

THE HIGH COURT

[2020 No. 337 JR]

BETWEEN

E, F, AND Z (A MINOR) SUING BY HER MOTHER AND NEXT FRIEND, F

APPLICANTS

– AND –

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr Justice Max Barrett delivered on 30th June 2021.

I

Introduction

1. Mr E, a third-country national is in a relationship with Ms F, an Irish national. They are both the parents of Miss Z, an infant Irish national. Ms F also has another child by a previous relationship and Mr E acts *in loco parentis* to that other child. There is a rather sad dimension to their case. Ms F suffers from bouts of serious mental ill-health, so much so that she has to be medicated and has even had to be hospitalised. So she has quite a burden to bear in life. Mr E has helped to lighten this burden. He helps to look after the two children, and Ms F's wider family and acquaintanceship appreciate what he has brought to Ms F's life. This application comes before the court because the Minister has decided to refuse Mr E permission to remain

in the State. That decision to refuse is the decision of which review has been sought. The detailed background to the case is best done by way of summary chronology:

- 7/9/01. Mr E arrives in Ireland based on a Stamp 2 permission which expired on 2.2.14.
- 2007. Mr E and Ms F meet at a Dublin nightclub.
- 2007-10. Mr E and Ms F date each other.
- 2.2.14. Stamp 2 permission expires.
- July 2015. Relationship with Ms F, an Irish national, recommences.
- 19.4.17. Miss Z, an Irish national, is born. Mr E is the natural father of Miss Z.
- 9.5.18. Mr E applies for residence in Ireland based on his parentage of Miss Z. Thereafter, there is some ‘to-ing and fro-ing’ of correspondence between Mr E’s solicitor and the Department.
- 21.2.19. Mr E’s solicitor seeks a decision in respect of the outstanding residency application.
- 21.5.19. ”
- 16.7.19. ”
- 26.9.19. ”
- 17.12.19. ”
- 27.2.20. Mr E’s application is refused. The main reason for the refusal of the application was that the refusal would not result in Miss Z having to leave the European Union and thus being deprived of the genuine enjoyment of her rights as a European Union citizen. Mr E also received a notice pursuant to s.3 of the Immigration Act, as amended.

2. There are three letters before the court from a distinguished consultant psychiatrist. The first two of them were also before the Minister when she made the impugned decision. The first letter (of 19th July 2016) indicates that Ms F has and has had an ongoing history of quite serious mental ill-health. The second letter (of 27th June 2019) refers to Ms F’s ongoing mental health

difficulties and asks that priority be given to reaching a decision in Mr E's case as the tension of waiting was exacerbating her condition. The third (a letter of 20th January 2021), so *post-dating* the impugned decision was apparently included to show that following on the Minister's decision Ms F had suffered a relapse in her mental health. I am very sorry that Ms F should have suffered this relapse; however, with every respect, it is not an occurrence that I can factor into my determination as to the lawfulness of the impugned decision.

3. Three complaints are made about the Minister's decision (four are mentioned in the statement of grounds but the fourth one got no mention at the hearing and it seemed as if the three points were the sole points being relied upon). First, that the Minister breached the principles of fair procedures, natural and constitutional justice in failing, refusing and/or neglecting to give any weight to or consider the mental health of the second named applicant, including expert reports that were submitted to the Minister in respect of Mr E's application for residency in the State on foot of his parentage of Miss Z; hence the impugned decision, it is contended, is invalid. Second, that the Minister failed, refused or neglected to consider that the first named applicant acts as primary carer to the child, the subject matter of these proceedings because, her mother, the second-named applicant suffers from poor mental health. Third, that the decision section of the impugned decision contains certain factual errors with the result being, the applicants claim, that the Minister's decision is invalid.

4. The court notes that in an affidavit of 4th December 2020, the Assistant Principal Officer who approved the impugned decision avers, *inter alia*, that if, when she made the impugned decision, she had noticed the factual errors in the impugned decision that are now accepted to present she would in any event have reached the same decision. However, the court's focus has to be on the impugned decision that was made, not on a decision that might have been made were a civil servant back in time and knew then what she knows now.

5. By way of general note, the court emphasises that nothing in this judgment should be taken to suggest that because a person may suffer from mental ill-health it follows that such a person cannot cope with parental/familial responsibilities. There are doubtless many people who suffer from mental ill-health who are perfectly able to cope with such responsibilities.

6. Quite remarkably in all the circumstances of this case, the fact of Ms F's mental ill-health, is nowhere touched upon in the reasoning in the impugned decision.

II

Two Decisions of the European Court of Justice

7. Two key decisions of the European Court of Justice arise for consideration: (i) *Case C-82/16 K.A. and Ors.* [ECLI:EU:C:2018:308]; and (ii) *Case C-133/15 Chavez-Vilchez and Ors.* [ECLI:EU:C:2017:354].

8. *K.A.* was a preliminary reference made in the context of seven cases between certain individuals and a Belgian asylum/migration body concerning the latter's decision not to examine the respective applications of those individuals for residence for the purposes of family reunification and to issue an order to them to leave Belgium (or to comply with an order to leave Belgium). In the course of its judgment, the European Court of Justice observes, *inter alia*, as follows:

⁴⁹ *Article 20 TFEU precludes national measures, including decisions refusing a right of residence to the family members of a Union citizen, which have the effect of depriving Union citizens of the genuine enjoyment of the substance of the rights conferred by virtue of their status [as citizens of the Union]*

...

⁷⁶ *...[W]here the Union citizen is a minor, the assessment of the existence of such a relationship of dependency must be based on consideration, in the best interests of the child, of all the specific circumstances, including [but not limited to] the age of the child, the child's physical and emotional development, the extent of his emotional ties to each of his*

parents, and the risks which separation from the third-country national parent might entail for that child's equilibrium. The existence of a family link with that third-country national, whether natural or legal, is not sufficient, and cohabitation with that third-country national is not necessary, in order to establish such a relationship of dependency.”

9. *Chavez-Vilchez* was a preliminary reference made in proceedings between, on the one hand, Ms Chavez-Vilchez and seven other third-country nationals, all mothers of one or more Dutch minors for whose primary day-to-day care they were responsible, and, on the other hand, the competent Netherlands authorities, concerning the refusal of their applications for social assistance and child benefit. Among the questions that arose for the European Court of Justice were whether Art.20 TFEU fell to be interpreted as precluding a Member State from depriving a third-country national who is responsible for the day-to-day and primary care of his/her minor child, who is a national of that Member State, of the right of residence in that Member State. In the curial part of its decision, the European Court of Justice (sitting as the Grand Chamber) concludes as follows:

“1. *Article 20 TFEU must be interpreted as meaning that for the purposes of assessing whether a child who is a citizen of the European Union would be compelled to leave the territory of the European Union as a whole and thereby deprived of the genuine enjoyment of the substance of the rights conferred on him by that article if the child's third-country national parent were refused a right of residence in the Member State concerned, the fact that the other parent, who is a Union citizen, is actually able and willing to assume sole responsibility for the primary day-to-day care of the child is a relevant factor, but it is not in itself a sufficient ground for a conclusion that there is not, between the third-country national parent and the child, such a relationship of dependency that the child would indeed be so compelled were there to be such a refusal of a right of*

residence. Such an assessment must take into account, in the best interests of the child concerned, all the specific circumstances, including [but not limited to] the age of the child, the child's physical and emotional development, the extent of his emotional ties both to the Union citizen parent and to the third-country national parent, and the risks which separation from the latter might entail for the child's equilibrium."

10. As counsel for the applicants has noted in his written submissions, the cumulative effect of *K.A.* and *Chavez-Vilchez* is that the European Court of Justice is now such as to require, in cases such as that here presenting, a close analysis of the relationship between the third country national and the child before deciding whether, for example, that person can be refused permission to remain in the European Union.

III

The Decision of the UK Supreme Court in *Patel and Shah*

11. In each of *Patel* and *Shah* (two unrelated cases), the claimant was a third-country national who had no right of residence in the United Kingdom but was the primary carer of a United Kingdom national. The claimant in the first case cared for his father, while the claimant in the second case cared for his son. In each case the claimant maintained that he had a derived right of residence pursuant to Art. 20 TFEU on the basis of his being the primary carer of an EU citizen who would be compelled to leave the Union if the claimant were required to do so. In dismissing the appeal in the first case and allowing the appeal in the second case, the UK Supreme Court noted that in its approach to the grant of a derived right of residence under Art. 20 TFEU the European Court of Justice had drawn a distinction between the case of a European Union citizen who was a child and one who was an adult; and that, where the Union citizen was a child, it was necessary to consider the child's best interests when determining whether there was a relationship of dependency between the child and the third-country national such that the child would be compelled to accompany the third-country national if he left the European Union. The Supreme Court also held that the Court of Appeal had erred (in the case involving the child) in having regard to whether the mother would *theoretically* be able to remain in the

United Kingdom to look after her son, since the assessment of compulsion was a practical test to be applied to the actual facts. In her judgment for the Court, Lady Arden observed, *inter alia*, as follows:

“30.*The overarching question is whether the son would be compelled to leave by reason of his relationship of dependency with his father. In answering that question, the court is required to take account, ‘in the best interests of the child concerned, of all the specific circumstances, including [but not limited to] the age of the child, the child’s physical and emotional development, the extent of his emotional ties both to the Union citizen parent and to the third-country national parent, and the risks which separation from the latter might entail for that child’s equilibrium’ (Chavez-Vilchez [2018] QB 103 , para 71). The test of compulsion is thus a practical test to be applied to the actual facts and not to a theoretical set of facts.*”

IV

The First Complaint Made

12. It will be recalled that the first ground of complaint made is that that the Minister breached the principles of fair procedures, natural and constitutional justice in failing, refusing and/or neglecting to give any weight to or consider the mental health of the second named applicant, including expert reports that were submitted to the Minister in respect of Mr E’s application for residency in the State on foot of his parentage of Miss Z; hence the impugned decision, it is contended, is invalid.

13. As noted above, the Minister rightly states in the impugned decision that:

*“An assessment must...be carried out to expressly consider the following: in the best interests of the child concerned, all specific circumstances, **including...**”* (Pleadings p.197) (Emphasis added).

14. ‘Including’ but not limited to. So, what specific circumstance ought to have been considered in the reasoning in the impugned decision and was not? The answer is Ms F’s mental ill-health and any implications that flowed therefrom as regards Miss Z’s best interests were Mr E to be removed from the family scene. That, with respect, is a gaping omission compounded by the fact that in the list within the impugned decision of documentation considered (Pleadings, pp.195-96) there is no mention of the consultant psychiatrist’s letter of 19th July 2016 which one must therefore presume was not considered, notwithstanding the claim in the impugned decision that all has been considered.

15. The Minister has sought to overcome the just-mentioned omission in her reasoning by relying on *GK v. Minister for Justice, Equality and Law Reform* [2002] 2 I.R. 418 (because in the Recommendation section of the impugned decision she refers to “[h]aving considered all information submitted”). However, Hardiman J. indicated in *G.K.*, at pp.425-26 that:

“A person claiming that a decision making authority has, contrary to its express statement, ignored representations which it has received must produce some evidence, direct or inferential, of that proposition before he can be said to have an arguable case”.

16. Here, it seems to the court, there is more than “*some evidence*”. First, as mentioned above, in the list within the impugned decision of documentation considered (Pleadings, pp.195-96) there is no mention of the consultant psychiatrist’s letter of 19th July 2016 which one must therefore presume was not considered. Second, there is in this case, to borrow from Conan Doyle, the ‘dog that didn’t bark’, *i.e.* the absolute silence in the impugned decision as to Ms F’s mental ill-health when that is a key and critical aspect of where Miss Z’s best interests lie. That silence is, with respect, unfathomable and suggests that the representations as to Ms F’s mental health were either partly or fully ignored or just not understood (an inference that is supported by the fact that in the list within the impugned decision of documentation considered (Pleadings, pp.195-96) there is no mention of the consultant psychiatrist’s letter of 19th July 2016 which one must therefore presume was not considered). Thus this is a case in which despite a reference in the impugned decision to “[h]aving considered all information submitted” there is, to borrow from Hardiman J. in *G.K.*, “*some evidence*” (in truth, more than “*some*”) of this not having been

done, opening the gate to the making of the first complaint made and as regards which the applicants have succeeded.

VI

The Second Complaint Made

17. It will be recalled that the second ground of complaint made is that the Minister failed, refused or neglected to consider that the first named applicant acts as primary carer to the child, the subject matter of these proceedings because, her mother, the second-named applicant suffers from poor mental health. That is, with respect, an unfair complaint. It was never suggested in the documentation before the Minister that Mr E is a primary carer and all the evidence before the Minister pointed to Ms F being a primary carer (albeit aided by an active father who lives at a different address). There was some mention at the hearing that Mr E could be perceived as a joint primary carer; again, no such suggestion is made in the documentation before the Minister and all the evidence pointed as just indicated. The applicants must fail as regards the second complaint made.

VII

The Third Complaint Made

a. The Third Complaint

18. It will be recalled that the third ground of complaint made is that the decision section of the impugned decision contains certain factual errors with the result, the applicants claim, that the Minister's decision is invalid. In essence, the court has to decide in this regard whether the said errors are material or not. More particularly, the applicants allege as follows in the statement of grounds (Pleadings, p.4):

“The Respondent’s decision refers to the First Named Applicant as ‘[Mistaken Name Stated]’. The decision refers also to a temporary grant of permission to the applicant by the Minister for Justice and Equality at a period not applicable to the applicant. The decision states:

‘Against this background, I recommend that Mr [Mistaken Name Stated] be informed that the Zambrano ruling does not apply in his case’

“The applicant entered the State with temporary permission of the Minister for Justice and Equality until 4th February 2016...’.

This is not the First Named Applicant’s name or identity. The decision, having referred to the First Named Applicant with a name that is not his, is invalid. The applicant entered the State on a student visa on 7th September 2007 and not on the 7th of September 2001 as stated by the Respondent in the opening paragraph of the decision. The Minister granted him a temporary residence card on 4th February 2016 which is not applicable to him, further strengthens the contention that this decision is not in respect of the applicant and is invalid.”

19. Three mistakes (the ‘Three Errors’) are flagged in the just-quoted text. First, the mis-date of 7th September 2007 (as opposed to 7th September 2001). This is a typographical error and nothing flows from it. It barely merits mention, let alone detailed consideration. Second, the reference to ‘Mr [Mistaken Name]’ and the temporary residence card. This is clearly a ‘cut and paste’ exercise gone wrong. Nothing flows from it so far as the applicants are concerned. Any fair-minded reading of the impugned decision (in truth one does not even need to be that fair-minded) makes immediately clear that the decisionmakers knew precisely who they were dealing with. Yes, the wrong details ought not to have appeared, but no practical consequence flows from the errors as regards the applicants in this application, decisionmakers are not expected to be perfect, some level of error is all but inevitable in any human endeavour, and (as a matter of law) decisions do not fall to be quashed every single time a factual or legal error occurs. The court considers the applicable law in some detail below and seeks to identify a useful set of principles from that case-law, which principles, for ease of reference, the court has also set out in Appendix A hereto.

b. Some Case Law Considered and Applied

20. The jurisdiction of the courts to quash for errors of fact or law is well-settled. In *N.M. (DRC) v. Minister for Justice* [2016] IECA 217, Hogan J. noted, at para.51, that a decision can be quashed for material error of fact. However, if the error is not material and no other errors present that would require (by themselves and/or when their cumulative effect is taken into account with an error that is not material in and of itself) then a decision will not be quashed. The court considers below an array of cases to which it has been referred and which concerns what might loosely be described as ‘material errors’ and ‘non-material errors’, identifying, as it proceeds, certain principles that it perceives to arise. A number of the authorities to which the court was referred were decisions of the UK Upper Tribunal (UKUT). This is entirely appropriate: the UKUT is a superior court of record, can set precedents and enjoys the power of judicial review.

i. *I.A. (Somalia) v. Secretary of State for the Home Department*
[2007] EWCA Civ. 323

21. This was a case where an asylum appeal was remitted for a rehearing in circumstances where it could not be said with confidence that the adjudicator would have arrived at the same conclusion as he had if he had taken a relevant country guidance case into account, and where that failure to take it into account amounted to a material error of law. In the course of his judgment, Keene L.J. observes, at para. 15, that “[I]n public law cases, an error of law will be regarded as material unless the decision-maker must have reached the same conclusion without the error.”

22. **Deducible Principle: In public law cases, an error of law will be regarded as material unless the decision-maker must have reached the same conclusion without the error (J.A.).**

23. The court does not consider that The Three Errors, or any of them, amounts to an error of law.

ii. *V (F) v. Refugee Appeals Tribunal*
[2009] IEHC 268

24. Here the applicant's appeal against the recommendation of the Refugee Applications Commissioner refusing him asylum was refused by the Refugee Appeals Tribunal. At the judicial review proceedings, the court held that although the respondent had made a technical error as to jurisdiction when recording that refoulement was not within its remit, it would not have made any difference to the outcome had the respondent engaged in such a consideration.

25. Without wishing in any way to doubt the correctness of the decision in *V(F)*, the court notes that any judge would need to proceed carefully before concluding that a decisionmaker would have reached the same decision absent an error that did in fact transpire.

26. **Deducible Principle: A technical error as to jurisdiction will not yield success in judicial review proceedings if there would not have been any change to the outcome absent that error (*V(F)*). However, any judge would need to proceed carefully before concluding that a decisionmaker would have reached the same decision absent an error that had in fact transpired.**

27. No error as to jurisdiction presents here.

iii. *VCBL v. Refugee Appeals Tribunal*

[2010] IEHC 362

28. This was an application for leave to seek judicial review of a decision of the Refugee Appeals Tribunal which affirmed a negative recommendation upon an application for asylum by the applicant in the judicial review proceedings. The applicant was a native of the Republic of Congo, a nation of about 5m people, and not a native of the neighbouring Democratic Republic of Congo, a nation of about 105m people. However, the decisionmaker made the embarrassing mistake throughout the impugned decision of treating the applicant as a DRC native. Not surprisingly, it was contended that this was an error on the face of the record which made the decision unsafe and which went to the heart of the Tribunal's jurisdiction in the appeal and therefore rendered the decision invalid. In his judgment, Cooke J. observes as follows:

“9. *While it is undoubtedly true that the applicant is a native of the Republic of Congo (Brazzaville) and that the references in the Contested Decision to the DRC are incorrect, this*

cannot be said, in the Court's judgment, to constitute a mistake of fact which is so material to the substantive analysis and consideration in the Contested Decision as to vitiate its validity. In reality, this Tribunal member has given an incorrect title to the country of origin in question but does not appear to have made any mistake in understanding the identity of the particular state to which the facts, events and alleged persecution related. It is a mistake as to the correct name of two similarly named and neighbouring countries. Indeed, as counsel for the respondents pointed out, the same mistake was also made by the applicant's own legal representatives (The Refugee Legal Service) when writing during 2008 on his behalf. Their letters too, describe the applicant as being a native of the Democratic Republic of Congo.

10. *More importantly, however, it is clear from the body of the decision that the Tribunal Member made no mistake as regards the details and substance of the case before him. The exposé of the factual background of the claim including the recital of the history and events, the description of the locations, ethnic groups and persons referred to by the applicant, are all correctly described. The events are recounted as having occurred in Brazzaville or other locations within the Republic of Congo and not as having taken place in Kinshasa or at locations identifiable as within the DRC. The political party is the UPADS and the elections are those which took place in the Republic of Congo in 2002.*

11. *The Court is therefore satisfied that, notwithstanding the misnaming of the country of origin, there has been no material error of fact which could be argued to raise an implication that there had been an actual misunderstanding*

or misconception on the part of the Tribunal member which vitiated his assessment of the claim and evidence before him in the appeal.”

29. Three observations jump out from the just-quoted text. First, Cooke J, would have been prepared to quash the decision if he had been presented with a mistake of fact which was so material to the substantive analysis and considerations in the impugned decision as to vitiate its validity. Second, Cooke J. was not prepared to quash where, despite the mistake of fact, it was clear from the body of the decision that no mistake had been made as to the details and substance of the claim. Third, Cooke J. would have been prepared to quash where there was a material error of fact that could be argued to raise an implication that there had been an actual misunderstanding or misconception on the part of the decisionmaker which vitiated his assessment of the claim and the evidence before him.

30. Deducible Principles: (i) A decision may be quashed where there is a mistake of fact that is so material to the substantive analysis and considerations in the impugned decision as to vitiate its validity. (ii) A decision may be quashed where there is a material error of fact that could be argued to raise an implication that there had been an actual misunderstanding or misconception on the part of the decisionmaker which vitiated his assessment of the claim and the evidence before him. (iii) A decision will not be quashed where, despite the mistake of fact, it is clear from the body of an impugned decision that no mistake was made as to the details and substance of an application. (VCBL).

31. As to (i), none of the Three Errors is possessed of the requisite materiality. As to (ii), any fair-minded reading of the impugned decision indicates no such misunderstanding or misconception to have arisen. As to (iii), it is clear from the body of the impugned decision that no mistake was made as to the details and substance of the application.

iv. *S.N. v. Refugee Appeals Tribunal*
[2013] IEHC 282

32. In *S.N.*, the applicant was a Kenyan asylum-seeker who was a member of the Mungiki tribe but was consistently referred to throughout the Tribunal decision as being a member of what

appears to be the non-existent ‘Kumgiki’ tribe. In his judgment, Mac Eochaidh J, observed, *inter alia*, as follows, at para.19:

“I have difficulty in characterising the mistake in this case as a mistake of fact. It is much closer to a typographical error than to an error of fact, much less an error as to a material fact. The parties agree that the Tribunal Member erred in the name of the tribe. The error is susceptible to judicial review as the name of tribe was never in dispute. The issue for the court on such a straightforward matter is whether that simple error had a material effect on the outcome. I am willing to assume that the error is an error of fact, but whatever its nature, the error had no effect on the decision.”

33. Deducible Principle: A distinction can be drawn between a typographical error and a factual error and between an error of fact and a material error of fact. Where what presents is a simple typographical error (or the like) the issue for the court is whether that simple error had a material effect on the outcome. (SN). This Court would respectfully add that sometimes even a simple typographical error can radically alter meaning, e.g., (i) ‘The man is now here’, ‘The man is not here’; (ii) ‘The man is now here’, ‘The man is now there’.

34. Here, it seems to the court that of the Three Errors, the dating error is but a typographical error and the other two errors are ‘cut and paste’ gone wrong, yielding an ostensible factual error. Any fair-minded reading of the impugned decision leads inexorably to the conclusion that none of the Three Errors had a material outcome on the impugned decision.

v. M.L. (Nigeria) v. Secretary of State for the Home Department
[2013] EWCA 844

35. This appeal, per Moses L.J., at para 2, was “*yet another unfortunate example where the First-tier Tribunal displayed an absence of care, both as to the recitation of the facts and the arguments that were advanced in relation to a claim for asylum*”, adding that “[t]he question that arises on the appeal is as to what the approach...should be to a case where there has been substantial errors in the recollection and record of the facts that were advanced...and of the

procedures and processes by which arguments were advanced in favour of the asylum-seeker.” The case was afflicted by a litany of factual errors, perhaps the worst of which was that the claimant, a Nigerian man who maintained that he was a homosexual who was afraid of being returned to Nigeria, was treated as someone who had been persecuted in Sri Lanka, a jurisdiction with which he appears to have had no connection whatsoever. The Upper Tribunal had held that all that presented were “*a number of factual errors*” (para.10). But in his judgment, Moses L.J. observes, *inter alia*, at para.10, that “*A series of material factual errors can constitute an error of law...[F]actual errors, if they are significant to the conclusion, can constitute errors of law*”.

36. Deducible Principle: A series of material factual errors can constitute an error of law. Factual errors, if they are significant to the conclusion, can constitute errors of law (ML).

37. Here, the court sees no error of law to flow from any of the Three Errors.

vi. *MELN v. Secretary of State for the Home Department*
[2014] UKUT (DA/01396/2013) (5th February 2014)

38. This was an appeal against a first-tier decision to dismiss an appeal brought against a decision to deport where among the grounds of appeal was a failure to refer correctly to the country of the Zimbabwean appellant. The UKUT held as follows at para.30:

“I indicated at the outset that I accept [that the]...reference to Jamaica and Nigeria is factually incorrect. I do not find they are indicative of a lack of understanding as a reading of the determination demonstrates the Panel was clearly aware of the [true facts]....These errors arise as a result of a ‘cut and paste’ style for standard paragraphs and a lack of care in proofreading the determination, but no more. No procedural issues material to the decision are made out”.

39. Deducible Principle: All else being equal, factual error will not lead to a decision being quashed where (i) it is attributable to a ‘cut and paste’ style for standard paragraphs and/or a lack of care in proofreading, (ii) the error is not indicative of a lack of understanding, and (iii) the decisionmaker was clearly aware of the true facts (MELN).

40. This is a perfect description of the second and third of the Three Errors. The first error (the dating error) seems to be but a ‘slip of the keyboard’.

vii. *Luximon v. Minister for Justice*

[2015] IEHC 227

41. Here the applicant, a Mauritian national, sought to quash the refusal of her residence application on account of its having referred to proving her departure from the State by means of a Chinese re-entry stamp. In the Supreme Court, MacMenamin J., at p.558, held that this was obviously an administrative error. More comprehensive are the following observations of Barr J., in the High Court, at para.205:

“[I]t seems to me that the error made in this case, namely the reference to a Chinese as opposed to a Mauritian re-entry stamp, is more in the nature of a typographical error than a material error of fact. Moreover, the applicants have not established that this error had a material effect on the outcome in this case. Accordingly, I reject the applicant's submission that the erroneous reference to a Chinese re-entry stamp in the Minister's letter of 5th November, 2012, renders her decision unlawful.”

42. **Deducible Principle: All else being equal, an error in a decision that (i) is more in the nature of a typographical error than a material error of fact and (ii) has not been shown to have had a material effect on the outcome of a case, will not yield a finding that the decision is unlawful (*Luximon*).**

43. Here, the dating error is clearly a typographical error.

viii. *Gossage v. Secretary of State for the Home Department*

[2015] UKUT (IA/16491/2014) (1st July 2015)

44. Here, Ms Gossage appealed unsuccessfully against the first-tier decision, *inter alia*, on the basis that it contained certain factual errors, the UKUT holding, *inter alia*, as follows in this regard, at para.19:

“I find that the two factual errors are of no significance. The FtT found that the appellant’s links in the Philippines were to her mother, brother, and sister. As to the sponsor’s father, whether or not the visits were monthly or weekly is of little significance in my view given that the FtT has clearly taken into account and engaged with that evidence...and found that there was a brother who could care for their father. As to the inclusion of [25] I am satisfied that this is clearly an error arising from careless use of cut and paste.”

45. Deducible Principle: Factual errors (including careless use of ‘cut and paste’) may be of little or no significance where the truth of matters is clearly taken into account and engaged with (*Gossage*).

46. Here the Three Errors are of no significance when one reads them in the context of the wider decision.

ix. *B.S. v. Entry Clearance Officer*

[2017] UKUT (OA/08879/2015) (20th June 2017)

47. The appellant was an Iraqi minor who sought entry clearance to join his father who was settled in the United Kingdom. His appeal raised a number of grounds, including that the first-tier judge “[o]n six occasions...refers to the male appellant as female....[T]hese errors suggest a serious lack of care in considering the facts and evidence of the case and possibly a cut and paste approach”. The UKUT concluded in this regard that it was clear that the decisionmaker was aware of the truth of matters and while the errors did not create a good impression, without more, did not indicate a serious lack of care in considering the facts and evidence nor did they indicate a ‘cut and paste’ approach.

48. Deducible Principle: A decision may stand even where it contains factual error where (i) the truth of matters is clearly known to the decisionmaker (presumably from the face

of his decision), and (ii) (a) there is nothing further to suggest any serious lack of care in considering the facts and evidence, and (b) the errors presenting do not indicate a ‘cut and paste’ approach (BS).

49. Here, the truth of matters was known to the decisionmaker and there is nothing to suggest a serious lack of care in considering the facts and evidence. The second two of the Three Errors are suggestive of a ‘cut and paste’ error in the last section but most certainly not suggestive of a ‘cut and paste’ approach to the decision as a whole, which, so far as it goes, is tailored to the specific facts in play.

x. *AJSA v. Secretary of State for the Home Department*
[2018] UKUT (PA/12309/2017) (8th May 2018)

50. Here, the applicant claimed to be an undocumented Bidoon from Kuwait. He appealed a refusal of his claim for asylum and humanitarian protection. Challenge was brought against the first-tier tribunal on the basis of, *inter alia*, certain factual errors that appear to have been ‘cut and paste errors’ and through a mis-application of the standard of proof. Perhaps most interesting for present purposes is that factual errors attributable to ‘cutting and pasting’ were not considered fatally to undermine the decision under review in circumstances where it was clear that when the judge considered the nature of the claim as presented by the appellant he focused on the true detail of the case. (The factual errors involved naming the wrong country (Gambia instead of Kuwait) and stating that there was more than one appellant).

51. **Deducible Principle:** Factual error attributable to ‘cutting and pasting’ need not fatally undermine the decision under review where it is clear that the truth of the claim was duly considered (AJSA).

52. Here, so far as the impugned decision goes (again it is flawed in making no consideration of Ms F’s mental condition when assessing the best interests of Miss Z, a crucial aspect of that assessment) the truth of the claim was duly considered.

xi. *M.Q. and E.Q. v. Entry Clearance Officer*
[2018] UKUT (HU/08329/2017; HU/14645/2017) (25th October 2018)

53. Here, the first tier judge stated in his judgment that “*I have carefully considered and taken into account all the documentation filed on behalf of both the Appellants and the Respondent. I have also considered the oral submissions of Mr Coleman*”. This last achievement involved a notable feat as no Mr Coleman was connected to the case. The UKUT held, at para.15 that “*I am satisfied that the reference to Mr Coleman is an error [that]...has crept into the determination quite by accident*” and after making like observation at para.20, concluded that paragraph with the observation that “*As a mistake, it does not amount to a material error by any stretch of the imagination*”.

54. **Deducible Principle: Reference to having taken non-existent evidence into account need not be fatal to a decision (M.Q.).**

55. Here, this point is not applicable.

xii. *X v. Minister for Justice and Equality*

[2021] IEHC 32

56. Here, a s.39 report issued to Mr X, which report referred to the wrong person in the recommendation section. Fifteen days later a revised s.39 report with the just-described error now corrected was sent to Mr X. At para.4(i) of its judgment, this Court held as follows:

“What occurred...was an administrative error. The wrong person was named in the recommendation section of the s.39 report but it is patently obvious that the report was concerned with all the circumstances of Mr X’s case, it is clear from the summary findings in Section 9 what the only recommendation could be, and it is clear that the civil servant who signed Section 10 could only have meant his recommendation to apply to Mr X. We all make mistakes, this was a small administrative mistake, and it was swiftly and honestly corrected; perfection of action is not a standard that the law demands of decisionmakers.”

57. **Deducible Principles: All else being equal, it need not be fatal to an administrative decision that administrative error occurs therein, if it is patently obvious that the decision concerns itself with the relevant facts, it is clear what decision the decisionmaker intended**

to reach, and the error is swiftly and honestly corrected. Perfection of action is not a standard that the law demands of decisionmakers. (X).

58. Here, the Three Errors were neither spotted nor corrected (though they have been freely admitted to in these proceedings). The court notes the importance of not setting unreal standards for decisionmakers: perfection of action is not a standard that the law demands of decisionmakers; the fair need not equate to the flawless.

59. Having regard to the foregoing it is clear that the applicants fail as to the third complaint made.

VIII

Conclusion

60. Of the three complaints made, the applicants have succeeded with regard to the first complaint and failed as regards the second and third. How then should the court exercise its discretion as regards the granting of any (if any) reliefs in this application?

61. When it comes to the said exercise of discretion, the court's attention has been drawn to Mr E's numerous criminal convictions, mostly for road traffic offences, one for a public order offence, and one for an offence under the Civil Registration Act 2004 (arising out of a so-called 'marriage of convenience'). (A separate conviction for possession of stolen property has been quashed by the High Court and hence is being disregarded by the court). The details of Mr E's criminal record, other than the quashed conviction, are set out in Appendix B hereto. Although the attention of the court was drawn to Mr E's convictions, no especial reliance was placed on them by the Minister in the proceedings, save to suggest that they were a factor that might be borne in mind if/when the court came to deciding how to exercise its discretion.

62. The court admits that Mr E's criminal record has given it considerable pause as to how it ought to proceed. Most people go through life without ever attracting a conviction. Mr E has several. Among Mr E's road traffic offences are convictions for driving without insurance (a serious matter). Moreover, Mr E's conviction for a public order offence for which he received a one month suspended sentence is unsettling. As against these convictions the court has to

weigh the fact that (i) Mr E has been punished for his offences, (ii) all of the offences were of such a level that they were tried in the District Court, and (iii) the impugned decision is greatly flawed in failing to elaborate *at all* upon the possible implications for Miss Z, an Irish infant national, if Mr E is removed from the familial scene in circumstances where Ms F clearly suffers from very poor mental ill-health. (Again in this regard the court would note the general point it made at para.5 above). Not without some hesitation in the face of Mr E's unimpressive criminal history – and it is perhaps fortunate for Mr E that this Court occasionally sits in family law cases and is keenly aware of how very important a child's home environment is for the lifelong psychological well-being of that child and so how important it is that matters be assessed thoroughly and correctly – the court has decided that in the very particular circumstances of this case it will quash the impugned decision for the various reasons stated herein and remit the matter to the Minister for fresh consideration.

APPENDIX A

‘Material’ and ‘Non-Material’ Errors

1. In public law cases, an error of law will be regarded as material unless the decision-maker must have reached the same conclusion without the error.
2. A technical error as to jurisdiction will not yield success in judicial review proceedings if there would not have been any change to the outcome absent that error. However, any judge would need to proceed carefully before concluding that a decisionmaker would have reached the same decision absent an error that had in fact transpired.
3. A decision may be quashed where there is a mistake of fact that is so material to the substantive analysis and considerations in the impugned decision as to vitiate its validity.
4. A decision may be quashed where there is a material error of fact that could be argued to raise an implication that there had been an actual misunderstanding or misconception on the part of the decisionmaker which vitiated his assessment of the claim and the evidence before him.
5. A decision will not be quashed where, despite the mistake of fact, it is clear from the body of an impugned decision that no mistake was made as to the details and substance of an application.
6. A distinction can be drawn between a typographical error and a factual error and between an error of fact and a material error of fact. Where what presents is a simple typographical error (or the like) the issue for the court is whether that simple error had a material effect on the outcome. This Court would respectfully add that sometimes even a simple typographical error can radically alter meaning, *e.g.*, (i) ‘The man is now here’, ‘The man is not here’; (ii) ‘The man is now here’, ‘The man is now there’.
7. A series of material factual errors can constitute an error of law.
8. Factual errors, if they are significant to the conclusion, can constitute errors of law.
9. All else being equal, factual error will not lead to a decision being quashed where (i) it is attributable to a ‘cut and paste’ style for standard paragraphs and/or a lack of care in proofreading, (ii) the error is not indicative of a lack

of understanding, and (iii) the decisionmaker was clearly aware of the true facts.

10. All else being equal, an error in a decision that (i) is more in the nature of a typographical error than a material error of fact and (ii) has not been shown to have had a material effect on the outcome of a case, will not yield a finding that the decision is unlawful.
11. Factual errors (including careless use of 'cut and paste') may be of little or no significance where the truth of matters is clearly taken into account and engaged with.
12. A decision may stand even where it contains factual error where (i) the truth of matters is clearly known to the decisionmaker (presumably from the face of his decision), and (ii) (a) there is nothing further to suggest any serious lack of care in considering the facts and evidence, and (b) the errors presenting do not indicate a 'cut and paste' approach.
13. Factual error attributable to 'cutting and pasting' need not fatally undermine the decision under review where it is clear that the truth of the claim was duly considered.
14. Reference to having taken non-existent evidence into account need not be fatal to a decision.
15. All else being equal, it need not be fatal to an administrative decision that administrative error occurs therein, if it is patently obvious that the decision concerns itself with the relevant facts, it is clear what decision the decisionmaker intended to reach, and the error is swiftly and honestly corrected.
16. Perfection of action is not a standard that the law demands of decisionmakers; the fair need not equate to the flawless.

APPENDIX B

Mr E's Criminal Record

(excluding one conviction previously quashed by the High Court)

YEAR	OFFENCE	COURT	CONVICTION DETAILS/PENALTY
2017	Road Traffic Act 1961. No insurance.	All	Fine €500.
2017	Road Traffic Act 1961. Failure to produce NCT certificate.	District Court	Fine €100.
2017	Road Traffic Act 1961. Unaccompanied learner driver.		Fine €100.
2017	Criminal Justice (Public Order) Act 1994. Threatening/abusive/insulting behaviour in a public place.		Imprisonment – suspended (1 month).
2013	Civil Registration Act 1994 offence.		Imprisonment – suspended (5 months).
2015	Road Traffic Act 2006. Holding a Mobile Phone While Driving.		Fine €60.
2015	Road Traffic Act. Failure to produce driving licence/learner permit.		Fine €150.
2015	Road Traffic Act. Driving Without Driving Licence.		Taken into consideration.
2015	Road Traffic Act. Failure to produce driving licence/learner permit within 10 days.		Taken into consideration.
2013	Road Traffic Act 1961. No insurance.		Fine €500.
2013	Road Traffic Act 1961. Failure to produce insurance certificate.		Taken into consideration.
2013	Road Traffic Act 1961. Driving without driving licence.		Taken into consideration.
2013	Road Traffic Act 1961. Failure to produce driving licence/learner permit.		Taken into consideration.
2013	Road Traffic Act 1961. Failure to produce driving licence/learner permit.		Taken into consideration.