

**THE HIGH COURT  
JUDICIAL REVIEW**

[2021] IEHC 634  
**RECORD NO. 2020/101JR**

**BETWEEN**

**AVSF**

**APPLICANT**

**-AND-**

**THE MINISTER FOR JUSTICE**

**RESPONDENT**

**JUDGMENT of Ms. Justice Tara Burns delivered on 6 October 2021**

**General**

1. The Applicant is a Colombian national who entered the State on a student visa on 4 June 2012. His mother has been a lawful resident in the State since 2001. At the time of the hearing of this matter, she was awaiting a determination on her application for Irish citizenship.
2. The Applicant's permission to remain in the State has been renewed on a number of occasions. Most recently, he was granted permission to remain on Stamp 1 status valid until 25 November 2019. When he applied for Stamp 4 status (or alternatively Stamp 1 status without the need for a work permit), on the expiry of his previous permission, this was refused on 13 January 2020. A proposal to deport the Applicant was also notified to him.
3. Leave to apply by way of Judicial Review seeking an order of *Certiorari* of the decision of the Respondent refusing the Applicant's application for a change in his immigration status from Stamp 1 status to Stamp 4 status was granted by the High Court on 10 February 2020 on the grounds that the Respondent erred in law and in fact in finding that no relationship beyond normal emotional ties existed between the Applicant and his mother; failed to properly consider or have regard to the Applicant's private and family life rights; and failed to properly consider the Applicant's representations.

**The Applicant's Personal Circumstances**

4. The Applicant's mother left him in Columbia to come to work in Ireland when he was just 10 years of age. He was left in the care of his maternal grandmother and uncle. The Applicant was sexually abused by his uncle over many years. As with many sexual abuse victims, the Applicant did not disclose this abuse to anyone. He only informed his mother of it in April or May 2019.
5. The Applicant joined his mother when he was 21. He suffers from psychosis which was diagnosed when he was hospitalised suffering from hallucinations. A medical report from Dr. Paul Scully sets out the following:-

"[The Applicant] has been under the care of the psychiatric services in Dublin South City since he was admitted to the psychiatric ward in St. James' Hospital on 20 January 2016. At that point he was diagnosed with an episode of psychosis characterized by abnormal beliefs, paranoid delusions and hallucinations. He remained as an inpatient for four weeks but has done very well with medication,

psycho-education, supportive psychotherapy, Occupational Therapy and family therapy.

...

Over the past 3 years he has done very well from a mental health point of view, and he shows great insight into his previous episode and has been very motivated to prevent relapse. Relapse prevention is crucial to his overall wellbeing and health, and this requires ongoing medication, psychosocial support and other interventions as necessary. He requires ongoing management under my supervision over at least the medium term (at least a number of years) and possibly indefinitely."

6. In March 2019, the Applicant successfully completed a degree in Business Studies from Griffith College and graduated in November 2019. He has not secured employment and is dependent on his mother financially.
7. The Applicant has no remaining family in Columbia except for his uncle who sexually abused him, and an aunt. Neither does he have any social connections or support.

**The Applicant's Permission to Enter and Remain Within the Jurisdiction**

8. The Applicant was permitted to enter this jurisdiction on a student visa. Guidelines relating to student visas stipulate that:-

"The maximum time a student may stay in Ireland for the purpose of attending courses at degree level is limited to seven years and students are responsible for managing their studies to ensure compliance with this time limit."

9. On 15 April 2019, the Respondent granted the Applicant permission to remain on Stamp 1G conditions, as an exceptional measure until 19 June 2019, this being the expiry of seven years since his initial entry to Ireland. The correspondence to the Applicant notifying him of this extension stated:-

"Please note that as you have reached 7 years, no further permission on student conditions will issue..."

10. A further request was made of the Respondent on 18 June 2019 seeking permission for the Applicant to remain in the jurisdiction on Stamp 4 conditions, or Stamp 1 conditions without the need for a work permit, or an extension of his Stamp 1G to enable the Applicant to secure employment. On 25 July 2019, the Respondent granted the Applicant permission to remain, as an exceptional measure, on Stamp 1 conditions for four months to enable the Applicant acquire a work permit. The correspondence to the Applicant notifying him of this decision stated:-

"Please note that further permission will only issue in your individual case on production of a work permit..."

11. The Applicant did not gain employment in that four month period and sought a further extension of his permission to remain in this jurisdiction which was refused. This is the decision under review.

**Decision of Respondent**

12. Relevant portions of the Respondent's decision refusing the Applicant a further grant of permission, read as follows:-

"This correspondence also states that you were diagnosed with an episode of psychosis characterized by abnormal beliefs, paranoid delusions and hallucinations..." in 2016 and that you would not receive the same level of care in Columbia. However, a letter from Dr. Paul Scully states, inter alia, "Over the past 3 years he has done very well from a mental health point of view, and he shows great insight into his previous episode and has been very motivated to prevent relapse...". However, I have examined the World Health Organisation (WHO) report on Columbia and it demonstrates that there is a functioning Health service in Columbia...

This correspondence further stated that you were sexually abused as a child by your uncle in Columbia when your mother left to come to Ireland, that there is a high level of crime and violence in Columbia and that returning to Columbia would be very distressing and traumatic for you. It should be noted that the International Protection Office (IPO) deal with cases where a person feels fear of returning to their country of origin. Having examined your particular case, no application has been made to the IPO.

You state that your mother has resided in this State since 2001 and that she left you at the age of 10 living in your country of origin with your grandmother and uncle until you applied to enter Ireland in your own right as a non-EEA national student in 2012 at the age of 21. You have resided in your country of origin without the care and company of your mother for at least 11 years. You are now 28 years of age and it is therefore not accepted that a family life exists between you, as an adult child, and your surviving parent beyond that which is of normal emotional ties."

13. With respect to Article 8 rights, the Respondent found that exceptional circumstances had not been established with respect to the Applicant's private life rights such as to engage Article 8 of the ECHR. She furthermore, found that family life rights pursuant to Article 8 of the ECHR had not been established as the relationship between the Applicant and his mother was no more than normal emotional ties.

14. The Respondent's conclusion reads as follows:-

"I have considered that you have achieved academic qualifications in the State. I have considered that you have engaged in employment in the State since you first registered in the State as a student. I have considered that you state that you

have made friends in the State, that you have volunteered, that you have worked with charities and that you have been involved in your local community. I have considered that you state that you have no connections in Columbia and that you want to continue to reside and work in Ireland. I have considered that you state you were sexually abused as a child by your uncle. I have considered that you were "diagnosed with an episode of psychosis characterized by abnormal beliefs, paranoid delusions and hallucinations..." in 2016... I have considered that upon examining the WHO report on Columbia that it demonstrates that there is a functioning Health service in Columbia. I have considered that you have resided with your mother since you arrived in the State. I have considered that you are in the State in excess of the 7 year time limit as stipulated in the Student Guidelines. I have considered the Student Guidelines provide a pathway to acquiring a work permit. I have considered that you have been granted permission on separate occasions by the Minister, as an exceptional measure, to enable you to acquire a work permit and that you have not done so. I have considered the fact that thousands of non-EEA nationals arrive in Ireland every year and follow the student guidelines and the consequences of granting a permission to you outside of the guidelines and the impact this may have on the operation of those guidelines.

Having weighed and considered all the information and documentation in your particular case as set out above, I am of the opinion that the interest of public policy and the common good in maintaining the integrity of the immigration system outweigh such features of the case as might tend to support a permission to remain in the State being granted. Having considered all rights in this case, the Minister is satisfied that in reaching this conclusion, no breach of rights arise."

#### **Private and Family Life**

15. Article 8(1) of the European Convention on Human Rights states:-

"Everyone has the right to respect for his private and family life, his home and his correspondence."

16. This Court has recently considered the jurisprudence of the Irish Courts with respect to the engagement of Article 8 rights in relation to a person who is a non-settled migrant or who has a precarious existence within the State in *MK v. Minister for Justice and Equality* [2021] IEHC 275. Having considered *CI v. Minister for Justice* [2015] 3 IR 385; *P.O. & Anor v Minister for Justice and Equality & Ors* [2015] 3 IR 164; *Rughnoona v The Minister for Justice and Equality* [2018] IECA 392 and *S.A. (South Africa) v The Minister for Justice* [2020] IEHC 571, I concluded at paragraph 27 of my judgment that:-

"[T]he jurisprudence of the Irish Courts is extremely well settled to the effect that a migrant with a non-settled or precarious residential status cannot assert Article 8 rights unless exceptional circumstances arise."

17. The Applicant does not demur from this statement of the law. However, it is argued on his behalf that the determination of the Respondent that there was "no evidence to

suggest that the relationship between himself and his mother extended beyond normal emotional ties" evidences a failure to properly consider his representations, and that exceptional circumstances arise for him with respect to his family and private life rights.

### **Family Life**

18. The Respondent's determination that the relationship between the Applicant and his mother is no more than normal emotional ties is difficult to fathom. It fails to comprehend the most basic nurturing instinct a parent has for her child. It also fails to understand the effect that sexual abuse has on an abused individual.
19. As a result of the Applicant's mother leaving him in Columbia at the tender age of 10, he was subjected to vile abuse at the hands of the man whom she left him in the care of. The Applicant's mother speaks of her guilt in her letter to the Respondent, which is completely understandable. The Applicant speaks of not wanting to burden his mother with disclosure of the abuse in light of their financial circumstances. Instead, he endured years of abuse from an alcoholic domineering relative. The particular factual matrix underlying this mother and son's relationship is far more than normal emotional ties. Clearly, the Respondent has failed to properly consider their relationship and the horrific and sorrowful events which have tied them together.

### **Private Life**

20. When determining whether private life rights are engaged, the Respondent is required to assess the effect of removal from this jurisdiction on an applicant. In *CI v. Minister for Justice and Equality* [2015] 3 IR 385, Ms. Justice Finlay Geoghegan stated at paragraph 42 of her judgment:-

"It appears to me that in relation to interference with a right to respect for private life it follows that in order to engage Article 8 the gravity of the consequences for an illegal immigrant or for his physical or moral integrity must be above the normal consequences of the impact on an individual and his physical and moral integrity of enforcement of immigration law, including deportation."

21. The Respondent has failed to consider the effect on the Applicant of returning him to Columbia, having regard to his very particular circumstances. She has considered the various strands of the Applicant's representations on a standalone basis, but has failed to tie those strands together to consider the effect on him of return. The Applicant is not only a person who has suffered sexual abuse in the particular situation arising. He also suffers a very significant mental health issue requiring, as set out by Dr. Paul Scully, "ongoing management... over at least the medium term (at least a number of years) and possibly indefinitely."
22. The circumstances arising in this matter can truly be described as exceptional. This is not a situation where social ties are developed at a time when an individual's standing in this State is precarious and hence cannot be relied upon. Rather, having endured years of sexual abuse, the Applicant has been reunited with his mother, has disclosed the sexual abuse by her relative on him, and is now managing significant mental health difficulties requiring familial support.

23. The Court finds no attraction in the argument that the issues raised in this case should await ventilation through the deportation process. Very regularly, the Court is presented with an argument on behalf of the Respondent that because an applicant has failed to challenge a decision at an earlier stage, they are now debarred from so doing. In light of *Luximon v. Minister for Justice* [2018] 2 IR 542, there is an onus on the Respondent to consider whether Article 8 rights were capable of being engaged in an application of this nature. In light of that onus, there is an obligation on the Respondent to properly consider same. The Court fails to see how a different outcome could emerge for the Applicant through the deportation process if the Respondent adopted a consistent approach.

**Conclusion**

24. Accordingly, I am of view that the Respondent erred in her determination that family life within the meaning of Article 8 ECHR had not been established and erred in her consideration of the Applicant's private life rights.
25. I therefore will grant the Applicant the relief sought at paragraph 4(a) of the Statement Grounding Application for Judicial Review and remit this matter to the Respondent to conduct a proportionality assessment with respect to his engaged Article 8 rights pursuant to Article 8(2) of the ECHR. I will further make an order for the Applicant's costs as against the Respondent to be adjudicated upon in default of agreement.