

THE HIGH COURT

[2021] IEHC 313

[2019 No. 758 JR]

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

X

APPLICANT

– AND –

THE MINISTER FOR JUSTICE AND EQUALITY (2)

RESPONDENT

JUDGMENT of Mr Justice Max Barrett delivered on 7th May 2021.

SUMMARY

This is an application for leave to appeal the court's judgment in *X v. Minister for Justice and Equality* [2021] IEHC 32 on the ground that the said judgment raises certain points of law of exceptional public importance and it is desirable in the public interest that an appeal be brought. The application falls to be determined in accordance with s.5(3)(a) of the Illegal Immigrants (Trafficking) Act 2000 (as amended). The court does not see any such points of law presenting. So the application must fail.

*"But go...enter into the infinite labyrinth of
another's brain...
If thou canst not do this, doubt thy theories..."*
BLAKE, "The French Revolution"

1. This is an application for leave to appeal the court's judgment in *X v. Minister for Justice and Equality* [2021] IEHC 32 on the ground that it raises certain points of law of exceptional public importance and it is desirable in the public interest that an appeal should be brought. The application falls to be determined in accordance with s.5(3)(a) of the Illegal Immigrants (Trafficking) Act 2000 (as amended).
2. The court's previous judgment concerned a judicial review application brought by Mr X, a man who steadfastly claims to be bisexual (his lawyers have also referred to him as homosexual), but who finds himself disbelieved by the Minister. The law required that the court's previous judgment go against Mr X.
3. This leave application falls to be decided in accordance with the principles propounded by MacMenamin J. in *Glancre Teoranta v. An Bord Pleanála* [2006] IEHC 250. There are multiple judgments in which those principles have been re-stated, to the point that they have attained the status of settled law. The court, though it has had regard to those principles, does not propose to recite them yet again.
4. Mr X has posited two putative points of law of exceptional public importance for certification. These are as follows:
 - A. Does the Minister for the purposes of the refoulement determination under s.50 of the International Protection Act 2015 fail to discharge her obligations fully if she

merely adopts the *refoulement* determinations of the international protection bodies without further review?

- B. Is the Minister obliged to provide adequate written reasons for her opinion on non-*refoulement* in the notices under ss.50 and 51(3) of the Act of 2015?
5. As to point A., this issue was not before the court nor, as a result, determined by it. Consequently, it is not a point of law that is capable of being certified for appeal: there is just nothing to appeal from. To the extent that reliance was sought to be placed on what was accepted to be an *obiter* aspect of the court's previous judgment, *obiter* observations cannot be the subject of appeal.
 6. As to point B., the court held in its judgment, consistent with settled authority, that sufficiently detailed reasons were given for the impugned decision. There is no question that Mr X could have been in any doubt about the reason for the decision (he knows through his participation in the asylum process from start to finish that the Minister has never accepted that Mr X is either homosexual or bisexual). As is clear from the decision of the Supreme Court in *Mallak v. Minister for Justice* [2012] 3 I.R. 297, para.66, authority binding on this Court, there can be situations where (as here) the reasons for a decision are obvious and effective judicial review is not precluded.
 7. It will be clear from the foregoing that the court sees no point of law of exceptional public importance to arise in or from its previous judgment. Hence no leave to appeal can issue.
 8. In passing, the court notes the suggestion by the applicant that leave may not be required as regards appealing some aspects of the court's previous judgment. The court has just indicated why, if leave is required, it does not fall to issue. If the applicant considers that he can appeal some dimension of the court's judgment without securing leave, he requires no input from the court in this regard.
 9. The Minister, for what it is worth, has the letter of the law on her side. So the within application for leave to appeal must fail. As to where charity, justice, and mercy lie, the court leaves that to the reader's better sense. For its part, the court winces at the notion that a man who steadfastly claims to be bisexual looks set to be deported to a country where LGBTI+ people are treated badly and suffer greatly; that outcome, it seems to the court, has the potential to involve a very grave moral wrong being done to Mr X, and morality has a place in a nation's conduct.

TO THE APPLICANT:

WHAT DOES THIS JUDGMENT MEAN FOR YOU?

Dear Mr X

I am always concerned that because applicants in international protection cases are foreign nationals for whom English may not be their first language, they should, if possible, be placed by me in a position where they can read and understand a judgment that has a sometimes great impact on them. I therefore summarise my judgment below. This summary, though a part of my judgment, is not a substitute

for the more detailed text above. It seeks merely to help you understand some key elements of what I have said. The Minister requires no such assistance. So this section of my judgment is addressed to you alone, though copied to all. Your lawyers will explain my judgment more fully to you.

Your lawyers have asked me for permission to bring an appeal against my previous judgment. For you to be able to bring an appeal, (a) my previous judgment must involve one or more points of law of exceptional public importance, and also (b) it must be desirable in the public interest that an appeal should be taken. (In truth, once you satisfy point (a), point (b) would seem almost certain to apply). Unfortunately, the proposed points that have been raised in your case do not satisfy point (a). As a result, I cannot as a matter of law grant you the permission to bring an appeal.

I am very sorry that your case has ended as it has; for what it is worth, I wish you every happiness.

Yours faithfully

Max Barrett (Judge)