

**THE HIGH COURT
JUDICIAL REVIEW**

[2020] IEHC 526

Record No.: 2019/612JR

**IN THE MATTER OF SECTION 5 OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT
2000 (AS AMENDED)**

BETWEEN:

AO AND ESC

APPLICANTS

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Ms Justice Tara Burns delivered on 22 day of October, 2020

General

1. The Applicants are married Filipino nationals. They are resident within the State since April 2018. On 22 August 2018, they made an application for an EU Residence Card on the basis of their asserted dependency on a UK citizen who is the husband of the second Applicant's sister. The UK national and his wife (hereinafter referred to as "the UK family") came to reside within the State eleven months prior to the Applicants entering the State. The Applicants asserted that they came to this jurisdiction to help the UK family with child care so that both of them could work. Those applications were refused on 12 and 3 September 2018 respectively. A challenge was not mounted by the Applicants to these refusals.
2. On 16 October 2018, the Respondent notified the Applicants that it was his intention to make a Deportation Order in respect of each of them. They were invited to make representations pursuant to s. 3 of the Immigration Act 1999 (hereinafter referred to as "the Act of 1999"). Such Representations were made by the Applicants on 7 November 2018
3. On 31 July 2019, the Respondent issued deportation orders in respect of each of the Applicants requiring them to leave the State by 31 August 2019.
4. The Applicants seek orders of certiorari in respect of these deportation orders on the grounds that the Respondent did not give proper consideration to their family connections within the State, namely to the UK family and that the reasons which were given by the Respondent were vague and opaque.

Deportation Considerations

5. In a document relating to the first Applicant and headed "*Examination of file under Section 3 of the Immigration Act 1999, as amended*" the considerations which the Respondent must have regard to pursuant to s. 3(6)(a-k) of the Act of 1999 are set out. It is also stated under the paragraph dealing with s. 3(6)(i) – "*Representations made by or on behalf of the Person*", that "*all documentation and information on file has been read and fully considered.*"
6. The Respondent determined that having considered all of the facts, "*the interests of public policy and the common good in maintaining the integrity of the asylum and*

immigration system outweigh such features of the case as might tend to support a decision not to make a Deportation Order in respect of” the first Applicant.

7. The Respondent then proceeded to specifically consider whether the first Applicant’s private and family rights under Article 8 of the European Convention on Human Rights were affected. In the course of doing so, the Respondent clearly considered the information and documentation which had previously been submitted for the purpose of the first Applicant’s application for an EU Residency Card. Accordingly, the fact that the UK family were resident here and that the Applicants were residing with them was considered. Regard was also had to a personal letter from the UK national indicating that the Applicants minded the UK family’s children when they were working. The Respondent erred in indicating that a personal letter had been received from the first Applicant. However, the significance of the letter are its contents and it is clear that the contents have been considered by the Respondent.
8. In light of all of the material before him, the Respondent determined that the Applicant did not have a relationship of dependency on the UK family more than normal emotional ties and that whilst his minding of their children was useful, as the UK family parents worked, the relationship which the first Applicant had with the children did not constitute a de facto family life within the meaning of Art 8. Further, as the second Applicant was also being deported, no separation of his family was envisaged.
9. A similar analysis was conducted by the Respondent when determining whether to issue a deportation order in respect of the second Applicant. Again, it was stated in the *“Examination of the File under s. 3 of the Act of 1999”* document that *“all documentation and information on file has been read and fully considered.”* The Respondent noted that the second Applicant asserted that she was an integral part of the UK family’s unit and helped care for her sister’s children. However, having considered the issue, the Respondent determined that there was nothing on the file to suggest that the second Applicant had a relationship of dependency more than normal emotional ties on the UK family and that while minding her sister’s children was helpful to her sister, the relationship which the second Applicant had with the children of the UK family did not constituted a de facto family life within the meaning of Art 8. Further, as the first Applicant was also being deported, no separation of her family was envisaged.

Failure to properly consider family connections within the State

10. Counsel for the Applicants asserts that the Respondent failed to properly consider the Applicants’ family connections within the State. Nothing is specifically pointed to by the Applicants which attempts to establish that the Respondent failed to have regard to a material fact or erred in law in making his decision. In reality, what is being suggested is that the Respondent came to an incorrect conclusion having regard to the evidence before him.
11. This court is not an appeal court. It is not permissible for this Court, on an application of this nature, to determine whether the Respondent reached a correct or an incorrect decision. Instead, this court is concerned with the decision making process rather than

the decision reached. As already stated, Counsel on behalf of the Applicants did not point to any asserted error regarding the decision making process. Accordingly, the Applicants have failed to establish that an error in the decision making process exists. In any event, it is clear that the Respondent was fully cognisant of the family relationship, connection and interaction between the Applicants and the UK family and made his decision having fully considered the factual position.

Failure to give reasons

12. Counsel on behalf of the Applicants assert that the reasons given by the Respondent were of such a vague and opaque nature that it, in effect, amounts to no reasons being given for the decision.
13. I cannot agree. The reasons for issuing the deportation order are clearly set out, namely: *"the interests of public policy and the common good in maintaining the integrity of the asylum and immigration system outweigh such features of the case as might tend to support a decision not to make a Deportation Order in respect of"*.
14. The specific considerations which the Applicants assert should have tipped the scales in their favour, namely their asserted family connection with the UK family, were clearly considered by the Respondent. The respondent's reasoning for finding that the family connection was not such as to outweigh the interest of public policy and the common good in maintaining the integrity of the asylum and immigration system are clearly set out. The reasoning is not opaque or vague.
15. Counsel for the Applicants referred to some case law in his submissions. On a specific basis, the cases referred to were of no application to the specific facts of the case at hand. On a general basis, having regard to the facts of the case and the decision of the Respondent, such case law did not assist the Applicants.
16. Accordingly, I will dismiss the Applicants' claim and make an order for costs in the Respondent's favour.