006, as amended (hereinafter “the 2006 Act”) deals with regulations governing the grant of permits etc and specifies the following:

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14(1) The Minister may, having regard to sections 3A and 14A and the matters specified in section 15 , make regulations providing for a class of employment permit for each purpose specified in paragraphs (a) to (i) of section 3A(2) and may, for each such class of employment permit, provide for one or more of the matters specified in subsection (1A) and may, in such regulations, make different provision for such classes of employment permit and such matters in relation to different cases and different classes of cases and different circumstances or different classes of circumstances;

(1A) The matters referred to in subsection (1) are:

- (a) the maximum number of employment permits that may be granted in respect of the purpose concerned or specified employments or categories of such employments and such employments or such categories may be provided for on the basis of one or more economic sectors into which they fall;
- (b) the employments for which an employment permit may be granted and such employments may be provided for by reference to categories of employments for which an employment permit may be granted and by reference to one or more economic sectors into which they fall;
- (c) the employments for which an employment permit shall not be granted and such employments may be provided for by reference to categories of employments for which an employment permit shall not be granted and to one or more economic sectors into which they fall;
- (d) economic sectors in respect of which employment permits for any employment that falls into such sector shall not be granted;

- (e) the minimum amount of remuneration that shall be payable in respect of an employment as a condition for the grant of an employment permit in respect of it, and without prejudice to the generality of the foregoing, in respect of such minimum amount of remuneration ...
- (f) the qualifications or skills that a foreign national, in respect of whom an application for an employment permit is made, is required to possess in order for a grant of the permit to be made;
- (g) the minimum number of hours of work that are required to be worked in each week for an employment as a condition for the grant of an employment permit in respect of it;
- (h) the minimum period of experience required for an employment, or a category of employment, as a condition for the grant of an employment permit in respect of it including different periods of experience by reference to different levels of remuneration;
- (i) the minimum period for which an employment permit may be granted....

6. Section 15 of the 2006 Act deals with criteria to which regard is to be had in making regulations under s. 14 and provides as follows: -

“15.— (1) The matters mentioned in subsections (1) and (2) of section 14 are—

- (a) the qualifications or skills that, in the opinion of the Minister, are required for economic and social development and competitiveness,
- (b) the economic sector or sectors that, in the opinion of the Minister, will be involved in the achievement of such economic and social development and competitiveness,
- (c) the qualifications or skills that, in the opinion of the Minister, are required for the proper functioning of such economic sector or sectors and
- (d) if, in the opinion of the Minister, there is likely to be a shortage or surplus in respect of qualifications, experience or skills falling within paragraph (c), an estimate as best the Minister may make (and which estimate the Minister is, by virtue of this section, required to make) of what the extent of that shortage or surplus will be.

(2) References in subsection (1) to qualifications or skills are references to qualifications or skills of employees.”

7. Section 3A of the 2006 Act concerns different purposes in respect of employment permit may be granted and provides as follows: -

“3A. — (1) Subject to any requirement that this Act specifies is to be satisfied in respect of the grant of an employment permit, an employment permit granted under section 8 shall be granted in respect of a purpose specified in subsection (2);

(2) The purposes for which an employment permit may, subject to any requirement referred to in subsection (1), be granted are:

- (a) to ensure that appropriately skilled foreign nationals with skills that are required —
  - (i) in enterprises in an economic sector that is of importance for the economic and social development of the State, and
  - (ii) in employments that are essential to the development and growth of those enterprises or economic sector,
 and that are in critical short supply in the State, are encouraged to become available for employment in the State, in such enterprises and employments and the Minister is satisfied that where such enterprises are unable to recruit such appropriately skilled persons, or there is a shortage of such persons, the inability to recruit or such shortage is likely to hinder —
  - (I) the development and growth of such enterprises, and
  - (II) the economic development of, and the development of industry, technology and enterprise in, the State and the services which support such development...
- (c) where the Minister is satisfied that a person in the State has been unable to recruit an employee for a vacancy for an employment, to provide for the recruitment of a foreign national who has the required knowledge and skills for the employment and, where appropriate, the qualifications and experience as may be required for that employment..."

#### **Employment Permits Regulations 2017**

8. S.I. No. 95/2017 comprises the employment permits regulations 2017 ('the 2017 Regulations') which were made by the Minister pursuant to the powers conferred on the respondent by virtue of *inter alia* the 2006 Act. The 2017 Regulations came into force on 3rd April, 2017. To be successful, an application for an employment permit must satisfy both the requirements of the 2017 Regulations and the 2006 Act under which the Regulations were made. The applicant does not claim that the 2006 Act adopts the standard occupational classification system ('SOC 2010') nor is it asserted that the 2006 Act provides that SOC 2010 shall be binding on the Minister. Nor is it asserted that the 2006 Act provides that the Minister shall be bound by SOC 2010 in the manner in which same is applied in the United Kingdom. I am satisfied that there are no such provisions in the 2006 Act. At para. 3 of the respondent's statement of opposition it is stated:

"3 . While it is accepted that the 2017 regulations utilise the standard occupational classification system (SOC 2010) regulations, they do not adopt the UK standard occupational classification system, and variance of the SOC 2010 regulations are used by the Respondent herein to manage the critical skills occupations list and the ineligible occupations list in Ireland in respect of which employment permits are granted:

4. In the context of the management of the critical skills occupations list and the ineligible occupations list and the ineligible occupations list in Ireland in respect of which employment permits are granted, the respondent requests information and

*assesses the application on own (sic) its own criteria, being (inter alia) the salary, job title, educational qualifications, description of the duties required for the role and job specification. Based on its assessment of the job title and the duties associated with the role a decision is taken by the respondent on whether the role is one in respect of which there is a labour or skills shortage in Ireland which cannot be filled by an Irish or EEA National."*

I am satisfied that , as a matter of fact, there is no explicit provision in the 2017 Regulations pursuant to which the entirety of SOC 2010 is adopted. I am satisfied that there is no provision in the 2017 Regulations which states that SOC 2010 as applied in the United Kingdom is binding in respect of applications for work permits brought in this jurisdiction pursuant to the 2017 Regulations.

9. Part 6 of the 2017 Regulations is entitled "General Employment Permit", which is what the applicant applied for. Clause 29(1) of the 2017 Regulations makes it clear that the granting of an employment permit is at the discretion of the respondent. The wording also makes clear that permits may be granted for employments other than those listed in Schedule 4.
10. Schedule 3 of the Regulations is entitled "Employments in respect of which there is a shortage in respect of qualifications, experience or skills which are required for the proper functioning of the economy". This is followed by a spreadsheet in which information is set out under four columns, being "SOC-3; "Employment Category"; "SOC-4" and "Employments". Immediately after Schedule 3, appears Schedule 4, entitled "Employments in respect of which an employment permit shall not be granted". Again, a spreadsheet appears under Schedule 4 in which information is set out in four columns, being "SOC-3"; "Categories of Employment"; "SOC-4" and "Employment". At the very end of Schedule 4 the following appears, upon which the applicant places significant emphasis:

"Note: 'SOC-3' and 'SOC-4' refer to applicable levels in the standard occupational classification system (SOC 2010)".

**Categorisation "2421"**

11. Of particular relevance for the present proceedings are two entries from the 2017 Regulations, one being from Schedule 3, being categorisation "2421", and the other being from Schedule 4, being categorisation "4122". The Schedule 3 categorisation 2421 states the following:

"Employments:

- Chartered and Certified Accountants and Taxation Experts specialising in tax, compliance, regulation, solvency or financial management, or related and relevant specialist skills, qualifications or experience;
- Qualified Accountants with at least three years' auditing experience, who are full members of the American Institute of Certified Public Accountants (AICPA), the

Philippine Institute of Certificate Public Accountants (PICPA) or the Institute of Chartered Accountants of Pakistan (ICAP) and who have relevant work experience in the areas of US GAP reporting and Global Audit and Advisory Services and the employment concerned is in NNC Global Audit Services;

- Tax Consultants specialising in non-EEA tax consultancy and compliance with a professional tax qualification or legal qualification with tax specialism, who have a minimum of three years of tax consultancy requirements and regulations in the relevant non EEA market.”

#### **Categorization “4122”**

12. The Schedule 4 categorisation 4122 states the following under the heading “Employment”:

“Book-keepers, payroll managers and wages clerks (with the exception of employment of a person fluent in the official language, apart from English, of a state which is not a Member State of the EEA in a role in accounts payable where the employment is supported by an Enterprise Development Agency.”

In the manner made clear in the 2017 Regulations, the foregoing are employments for which permits shall not be granted.

13. At the heart of this case is the applicant’s contention that the position of “Trainee Accountant” was incorrectly categorised by the respondent under SOC Code 4122 rather than under 2421. In challenging the respondent’s decision, the applicant accepts that all the relevant job details provided were considered by the respondent and it is not alleged that the conclusion reached by the respondent was irrational. The applicant submits that the respondent erred in law when the respondent determined that the Trainee Accountant position was categorised Code 4122, rather than 2421 and asserts that the respondent failed to have regard to categorisation rules pertaining to SOC 2010. In advancing her case the applicant relies on certain statements from the respondent’s website as well as “volume 2” of the “SOC 2010” as produced by the UK Office for National Statistics (“UK NSO”) in addition to statements by the UK NSO in a letter dated 19 July 2019. I now turn to an examination of the evidence which was put before the court.

#### **Prior application not disclosed in statement of grounds or grounding affidavit**

14. The applicant accepts that she failed to disclose, in her statement of grounds or in her affidavit grounding the application for liberty to seek judicial review, the fact that a prior application had been made on the applicant’s behalf. This was an application received by the respondent on 06 July 2018. It was made on the applicant’s behalf by Padraic O’Rafferty in respect of a role specified to be that of “Assistant Accountant”, due to commence on 27th August, 2018. That prior application was refused by the respondent on 30th October, 2018. The applicant concedes that the refusal was valid and no challenge by way of judicial review was brought in respect of the 30th October, 2018 decision. It is submitted on behalf of the applicant that the prior application was not material to the decision which she now seeks to impugn even if, for the sake of completeness, it should have been disclosed from the outset. It is common case that the

prior application and its refusal played no part in the decision made by the respondent which the applicant now seeks to challenge.

15. The respondent points out that the proposed employer, Mr. Rafferty, is the same in respect of the undisclosed application and the application which gave rise to the decision being challenged. The respondent points out that the applicant's details are identical, as provided in both applications, but points out that the role in respect of which the application was based was previously described as "Assistant Accountant" which it says is materially different to that of Trainee Accountant. The respondent refers to other differences between the two applications including the fact that Mr. Rafferty was first described as having "zero employees" in the prior application but in the second application is described as having "one". Differences in salary as between the two applications are also highlighted as well as the advertisement associated with the role being differently described in the second application insofar as "*fluency in Spanish and international experience is an advantage*".
16. The respondent submits that, absent a satisfactory explanation, the applicant should be refused the reliefs sought on the grounds of lack of candour. It is, however, not in dispute, that the respondent did not consider the previous application, when making the decision which the applicant now seeks to impugn. In an affidavit sworn 14th October, 2019, the applicant describes the prior application in the following terms:

*"I say that my employer and I prepared and submitted a general employment permit application. Due to our inexperience and lack of knowledge with respect to the employment permit application process, we submitted an inaccurate and incorrect application which did not reflect the true nature of the intended position. That application was refused, and as is often the case, my employer and I approached specialist immigration solicitors for the purposes of rectifying these errors. My solicitors submitted a new employment permit application that was a true reflection of the job and traineeship being offered to me. As is usually the case with new employment permit applications, the respondent does not take previous applications made by an applicant into account when deciding a new application, therefore, I assumed it was not relevant to these proceedings. I say that there was no deliberate intention on my part or that of my legal advisors to withhold any information from this honourable court."*

**Grounding affidavit of the applicant**

17. On 26th July, 2019, the applicant swore a sixteen-paragraph affidavit in support of her application for judicial review. In this affidavit, she explains *inter alia* that she has been in Ireland since June, 2017, lawfully resident until 21st November, 2018 and was granted an extension of her permission which expired on 6th April, 2019 and that she is in the process of regularising her position. She confirms that she completed a BSc in Public Accounting before coming to Ireland and that she completed a certificate in Business Accounting in Ireland through CIMA, conferred in May, 2018. She refers to the application by her then employer, O'Rafferty & Co., accounting practice, for an employment permit on 20th November, 2018 and she exhibits a copy of this application. She also exhibits the refusal



decision of 26th February, 2019. She then refers to the statutory review sought by her then employer, via his legal advisors, and she refers to submissions dated 19th March, 2019 made to the respondent which included a letter from O'Rafferty & Co. dated 15th March, 2019, which letter stated that they will be supporting the applicant in relation to pursuing a qualification as a chartered certified accountant (ACCA) which would include completion of the relevant exams and that her role in the firm qualified for the ACCA competency framework. The foregoing submissions are exhibited. She also refers to further correspondence addressing issues pertaining to her passport and these are exhibited. The applicant then refers to the review decision dated 15th July, 2019 which she seeks to impugn.

18. Paragraphs 13, 14 and 15 of the applicant's affidavit read as follows:-

*"13. I say and believe that my legal advisors wrote to the Office of National Statistics (ONS) by email dated 23rd July, 2019 querying the correction coding/categorisation of Trainee Accountant. I understand that a reply issued on 24th July, 2019 requesting more information about the role, which my legal advisors provided on the same date. I understand that the ONS issued an email confirming that the correct coding was SOC2010 Unity Group 2421. I beg to refer to true copies of the correspondence pinned together and upon which marked with "JOR9" I have signed my name part of swearing hereof;*

*14. I say and believe that the foregoing is further confirmed within 'SOC2010 volume 2: the structure and coding index'. I beg to refer to a true copy of the said index upon which marked with the "JOR10" I have signed my name part of the swearing hereof."*

**Exhibit "JOR9" – UK Office of National Statistics Correspondence**

19. At "JOR9", the applicant exhibits a series of exchanges between McGrath McGrane, solicitors for the applicant and the "Occupation, Social & Country Classification Helpdesk in Data Architecture, Office for National Statistics, Swyddfa Ystadegau Gwladol", United Kingdom. The first is a letter dated 19th July, which reads as follows:-

*"Re: Categorisation of job title "trainee accountant"*

*Dear Sir/Madam,*

*We are seeking some clarification on the categorisation of the job title "trainee accountant".*

*Can you please advise whether or not they come within the 4122 category.*

*We act on behalf of an accountant who submitted a general employment permit application for his trainee accountant last November, 2018. It was recently refused on appeal on the basis that "trainee accountant" falls within category 4122 and is therefore ineligible.*

*The applicant has a degree in Public Accounting and has a certificate in Business Accounting (CIMA). She wishes to register and sit her ACCA exams in order to qualify as an accountant.*

*We would be grateful if you could shed some light on this particular job title and whether or not you think it falls within category 4122.*

*We look forward to hearing from you in early course."*

20. The applicant exhibits the initial reply which was sent on 24th July, 2019 by email (14:36) by Paul Hammett of the aforesaid Office for National Statistics to Elaine O'Sullivan of McGrath McGrane Solicitors and which reads as follows:-

*"Thank you for your enquiry.*

*To enable us to provide you with an accurate SOC2010 code, please advise what duties/tasks is involved for this job role.*

*We will be very happy to assist you when we have received the information."*

21. A key element of the applicant's case is that job titles prefixed by words such as "trainee" are normally coded as though the prefix word was not present. The applicant submits that this is the approach taken by the UK ONS in so far as SOC2010 is concerned and, the applicant argues, a proper categorisation of Trainee Accountant within the 2017 Regulations is under code 2421 where Accountants are categorised. Notwithstanding that argument on behalf of the applicant, the said 24th July, 2019 email from the UK ONS evidences the fact that, in response to a query as to where "Trainee Accountant" should be categorised, the UK ONS did not simply say that the prefix "Trainee" should be deleted and that a proper categorisation under SOC2010 as operated by the UK ONS is that of "Accountant". On the contrary, the 24th July, 2019 response makes it clear that, as a matter of fact, the UK ONS could not provide what was, from their perspective, an accurate SOC2010 code without being furnished with further information, specifically the duties/tasks involved for the job role in question.

22. The next item in the exchange is a 24th July, 2019 email by way of a response sent by McGrath McGrane Solicitors to the UK ONS which reads as follows:-

*"Thank you for your swift response.*

*The duties and tasks assigned for the job role of Trainee Accountant are follows:-*

- 1. Managing the ongoing tax compliance and accounting needs of clients;*
- 2. Preparation and submission of VAT, payroll tax, income tax, and corporation tax returns to meet relevant deadlines;*
- 3. Management of payroll services for clients;*

4. *Preparation of periodic management accounts and year end statutory financial statements; and*
5. *Preparation and review of financial reports.*

*I look forward to hearing from you."*

23. The foregoing job description reflects the job description submitted with the applicant's 20th November, 2018 application to the respondent. However, from a consideration of the entire evidence, several matters of fact require to be pointed out. Firstly, the UK ONS was not being requested to provide an "accurate SOC2010 code" with reference to the Minister's 2017 Regulations which utilises the SOC2010 codes. Rather, as a matter of fact, the UK ONS was plainly being asked to provide "an accurate SOC2010 code" with reference to SOC2010 as employed or operated by that UK body. Furthermore, it is a matter of fact, that although the 20th November, 2018 application to the respondent contained a similar job description to that in the 24th July, 2019 email, the 20th November, 2018 application contained additional information which the respondent required in order to properly consider what was, as a matter of fact, an application for a work permit made to the respondent decision-maker, as opposed to a request for advice as to where a job title should be categorised, made to a UK body. It is also a matter of fact that the 20th November, 2018 application contained at least the following information, none of which was furnished by the applicant's solicitors to the UK ONS: (a) the qualifications, skills, knowledge or experience required for the job, (b) the skills, knowledge and experience of the applicant, (c) the recruitment method for the role, (d) the remuneration, (e) the number of hours worked and (f) the terms and conditions of employment. With regard to the latter, it is also a matter of fact that the 20th November, 2018 application to the respondent contained a 12th November, 2018 document entitled "Re: Trainee Accountant – Terms and Conditions of Employment", the second paragraph of which reads as follows:-

*"On behalf of the company, I am pleased to offer you the position of Assistant Accountant reporting to Padraic O'Rafferty, Principal. You will be employed on a full time basis commencing with effect from 01 February, 2019." (emphasis added).*

It is a matter of fact that none of the foregoing details were provided to the UK ONS when its advice was sought. It is also a matter of fact that, when seeking advice from the UK ONS, the applicant's solicitors did not furnish the latter with a copy of the 2017 Regulations.

**Email of the 25th July 2019 (10:31)**

24. On Thursday 25 July 2019 the UK ONS sent an email (10:31) to the applicant's solicitors, the text of which is as follows: -

*"Thank you for your enquiry.*

*Job title: Trainee accountant*

*All persons in training for an occupation or profession are coded to the relevant occupation or profession for which they are in training. Therefore, based on the information provided, we would advise Soc 2010-unit group 2421.*

*If your enquiry is regarding a visa application, the system was designed by UK Visas & Immigration (formerly UK Border Agency) and is broadly based on a standard occupational classification 2010 (Soc 2010). You are under no obligation to use the Soc 2010 code that we have provided, and any further enquiries that are not Soc 2010 related need to be addressed directly to @UK Visas & Immigration . . . .”*

25. A number of matters of fact arise. Firstly, this email from the UK NSO “helpdesk”, even on its own terms, did not purport to be definitive of anything. At least four conditions were flagged. Firstly, the helpdesk was advising rather than determining and specifically used the phrase “we would advise”. Secondly, the advice was based on such information as they had received and they specifically used the phrase “based on the information provided”. Thirdly, it was made clear that there was no requirement to use the suggested code and they specifically stated “you are under no obligation to use the Soc 2010 code that we have provided”. Fourthly, it was made clear that the advice was provided from the perspective of a body concerned with the categorisation of job titles, not the body responsible for dealing with visas and immigration issues.
26. Two further matters of fact arise. Firstly, this email was sent ten days *after* the determination, on 15th July, 2019, of the statutory review carried out by the respondent in respect of the decision to refuse the work permit applied for and, as a matter of fact, played no part in the respondent’s decision, nor could it have. Secondly, the UK NSO helpline email does not state, for example, that any advice given by it with regard to what SOC 2010 code applies to any given job title, is binding on any party, much less on a Minister in a different jurisdiction, responsible for the consideration of employment permit applications and required to do so in accordance with the provisions of the 2006 Act and the 2017 Regulations.
27. Having considered the evidence, I am satisfied that, as a matter of fact, although the 2017 Regulations utilise the SOC2010 codes, the 2017 Regulations do not include the entire of, and does not comprise, SOC2010 as employed or maintained by the UK ONS. This is wholly apparent from exhibit “JOR10” to which the applicant referred in her 26th July, 2019 affidavit.

**“JOR10” – “SOC2010 volume 2: the structure and coding index”**

28. Exhibit “JOR10” to the applicant’s grounding affidavit comprises a document entitled “SOC2010 volume 2: the structure and coding index - ONS”. The first words on the first page of this document state “Guidance and Methodology”. It is a matter of fact that, whereas the term “guidance” is used, there is no reference to the coding or classification system described in the document as being inflexible, immutable or not subject to change. On the contrary, the second page of the document contains, inter alia, the following explicit statements:-

*"The coding index for SOC2010 contains 27,966 entries, including 4,228 changes (2,206 additions, 1,210 deletions and 812 replacements) to deal with new job titles, changes in usage and some removal of redundant titles."*

29. On the same page, under the heading "Updating the Index", the following is, inter alia, set out:-

*"Staff in the Classifications and Harmonization Unit gathered information on new occupation titles from advertisements for job vacancies and scrutinised queries from all sources to identify changes to update the index."*

30. The fact that the coding index as produced and/or maintained and or/employed by the UK ONS is an evolving and dynamic document is explicit from section 4 where, under the heading "Keeping in Touch", the following is stated:-

*"The use of job titles changes over time and new titles are introduced.*

*The Classifications and Harmonisation Unit seeks to increase its knowledge of jobs, their titles and associated tasks.*

*SOC2010 users are invited to forward information, which will help in the compilation of the job title index and feed into the work for the next update."*

31. At the heart of the applicant's case is the proposition that, because the 2017 Regulations utilise SOC2010 codes, the Minister is bound as a matter of law by decisions made in another jurisdiction concerning the codification of job titles in a document maintained in the United Kingdom, derived from UK sources and which, in its own terms, is explicit as to the fact that its contents change over time. The key reason the applicant seeks to assert that the UK ONS SOC2010 applies, is because clause 1.18 of the document exhibited by the applicant, under the heading "assistant, deputy, principal, etc. as prefixes" states the following: "Job titles prefixed by words which indicate a position in a hierarchy, for example, 'apprentice', 'assistant', 'chief', 'departmental', 'deputy', 'head', 'principal', 'trainee', 'under', are normally coded as though the prefix words were not present".
32. As can be seen from the foregoing, however, even the UK ONS SOC2010 volume 2 document does not state that, when assigning a code to a particular job title which has a prefix such as "trainee", one "must" or "shall" assign a code as though the prefix was not present. Even on the applicant's case, to the extent that it is made in reliance of the UK ONS SOC2010 volume 2 document, there is plainly flexibility as to what the UK authority would regard as appropriate coding for a particular job title, according to the contents of the UK ONS SOC2010.
33. The purpose behind the UK ONS SOC 2010 is an attempt to create a standardised system for categorising thousands of job titles and the complexity associated with such a task is entirely apparent from the contents of the eighteen-page document exhibited by the applicant at "JOR10". Just one example concerns a job title which has, as a matter of fact, the term "Accountant" in the title and where, according to the very document which the

applicant seeks to rely on, the correct coding may be 2421 or 4122, depending on whether the relevant individual is qualified or not, as the following illustrates.

**2421 versus 4122 – Qualified Cost Accountant versus Cost Accountant**

34. Section 1.12 on internal p. 8 of the UK document entitled "SOC2010 volume 2: the structure and coding index – ONS" deals with "additional qualifying terms" and begins by stating:-

*"Sometimes the qualifying term is more easily stated in terms of the type of material worked with, the machinery used or the process involved.*

*These additional qualifying terms enable a number of specific terms to be summarised in a more general word and are shown in the index within brackets...*

*Additional qualifying terms can also, in a few cases, take the form of professional qualifications to differentiate between occupations.*

*Two examples are:*

*The job title 'Cost Accountant' has the following index entries:*

*2421 Accountant, cost (qualified)*

*4122 Accountant, cost" (emphasis added)*

The foregoing undermines the factual basis for the assertions made by the applicant regarding effect of SOC2010 volume 2 on the interpretation of the 2017 Regulations.

**The respondent's website**

35. Although not exhibited by the applicant, her counsel handed into Court, without objection by counsel for the respondent, a document comprising a photocopy of an extract from the respondent's website. The following is a verbatim quote from that document: -

*"Clarification on the classification of employments for the purposes of Employment Permits*

*Standard Occupational Classification (SOC)*

*The Critical Skills Occupations List and the Ineligible List of Occupations for Employment Permits are organised using the Standard Occupational Classification system (SOC 2010), a system devised to classify workers into occupational categories. SOC2010 is structured in nine major groups and 25 sub-major groups; it has 90 minor groups and 369 unit groups.*

*Within the structure of the classification, occupations fall broadly into four skill levels:*

*The first level relates to occupations requiring only a general education, usually the completion of secondary level education. These occupations are coded in the ninth major group.*

*The second skill level covers a large group of occupations, that require a general education as for occupations at the first skill level, but which normally have a longer period of work-related training or work experience. These occupations mainly fall into the fourth, sixth, seventh and eighth groups.*

*The third skill level applies to occupations that normally require a body of knowledge associated with a period of post-secondary education eg. diploma, ordinary level degrees. A variety of technical occupations fall into this category, as do trades occupations. These occupations fall into the third and fifth groups, but also include occupations prefixed 12--.*

*The fourth level applies to what are termed 'professional' occupations and high level management positions in corporate enterprises. Occupations at this level normally require a degree and/or substantial work experience. These occupations fall into the first and second major groups.*

*The lists operate at Levels 3 and 4 of SOC-2010, in order to furnish sufficient detail to prospective applicants for employment permits.*

*The eligible and ineligible employments for employment permits are laid out in regulations and are arrived at following a formalised and evidence-based process which is carried out bi-annually. The process involves obtaining and considering advice from the Expert Group on Future Skills Needs (EGFSN) and Skills and Labour Market Research Unit (SMLRU) in SOLAS. It also involves input from relevant Government Departments, Agencies, and industry as necessary.*

#### *Assigning SOC codes to Job Titles*

*When processing employment permits, if an applicant assigns a SOC code to an employment the Department evaluates it based on its own criteria. In determining the relevant SOC code to be applied the following criteria are indicative of those used by the Department:*

- Salary
- Job Title
- Educational Qualifications, and where relevant, experience of foreign national.
- Description of the employment to be undertaken - the majority of tasks undertaken by the job holder must fall under the selected SOC code.

*However, it may also include additional tasks not specifically listed under the chosen SOC code but these must not be majority of the job holder's core duties.*

*Job specifications (official and summary versions) that may be submitted as part of an application.*

*In finalising its decision, the Department may also seek from the applicant additional information in relation to the employment.*

*Useful tools and websites*

*The following webpages include useful tools and reference points which we use for clarification of relevant SOC codes:*

*[www.ons.gov.uk/ons/guide-method/classifications/current-standard-classifications/soc2010/soc2010-volume-1-structure-and-descriptions-of-unit-groups/index.html](http://www.ons.gov.uk/ons/guide-method/classifications/current-standard-classifications/soc2010/soc2010-volume-1-structure-and-descriptions-of-unit-groups/index.html)*

*[www2.warwick.ac.uk/fac/soc/ier/software/cascot](http://www2.warwick.ac.uk/fac/soc/ier/software/cascot)*

*Employment Permits Section*

*21 August 2019 "*

36. A number of matters of fact arise from an analysis of the foregoing. Firstly, the foregoing information, which is publicly available on the respondent's website, does not state, for example, that the 2017 Regulations shall be interpreted in accordance with the information on the respondent's website or that any statement on the respondent's website shall be binding upon the Minister when considering a particular case under the 2017 Regulations. Nor does the information on the respondent's website state that, in determining the relevant SOC code to be applied in respect of any particular employment, volume 2 of the SOC as maintained or applied by the UK ONS shall be determinative. On the contrary, the information on the respondent's website goes no further than stating that webpages comprising links to the UK ONS "*...include useful tools and reference points which we use for clarification of relevant SOC codes*". The foregoing is, as a matter of fact, entirely different to stating, for example, that the UK ONS view, in a given situation, shall bind the Minister, or that, in the event of any dispute in respect of what code is most appropriate, the Minister must defer to the views expressed by the UK ONS. Furthermore, the publicly available information on the respondent's website is explicit about the fact that it is the respondent who makes a determination in relation to the relevant code to be applied, regardless of whether, or not, an applicant assigns an SOC code to a particular employment. This is clear from the following statement on the website: -

*"When processing employment permits, if an applicant assigns a SOC code to an employment, the Department evaluates it based on its own criteria. In determining the relevant SOC code to be applied the following criteria are indicative of those used by the department". (emphasis added)*



If one considers the entirety of the statements which appear on the respondent's website, as per the photocopy handed into Court by the applicant, I am satisfied that those statements do not, as a matter of fact, confirm that the contents of SOC2010 volume 2 and/or the views of the UK ONS shall bind the respondent Minister insofar as the interpretation of the 2017 Regulations is concerned.

**Affidavit of Rob Walsh sworn 03 October, 2019**

37. As well as referring to the prior application of 6th July, 2018 made on behalf of the applicant and which was not referred to in her application for leave to seek judicial review and, having made reference to statements on the respondent's website, which I have quoted above, Mr. Walsh on behalf of the respondent makes the following averment in relation to the role advertised in the context of the present application stating that "*The role did not require the Applicant to be a qualified accountant.*" As a matter of fact, this is undoubtedly true and Mr. Walsh's averment is uncontroverted. He goes on to make the following averment in respect of the role: "*it was properly assessed as a Soc Code 4122 being 'book-keepers, payroll managers and wage clerks' and is an ineligible category of employment under the 2017 regulations.*" At para. 13 he avers that "*while the applicant states that 'trainee accountants are not referred to' in the list of ineligible jobs, the description of the role combined with the fact that the applicant is not a qualified and professionally recognised accountant means that the role is associated with a role of an administrative nature and therefore is an ineligible role.*"

38. At this point I would again observe that the applicant does not make the case that the decision made by the respondent was irrational or that the respondent failed to consider all the relevant information including job details as provided in the application. Mr. Walsh then provides the following sworn evidence which is not controverted in the affidavit subsequently sworn by the applicant on 14th October, 2019. The following is the respondent's uncontroverted evidence at paras. 14 and 15 of Mr. Walsh's affidavit:

"14. *Section 15 of the Employment Permits Act, 2006, as amended, provides that, when making regulations, the Minister must consider the qualifications, experience or skills that, in the opinion of the Minister, are required for economic and social development and competitiveness. Ireland is not lacking people who want to be trained in certain professions but is looking for people who already have certain skills.*

15. *Professionally qualified accountants are thus contained on the list of critical skills in respect of which Employment permits are granted, subject to all other criteria being satisfied. The regulations make it clear that in order to qualify for an Employment Permit the applicant must be fully qualified and professionally registered/certified with an accredited Accounting body. The work of a trainee accountant or Assistant Accountant (or however described) is a business administrative role and is a role which is ineligible for an employment permit.*"

**Exhibit "RW3"**

39. At paragraph 16 of his affidavit Mr. Walsh avers that, while the applicant seeks to rely on the provisions of SOC2010 volume 2, this is a reference to the UK ONS classification on coding which, Mr. Walsh states, is not applicable in Ireland. He goes on to aver as follows:

*"I note that the UK migration advisory committee (which advises the UK Home Office on migration issues, including skills shortages within occupations) published a report entitled 'full review of the shortage occupation list' in May 2019. In its consideration of Soc 2421 (on page 235) it refers to 'Soc 2421- accountants, chartered and certified' and makes no reference to 'trainee accountants'."*

40. The foregoing averment is not disputed by the applicant in her replying affidavit sworn on 14 October 2019. Mr. Walsh exhibits at "RW3" a copy of the relevant part of the aforesaid report. Page 235 of same includes information in narrative and graphic form under a heading which begins as follows:

*"Soc 2421 – accountants, chartered and certified*

*Summary table: Soc 2421 chartered and certified accountants" (emphasis added).*

41. Mr. Walsh also gives the following uncontroverted evidence at para. 17 of his affidavit sworn 3rd October, 2019:

*"The standard occupational classification (Soc) is a common classification of occupational information that has been developed within the UK to use as a statistical tool to classify jobs in terms of their skill level and skill content. National variants of the Soc are used in other jurisdictions such as USA, Canada, Spain, the Philippines and Singapore. In Ireland the Soc codification is used to assist with managing the employment permit system and evaluating an occupation for an employment permit application based on criteria, qualifications and skill level. Ireland conducts its own regular analysis of the skill needs of the country, and the law is updated as then required".*

42. At para. 20 of his affidavit, Mr. Walsh gives the following uncontroverted evidence:-

*"While the UK Office for National Statistics may assign Soc code 2421 to a Trainee Accountant for statistical purposes, this has no bearing on the Soc code that the employment permits system in Ireland assigns to the same role. Soc 2010 contains a large number of accountant roles. Many of these roles are assigned Soc code 4122. Many of the accountancy roles under Soc code 2421 specifically state 'qualified' after the title. As a trainee accountant is not yet qualified, the department assigns this role Soc code 4122. I beg to refer to a copy of the relevant accountant reels (sic) rolls from the UK ONS upon which pinned together and marked with the letters 'RW 4' I have signed my name prior to the swearing hereof".*

43. Exhibit "RW 4" comprises what Mr. Walsh avers to be a copy of the relevant accountant roles from the UK ONS. This single page document is headed "*Alphabetical index for coding occupations – A*". It comprises an alphabetical list of occupations and cites, opposite each occupation, a code number under two columns, the first being "SOC 2000" and the second being "SOC 2010". The following are several entries taken, verbatim from Exhibit "RW 4", using the SOC 2010 code and the job title which appears opposite the relevant code: -

- "2421 – *Accountant, bank.*
- 4122 – *Accountant, barrack.*
- 4122 – *Accountant, barracks.*
- 2421 – *Accountant, borough.*
- 2421 – *Accountant, branch.*
- 2421 – *Accountant, certified.*
- 2421 – *Accountant, chartered.*
- 2421 – *Accountant, chief, group.*
- 2421 – *Accountant, chief.*
- 2421 – *Accountant, company.*
- 2421 – *Accountant, cost (qualified).*
- 4122 – *Accountant, cost (qualified)*
- 4122 – *Accountant, cost.*
- 2421 – *Accountant, cost and management (qualified).*
- 2421 – *Accountant, cost and works (qualified).*
- 2421 – *Accountant, cost and works (qualified).*
- 2421 – *Accountant, cost and works (qualified).*
- 4122 – *Accountant, cost and works.*
- 2421 – *Accountant, district.*
- 2421 – *Accountant, financial (coal mine) (qualified).*
- 4122 – *Accountant, financial (coal mine).*

2421 – *Accountant, financial.*

2421 – *Accountant, forensic.*

2421 – *Accountant, group (qualified).*

4122 – *Accountant (group)*

2421 – *Accountant, incorporated.*

2421 – *Accountant, management, chartered.*

2421 – *Accountant, management (qualified).*

4122 – *Accountant, management.*

2421 – *Accountant, principal.*

3535 – *Accountant, tax.*

3535 – *Accountant, taxation.*

2421 – *Accountant, works (qualified).*

4122 – *Accountant, works.*

2421 – *Accountant (qualified).*

2421 – *Accountant (qualified)*

4122 – *Accountant.*

4122 – *Accountant and auditor”.*

44. In light of the foregoing, I am satisfied that, as a matter of fact, SOC 2010, as employed by the UK ONS, makes a distinction for the purposes of applying an SOC 2010 code, firstly, between different *types* of accountant and secondly, between accountants who are “*qualified*” as opposed to those who are not. I am satisfied that, as a matter of fact, such distinctions are reflected in the difference between using code 2421, as opposed to 4122. By way of illustration, the UK NSO document contains, inter alia, the following: - “2421 – *Accountant (qualified)*” and “4122 – *Accountant*”.

In her replying affidavit sworn on 14 October 2019, the applicant does not take issue with or dispute the averments by Mr. Walsh or the contents of exhibit “RW4”. The applicant’s central contention in this case is that the prefix “*trainee*” should be removed from the job title “*trainee accountant*” for the purposes of ascribing the correct SOC2010 code because, according to the applicant, this is the approach taken by the UK NSO and the UK NSO has advised that the correct code for trainee accountant is 2421. I am satisfied, however, that as a matter of fact the UK NOS has, in at least one publicly

available document, ascribed the code "4122" to the job title "accountant", reflecting the fact that the job title in question is different to the job title "accountant (qualified)" which the UK ONS designated with the code "2421", as exhibit "RW 4" confirms. It is incontrovertible that the applicant is *not* a qualified accountant. Thus, even before an analysis of relevant legal principles, there would seem to be a very significant difficulty with the claim which the applicant seeks to make, having regard to the facts which emerge from an analysis of the evidence put before the Court.

45. In paras. 21 to 23 inclusive, in Mr. Walsh's affidavit sworn 03 October 2019, he refers to a "visa permit specifically for full-time paid accountancy trainees (Stamp 1A)". He also makes reference to "new rules effective from July 2019 as regards trainee accountants". Finally, he refers to the fact that the respondent wrote to the applicant in relation to the foregoing and inviting her to withdraw the within proceedings, which the applicant declined to do.

#### **Applicant's second affidavit sworn 14 October 2019**

46. The second affidavit sworn by the applicant on 14th October, 2019 deals, primarily, with the fact that a prior application for an employment permit was not mentioned in the applicant's affidavit grounding her application for leave to seek judicial review. She also asserts that the alternative option suggested in the respondent's affidavit was not available to her prior to 19th July, 2019 and she highlights difficulties in making an application for a "Stamp 1A", were she to leave Ireland and return to Venezuela and make a visa application from there. Other than the foregoing issues, the applicant makes no attempt to refute or challenge the contents of the affidavit sworn on the respondent's behalf by Mr. Walsh on 3rd October, 2019 and the applicant does not dispute or take issue with the documents exhibited by Mr. Walsh or any averments made by Mr. Walsh regarding those exhibits.

#### **Discussion and Decision**

47. In submissions, the applicant relies, *inter alia*, on the decision by Donnelly J., delivered on 9th July, 2019 in *Omotayo Mobolaji Olaneye v. The Minister for Business, Enterprise and Innovation* [2019] IEHC 553. Although acknowledging that the *Olaneye* decision was in the context of the duty to give reasons, the applicant lays particular emphasis on affidavit evidence given in the *Olaneye* case by a Mr. Harrington, for the respondent, who said that "... the SOC 2010 was a precise tool and would not be functional if it were subject to the wide fluctuations of application for which the applicant argued." (see para. 30 of the judgment of Donnelly J.). I have carefully considered the judgment in *Olaneye*. I am satisfied that it is not authority for the proposition that the 2017 Regulations imported the entirety of SOC 2010 or that the 2017 Regulations comprise the "SOC 2010 volume 2", as maintained or applied by the UK NSO. I am satisfied that *Olaneye* is not authority for the proposition that the Minister is in any way bound to interpret either the 2006 Act or the 2017 Regulations in accordance with such opinion or determination as the UK ONS may make with regard to SOC 2010 as maintained or operated in the United Kingdom by the UK ONS.

48. I would also observe that there are several other statements made in *Olaneye* which are of some relevance to the present case. In the first sentence at para. 30 of the *Olaneye* judgment, Donnelly J. states: "*A final affidavit was sworn by Mr. Harrington in which he stated that the list published by the respondent was closely aligned with SOC 10 but did not mirror it*".
49. That statement, I am satisfied, is entirely consistent with the evidence on behalf of the respondent in the present case and entirely consistent with the facts which I have found as a result of the foregoing analysis of the evidence. The above statement from *Olaneye* is consistent with the uncontroverted evidence given by Mr. Walsh, at para. 6 of his 3rd October, 2019 affidavit that, while the 2017 Regulations
- "... utilises the Standard Occupational Classification system (SOC 2010) Regulations, the 2017 Regulations do not adopt the UK standard occupational classification system and variants of the SOC 2010 Regulations (as captured by the 2017 Regulations) are used by the respondent herein to manage the list of critical skills needed in Ireland and in respect of which Employment Permits are granted."*
50. Paragraph 33 of the judgment in *Olaneye* begins as follows: "*At the hearing, counsel for the applicant referred to the SOC 10 and pointed towards differences between it and the list set out in Schedule 3 of the 2017 Regulations.*" The paragraph ends: "*Furthermore, counsel pointed out that the SOC 2010 was a list compiled for statistical purposes in the United Kingdom.*" The foregoing is also consistent with the facts, as found, in the present case. In short, based on the evidence before the Court, I am satisfied that SOC 2010 as compiled and maintained by the UK NSO is not one and the same as the list of job titles and corresponding codes contained in the respondent's 2017 Regulations, which Regulations utilise certain SOC 2010 codes.
51. The uncontroverted evidence in the present case is that the respondent relied on its own criteria to determine the appropriate categorisation for the job description associated with the application made by the applicant herein. There is no authority before the court suggesting that the respondent's powers under the 2017 Regulations and thereunder the 2006 Act were fettered in anyway by the existence in another jurisdiction of "*SOC 2010 Volume 2: the structure and coding index*" and/or the manner in which same is interpreted or applied by the UK Office of National Statistics or that the respondent has any obligation, at law, to abide by such advice or opinion as that UK body might give.
52. The applicant claims that the respondent erred in law, in its decision of 15th July, 2019, in refusing to grant the employment permit sought by the applicant on the basis that the position "*Trainee Accountant*" was on the list of ineligible categories of employment specified in schedule 4 of the 2017 Regulations, specifically SOC code 4122. According to the applicant, the position of "*Trainee Accountant*" properly comes within SOC code 2421. I am satisfied that the applicant is incorrect in fact and in law. I am satisfied that the applicant's argument can fairly be characterised as one which seeks to prioritise *form* over *substance*. If one looks at the 2017 Regulations, schedule 3, internal page 37, code "2421", being the code contended for by the applicant, it is instructive to ask a number of

questions, as follows: (1) Is the applicant in truth, a chartered and/or certified accountant? She is not. (2) Is she a qualified accountant with at least three years auditing experience? She is not. (3) Is she a full member of the American Institute of Certified Public Accountants (AICPA)? She is not. (4) Is she a member of the Philippine Institute of Certified Public Accountants (PICPA), or the Institute of Chartered Accountants of Pakistan (ICAP), with relevant work experience in the area of US GAP reporting and global audit and advisory services? She is not. (5) Is she a tax consultant specialising in non – EEA tax consultancy and compliance with a professional tax qualification or legal qualification with tax specialism, who has a minimum of three years' experience in tax consultancy and regulations in a relevant non – EEA market? She is not. That being so, on the facts of this case and from the perspective of *substance*, the job description "Trainee Accountant" or "Assistant Accountant" (both terms being used in the 12 November 2018 "terms and conditions of employment" signed by Mr. O'Rafferty and by the applicant, which accompanied the 20 November 2018 application) plainly do not fall within any of the job descriptions relevant to code 2421 for "*business, research and administrative professionals*" as employed in the 2017 Regulations which bind the Minister.

53. The applicant, in effect, argues that *form* should trump the lack of *substance* in her contention that the job description "*trainee accountant*" comes within code 2421 in the respondent's 2017 Regulations. In essence, she argues that the court should regard it as coming within 2421 by engaging in the following exercise, namely to delete or to wholly ignore the word "*trainee*" and, in circumstances where one is left with the word "*accountant*", to regard the job title, without the prefix, as being sufficient to bind the Minister to consider it as being code 2421, even though the applicant, in fact, fails to satisfy any of the requirements which are explicitly set out in in schedule 3 of the 2017 Regulations . Such an exercise could only be described as an attempt, artificially, to have *form* win out over *substance*. Yet the Court is being asked to interpret the contents of the 2017 Regulations, plus comments made by the respondent on its website, as creating a legal obligation which, in the present case, requires the Minister to ignore substance and prioritise form. I have no hesitation in saying this Court simply cannot do so.
54. This Court has no constitutional power to make laws and must be careful not to do so when exercising the interpretative function. I am entirely satisfied that the 2017 Regulations cannot be interpreted in the manner in which the applicant contends. Doing so would involve this Court importing into the 2017 Regulations words which are simply not there and also ignoring the plain meaning of words which incontrovertibly appear in the 2017 Regulations. In particular, Schedule 3 of the 2017 Regulations very clearly sets out those employments in respect of which there is a shortage in relation to "*qualifications, experience or skills*" required for the proper functioning of the economy and these include "*Chartered and Certified Accountants*" with particular specialisms, "*Qualified Accountants*" with particular experience and "*Tax Consultants*" with specified experience. As a matter of fact, the applicant falls into none of the categories specified in Schedule 3. For this Court to hold that she does, would be to do violence to the specific words used in Schedule 3 and would amount to this Court deciding, impermissibly, that

someone who is *unqualified* comes within a category which explicitly addresses shortages in “*qualifications*”. This Court has no power to ignore the clear wording in Schedule 3 of the 2017 Regulations and to hold that shortages in the qualifications set out in Schedule 3 are met by unqualified persons. I say this, having considered all of the evidence and all of the submissions made with skill on behalf of the applicant.

55. The foregoing is no personal criticism of the applicant, who is a citizen of a troubled country and who appears to be someone who is both talented and motivated. It has to be emphasised, however, that the sole function of this Court is to interpret the law with impartiality and objectivity and to produce a decision which does not encroach on the legislative power which is the sole preserve of the Oireachtas. I am satisfied that, were the court to find a legal obligation on the Minister such as contended for by the applicant, it would involve interpreting the 2017 Regulations in a way which does violence to their contents and it would inevitably involve an impermissible exercise in judicial law making. I am satisfied that there is nothing in the 2017 Regulations which requires the Minister to be bound by any opinion or advice by any third party, be they outside or within this jurisdiction, when it comes to the question of determining whether a particular job description falls within Schedule 3 or Schedule 4 of the 2017 Regulations. I am satisfied that there is no provision in the 2006 Act or the 2017 Regulations which cedes the interpretation of same to the UK National Statistics Office or to any other third party, or which makes the terms of the UK Soc 2010 binding in this jurisdiction for the purposes of either the 2006 Act or the 2017 Regulations. I am satisfied that the respondent was not obliged, when making a decision under the 2017 Regulations, to have regard to volume 2 of SOC 2010 as employed by the UK ONS, nor was or is the respondent Minister under any obligation to consider the views of the UK ONS, regardless of any comments appearing on the respondent’s website.
56. The role of statutory interpretation is to identify and to give effect to the intention of the Oireachtas, having regard to the words used in the relevant legislation be that primary or secondary. I am satisfied that there is no intention evidenced in the 2006 Act, or in the 2017 Regulations made by the Minister under the said Act, to fetter the Minister’s powers with reference to the UK Soc 2010 volume 2. For example, the 2017 Regulations theoretically could have said, but in reality certainly do not say, that any difference of opinion between an applicant and the Minister as regards the appropriate codification of a job description with respect to an employment permit application shall be determined by reference to the then opinion of the United Kingdom’s ONS which has produced “Soc 2010 Vol. 2: the structure and coding index”. No such provision is contained in the 2017 Regulations and, having carefully considered all the evidence, I cannot hold that the respondent Minister’s powers under the 2017 Regulations are constrained in the manner contended for by the applicant.

### **Conclusion**

57. I am satisfied that the respondent did not err in law in the decision of 15th July, 2019. I am satisfied that the respondent did not have regard to factors which ought not properly have been included in the consideration undertaken by the respondent or that the



respondent failed to have regard to factors which should properly have been considered. Having carefully examined all the evidence I am satisfied that the facts, as found from an examination of the evidence before this Court, do not support the case the applicant has sought to make out. I am also satisfied that there is no legal basis to ground the present application. For the reasons set out in this judgment, I am obliged to dismiss the application. In circumstances where the applicant has been unsuccessful, it is unnecessary to consider the effect, if any, of the initial failure of the applicant to make reference to the unsuccessful application for an employment permit, which issue has played no part in my findings and decision.