

**THE HIGH COURT
JUDICIAL REVIEW**

[2022] IEHC 413
[Record No. 2020/776JR]

BETWEEN

M

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Ms. Justice Miriam O'Regan delivered on the 1st day of July, 2022

Issues

1. In these proceedings the applicant is seeking to quash the Deportation Order made against him bearing date 16 September 2020 and communicated to him on 30 September 2020.
2. The applicant's statement of claim is dated 27 October 2020 and in it he complains that the respondent erred in the consideration given to the applicant's employment prospects under s.3(6)(f) of the Immigration Act 1999 as amended.
3. In this regard it is suggested that the respondent applied an incorrect test to the analysis by considering whether the applicant had prior permission rather than considering his actual employment prospects if permission to remain was granted.
4. Further it is asserted an error occurred by reason of a failure to reach any conclusion on the applicant's employment prospects.
5. The applicant also complained in the statement of grounds as to the assessment of his private rights, however, this ground was not pursued.
6. Finally, the applicant complains that the respondent failed to provide adequate reasons for the final conclusions reached, and/or failed to conduct a sufficiently clear and reasoned analysis of the actual factors which were being weighed in this regard.

Background

7. The applicant is a Pakistani national born on [X] June 1982. He arrived in the State on 13 August 2011 and made an application for asylum on 16 August 2011. This application was refused on 17 November 2011 and was appealed by the applicant. However, the applicant failed to attend an oral hearing and failed to provide an explanation. The appeal was therefore deemed abandoned.
8. On [X] March 2012 the applicant married a Latvian national and in his submissions of 20 December 2018 to the Minister the applicant stated that he resided with his wife in the State from 2011 to 2016. On 8 October 2012 the applicant was granted residence under the European Communities (Free Movement of Persons) Regulations 2006 and 2008, and

Directive 2004/38/EC (whereby the spouse of an EU national exercising her EU Treaty rights in the State would be entitled to residence permission) which was valid until 28 September 2017.

9. The applicant made an application for permission on the basis of his asserted subsisting marriage as aforesaid on 3 October 2017 following which he was afforded temporary permission and was subsequently refused this permission on 10 July 2018 on the basis that his marriage was deemed to be one of convenience. A review was sought but was unsuccessful and subsequently the applicant was advised on 6 December 2018 of the Minister's proposal to make a Deportation Order.
10. The applicant worked as a sales assistant from 2012 to 2014 and thereafter set up his own business of a grocery shop which closed in May 2015. He subsequently opened a takeaway business. In the takeaway business the applicant employed two to three people on an ongoing basis. In an affidavit of the applicant of 26 April 2022 the applicant stated that he was forced to close the business in April 2021 because of the Deportation Order.

The impugned decision

11. In the applicant's submissions, through his solicitor, of 20 December 2018, the applicant set out the background aforesaid as it then was insofar as his employment prospects are concerned and he indicated that:

"Should he be deported, his business in particular may fail and the State will lose the revenue generated from it and the employment created by this business."

12. The submissions also dealt with the applicant's character, humanitarian considerations, his private and work life, together with the other matters mentioned in s.3(6) of the 1999 Act. It is suggested that the granting of the application would be wholly consistent with the common good as the applicant would be in a position to continue to provide the valuable service that his business provides. It is asserted that he makes a significant contribution to the national economy.
13. In the letter of 12 August 2020 accompanying the Deportation Order aforesaid it is indicated that all facts arising as outlined in the attached submission were considered. The conclusion was reached that 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 which might tend to support a decision not to make a Deportation Order in respect of the applicant.
14. In the examination of file of 13 March 2020 which was also furnished to the applicant with the Deportation Order the provisions of s.3(6) of the 1999 Act were addressed. The examination proceeded to address each of the subparagraphs of s.3(6) in sequence and in the final sentence of the matters contained under sub. (e), relating to the employment record of the relevant person, it is recorded that the applicant states that should he be deported "his business may fail and the State will lose the revenue generated from it and the employment created by it."

15. Thereafter under the heading of sub. (f) it is stated:

"[M] is currently working in the State in his take-away business, [X] and [X]. However, [M] does not have the permission of the Minister to reside or work in the State at this time and there is no obligation on the Minister to grant him permission to remain in the State in order to facilitate his employment/self-employment in this State."

16. Under the heading of sub. (i) it is stated that all representations received in response to the proposal to make a Deportation Order in relation to the applicant, together with all documents and information received in support of the applicant's case, had been read and fully considered.

17. Under the heading of sub. (j) it is recorded that the applicant states that granting him permission to remain in the State would be consistent with the common good insofar as he could continue to provide the valuable service that his business provides.

Employment prospects

18. Insofar as the applicant's employment prospects are concerned the complaint by the applicant is to the effect that reference to the applicant not having permission to work or reside in the State, and the Minister not being obliged to grant such permission, under the heading relating to prospects of employment, indicates that the Minister incorrectly negatively evaluated the applicant's future employment prospects.

19. This is identical to the complaint made by the applicant in *Talukder v. Minister for Justice* [2021] IEHC 835 being a judgment of Ms. Justice Hyland of 21 December 2021. At para. 18 of that judgment Hyland J. noted the argument made, and in or about a consideration of such argument referenced two judgments of Burns J. namely *MAH v. Minister for Justice* [2021] IEHC 302 and *ANA v. Minister for Justice* [2021] IEHC 589.

20. It is common case that Hyland J.'s judgment was consistent with Burns J.'s judgment in *MAH*. In both *Talukder* and *MAH* the respondent's consideration of the relevant applicant's file under the heading of employment prospects included reference to the applicant not having permission of the Minister to reside and work in the State at the relevant time and there being no obligation on the Minister to grant permission.

21. In *MAH* a further comment was made under the heading of employment prospects, namely that it would be open to a prospective employer to apply for a work permit in respect of the applicant from outside the State, with the process under s.3 of the 1999 Act not being the means by which Ireland's labour market should be met. In *MAH* Burns J. stated that it was inappropriate to have regard to the fact that the applicant did not hold a work visa or permission to remain under the sub-heading of employment prospects.

22. Hyland J. quoted from *MAH* to the effect that there was a mandatory onus on the respondent to consider certain issues. However, while the respondent did consider the applicant's employment prospects in *MAH*, Burns J. held at para. 28 that:

"...she reversed the clearly positive outcome in respect of that heading by having regard to the fact that the Applicant does not hold a work visa in respect of such employment prospects, nor has permission to remain in the State."

23. Hyland J. was satisfied that these are inappropriate matters to have regard to under this sub-heading.
24. In the decision of Burns J. in ANA of 15 September 2021, notwithstanding that there was similar reference to a lack of permission to reside or work in the State, and a lack of obligation on the Minister to grant him permission to remain to facilitate work, Burns J. was satisfied that the respondent clearly considered the fact that the applicant had a job offer. Insofar as reference was made under this heading to a lack of permission to reside and work, it was indicated that that was a not a misstatement of fact or law by the respondent or something which the respondent should not take into consideration, nor did such reference negatively impact the job offer which the applicant had.
25. At para. 14 Burns J. in ANA indicated that in MAH the respondent held that the applicant had reasonable work prospects, however, relied on the fact that the applicant did not have permission to remain or have a work visa to nullify the finding that the work prospects were reasonable. At para. 15 it was indicated that the error which arose in MAH did not occur in ANA and the lack of permission to remain was not utilised to make a determination that the applicant does not have reasonable work prospects.
26. In dealing with the decision of ANA Hyland J. at para. 22 of her judgment indicated that the applicant in ANA had a less impressive employment history and prospects than the applicant before Hyland J.
27. At para. 29 Hyland J. was satisfied that the obligation of the Minister to have regard to the matters identified in s.3(6) of the 1999 Act is not synonymous with placing an obligation on the Minister to carry out an individual analysis and conclusion in respect of each of the eleven statutory guidelines. Hyland J. rejected the applicant's argument that the Minister was under an obligation to arrive at a discreet conclusion in respect of the employment prospects of the applicant.
28. At para. 30 Hyland J. indicated concern that reference to the applicant's inability to work in the State meant that the Minister was in fact treating the statutory criteria incorrectly.
29. At para. 32 Hyland J. stated that the statutory criteria require consideration to be given to the employment prospects of the person. At para. 33 she stated that:

"Identifying the lack of permission to work/remain as a counterweight to employment history or prospects has the effect of wholly undermining the statutory criteria identified under s.3(6)(f)."
30. In para. 34 Hyland J. held that the consideration of a person's employment prospects must be exercised without reference to the lack of permission to work and reside in the State and relied on MAH at para. 29 where Burns J. observed that the issues are separate (vis-à-vis lack of permission to reside or work) to the applicant's employment prospects

and should not be used in a compartmentalised determination regarding the employment prospects simpliciter. Hyland J. was satisfied that reading MAH as a whole it indicated that permission to work/reside should not be taken into account when considering s.3(6)(f), and Hyland J. went on to indicate that by including the word "however" that:

"The practical effect of the Minister taking the lack of permission into consideration at this stage was to negate the applicant's positive work record and prospects in this case" (para.35).

31. As to the decision in ANA Hyland J. stated at para. 37 that each case turns on its own facts and also referenced the fact that the applicant's work record in ANA was significantly weaker than in the case before Burns J. in MAH, and "that may have been a relevant issue in the consideration of the Court." Hyland J. concluded that the inclusion of the impugned paragraph was in fact utilised to determine that the applicant did not have reasonable work prospects, and as such, made it impossible for any appropriate weight to be given to that statutory factor.
32. The respondent refers to the suggestion at para. 37 of Hyland J.'s judgment that the applicant's significantly weaker work record in ANA was a relevant issue in the consideration of the Court in ANA. The respondent argues that if the judgment of Burns J. of 30 September 2021 in Huang v. Minister for Justice [2021] IEHC 630 had been brought to the attention of Hyland J. before her judgment in Talukder it would have been clear that a significantly weaker work record was not in fact the basis for the differential between the decision in MAH and ANA.
33. The facts in Huang are particularly similar to the instant circumstances and the circumstances in Talukder. In Huang the applicant was the director of a company and the owner of two Chinese restaurants. He had worked in Ireland in the restaurant since his arrival in 2007. In that matter under the heading of employment prospects in the examination of file, the fact that he was a head chef in the business which he ran and was also the director of the company which owned the business was noted. Thereafter a statement was included to the effect that there was a lack of permission to reside or work and the Minister was not under an obligation to grant such permission.
34. At para. 11 (Huang) Burns J. was satisfied that these statements did not comprise an error in approach by the respondent once the applicant's employment prospects are not nullified by these considerations, which error was said not to have occurred. It was indicated that the respondent's primary focus was that the applicant had engaged in this activity without permission for such a significant period of time. The relief sought in Huang was refused whereas the relief sought in Talukder was granted notwithstanding the similarities aforesaid.
35. The respondent argues that Talukder should not be followed for two reasons namely:
 - (1) Talukder relied on the preceding reasoning in MAH to support its decision notwithstanding that Burns J. did not rely on or follow MAH in ANA or Huang; and,

(2) regard was not had to existing jurisprudence on the feature of the obligation of the Minister in his assessment under s.3(6) of the 1999 Act.

36. In regard to sub. (2) above the respondent relies on the following jurisprudence:

(a) In *Kouaype v. Minister for Justice & Ors.* [2005] IEHC 380 Clarke J. in a consideration of s.3(6) identified at para. 4.16:

“It is clear from the above authorities that the only obligation that arises in those circumstances is to afford the person concerned an opportunity to make submissions and, provided that the submissions are made in accordance with the Act, to consider them or, if no submissions be made, to consider the matters set out in s.3(6) ‘so far as they appear or are known to the Minister’”.

Clarke J. was also satisfied that the weighing of the various matters under the section in accordance with authorities is entirely a matter for the Minister – such an approach was echoed by Murray C.J. in *Meadows v Minister for Justice* [2010] IESC 3.

(b) In *BIS & Anor. v. Minister for Justice Equality and Law Reform* [2007] IEHC 398, Dunne J. in the High Court, in a discussion on an application to revoke a Deportation Order, expressed the view that it is necessary to consider the papers before the Minister overall and to consider in those circumstances whether it could be said that the Minister was aware of the family circumstances of the applicants (para.52).

(c) In *OST v. Minister for Justice & Ors.* [2008] IEHC 384 Hedigan J. was dealing with a number of matters including, inter alia, an application for leave to apply for judicial review in respect of the Minister’s Deportation Order against the applicant. At para. 14 it was noted that in the analysis of the applicant’s file only two subheadings of s.3(6) were expressly dealt with, and the applicant’s contention was to the effect that the Minister failed to consider the subsections not specifically dealt with. The respondent argued that account must be taken of the accompanying letter to the Deportation Order where it was expressly stated that the Minister had regard to the factors set out in s.3(6), and representations received. At para. 26 of his judgment Hedigan J. expressed the view that it was not incumbent on the Minister to refer to each and every matter that he had taken into consideration as this would encourage the adoption of a mechanistic approach comparable to the ritualistic ticking of boxes. Hedigan J. was satisfied:

“...the departmental analysis contains a fair and reasonable consideration of humanitarian and other factors set out in section 3(6); each of the representations made on behalf of the applicant was more than adequately considered.” (para. 26)

Leave was refused in that matter.

(d) In *APA v. Minister for Justice & Ors.* [2010] IEHC 297 Cooke J. indicated at para. 22 of his judgment that in order to establish an entitlement to an order of certiorari in respect of a Deportation Order:

“...it is necessary to demonstrate that the approach by which the conclusion has been reached on the part of the Minister and which has produced the disproportionate or unreasonable conclusion has been vitiated by one or more material defects in the approach to the analysis and appraisal such as, for example, some specific mistake whether of fact or law; some significant failure to consider a factor required to be taken into account; or an influential reliance placed upon some irrelevant consideration.”

(d) In *SO & OO & Ors. v. Minister for Justice* [2010] IEHC 343 Cooke J. was dealing with an admitted error in the assessment of the applicant’s file relative to a Deportation Order made against the applicant. However, the Court was satisfied that such error was not material to the family life rights of the applicant and therefore could be disregarded and the application for leave which was before Cooke J. was refused.

(e) In *Alawiye v. Minister for Justice* [2016] IEHC 673 one of the contentions on behalf of the applicant related to the form of words used by the Minister in respect of humanitarian considerations. The applicant complained that stating that such considerations were not of sufficient weight to outweigh the proposal to deport was insufficient. Humphreys J. was satisfied that the form of the decision is not one to be directed by the applicant and an assessment of humanitarian considerations is essentially an *ad misericordiam* process and no detailed reasons can be required. The manner the decision is phrased conveys sufficient reasons having regard to the essentially discretionary nature of the process under discussion.

(f) In *Azeem & Ors. v. Minister for Justice* [2018] IEHC 104, Humphreys J. at para. 8 referred to Clarke J.’s judgment in *Kouaype* which was:

“...to the effect that the exercise of the Minister’s discretion under s.3 of the Immigration Act 1999 is not reviewable by the courts unless there is evidence that he did not afford the person an opportunity to make representations, or did not consider the representations or the factors set out in s.3(6) of that Act...”.

(g) In *FZ v. Minister for Justice* [2019] IEHC 368 Humphreys J. in regard to an allegation of lack of proper or adequate determination stated at para. 11 that the decision states that the matters set out in the relevant section were considered, and there is therefore an onus on the applicant to show that this is not so, an onus which has not been discharged in that case. In this regard Humphreys J. relied on the decision of Hardiman J. in *GK v. Minister for Justice & Ors.* [2002] 2 IR 418. Insofar as it was complained that the respondent gave no adequate regard to the offer to the applicant of fulltime work in the State, or to his character references, the Court was satisfied that these matters manifestly were considered and the weight to be given to them is quintessentially a matter for the Minister.

An application was subsequently made by the applicant in that matter to appeal directly to the Supreme Court from the order of Humphreys J. which dismissed the proceedings, with the Supreme Court refusing such leave.

37. By reason of the foregoing, it is argued by the respondent in resisting the applicant's within application:

(1) If it was an error to include reference to non-existing right to reside or right to work and the fact that there is no obligation on the Minister to grant such a right under the consideration of the employment prospects of the applicant, same was a minor error and so should be disregarded in accordance with SO;

(2) The reference to the lack of permission and lack of obligation on the Minister comprises a statement of fact only rather than utilised to determine that the applicant did not have reasonable work prospects (Huang);

(3) The consideration of the matters in s.3(6) should be considered in the round and not compartmentalised (OST).

(4) Given the discretionary nature of the Minister's decision, once it was stated that the relevant factors were taken into account, it was for the applicant to show an inadequacy of reasons (GK and FZ).

38. In addition to the foregoing the respondent argues that it is entirely inaccurate to suggest that lack of existing work or residence permits has an impact on employment prospects, as the lack of permission to work or reside and lack of obligation on the Minister to grant such permission refers to past facts, and therefore could not involve a negative evaluation of future employment prospects.

39. The applicant relies on the decision of Barrett J. in *Y v. Minister for Justice* [2021] IEHC 82 where it is said that Barrett J. clarified a distinction between GK and *Mallak v. Minister for Justice* [2012] IESC 59. The applicant refers to para. 36 of the judgment where it was clarified that the issue is whether the significance or otherwise of the evidence that was put before the Court has been properly evaluated in the manner contemplated by Mallak. Barrett J. accepted that the Supreme Court decision in GK must be viewed in the context of the subsequent decision of Mallak to the effect that there may, and will be, instances in which the absence of a narrative discussion offends against the legal requirement to provide sufficient information to an affected person on which to later construct a judicial review application. No reasons were offered and this was considered unsatisfactory. The respondent noted that this argument arose in the context of a claim by the applicant that he would suffer treatment contrary to a non-refoulement requirement.

40. The respondent argues that this is an entirely different matter to employment prospects, or indeed humanitarian considerations. In *Y* the applicant had furnished new information to the Minister on the point of non-refoulement, however, the decision was silent as to its impact.

41. The applicant suggests that the respondent's characterisation of the comments of Barrett J. are misplaced as at para. 42 of his judgment Barrett J. states that GK must be viewed in the light of the legal principles identified in Mallak, and he made such comments under the heading of humanitarian considerations.

42. In *Lin v. Minister for Justice* [2017] IEHC 745 Humphreys J. found an error in the consideration of employment prospects of the applicant made by the respondent. In that regard the employment prospects were considered as potentially competing with Irish jobseekers, whereas in fact Mr. Lin would not be so competing if he had his own business. Humphreys J. commented:

"Errors in relation to employment prospects might not necessarily be fatal in every case but come into focus where the employment issue is central to the decision..."

43. The respondent relies on *A, S & Ors. v. Minister for Justice* [2020] IESC 70 a decision of Charleton J. in the Supreme Court, 8 December 2020, wherein he quoted Halsbury's Laws of England to the effect:

"Where there are conflicting decisions of courts of co-ordinate jurisdiction the later decision is to be preferred if reached after full consideration of earlier decisions."

44. In this regard the respondent points to the fact that the earlier decisions such as that of Hedigan J. in *OST* were not considered by Hyland J., nor was the Huang decision of Burns J. considered.

* * * * *

45. It is correct to say that para. 42 did come under the heading of humanitarian considerations, however, it is clear that the issue being addressed by the Court was effectively a refoulement issue as under the same heading of humanitarian considerations it was noted at para. 30 that the country of origin information confirmed that if the applicant was indeed a member of a particular religious sect then he would run the risk of persecution or serious harm from state forces.

46. At para. 31, still under the humanitarian considerations heading, it was noted that the relevant membership card was just to hand and not previously considered. The Court was concerned that there had never been a proper evaluation of these novel factors (the membership and other cards recently produced).

47. I am satisfied therefore that in substance Barrett J. was dealing with a refoulement issue.

48. Employment prospects cannot be considered as comparable to the issue of a potential return to a country where the party would face a risk of persecution or serious harm from state forces.

49. Insofar as the asserted error in respect of the paragraph on the applicant's employment prospects by reason of including the statement to the effect that the applicant did not

have a right to reside or work, and the Minister was under no obligation to afford such permission, I am satisfied:

- (1) As in ANA and Huang the reference to lack of permission and lack of obligation to provide such permission comprised a statement of fact only and did not have the effect of a negative evaluation of the prospects for future employment of the applicant;
- (2) if it was an error to include the matters of fact aforesaid within the employment prospect paragraph, same was a minor error in the circumstances of this case and does not comprise a basis for condemning the Deportation Order (SO);
- (3) it is necessary to consider the entirety of the evaluation in the round and it is not appropriate to compartmentalise various matters involved in the consideration by the Minister (Hedigan J. in OST).
- (4) The prospect of employment of the applicant was not in my view central to the issue before the Minister (Lin).

50. By reason of the foregoing, it appears to me that the Deportation Order should not be condemned because of the inclusion of the lack of current permission to reside or work and lack of obligation on the Minister to provide such permission, within the paragraph of employment prospects. Rather in accordance with ANA and Huang such observation did not have a negative evaluation on the applicant's employment prospects. As was stated by Hyland J. each case turns on its own facts.

Reasons

51. Insofar as reasons are concerned, in Mallak it was held that the reasons must enable the person to understand the decision to ascertain if there are grounds for appeal.
52. The decision has to be considered in the context of the Minister's discretion.
53. In the letter accompanying the Deportation Order it was indicated that all matters were taken into account. The Minister indicated that:

"It is concluded that the interests of public policy and the common good in maintaining the integrity of the asylum and immigration system outweighs such features of this case which might tend to support a decision not to make a Deportation Order in respect of Mr. [M]."

* * * * *

54. In the events therefore I am satisfied that the applicant was informed in broad terms as to the reasons for the decision to make the Deportation Order, and accordingly the applicant has not established any unlawfulness in the Minister's decision under the heading of reasons.

Discretion

55. In PF v. International Protection Appeals Tribunal [2020] IECA 357 the Court of Appeal considered the exercise of the Court's discretion in refusing judicial review relief based on conduct. In this regard the applicant points out that the comments of the Court of Appeal

were obiter, which indeed they were, however, in my view that is of no avail to the applicant as the comments were in keeping with the decision of McKechnie J. in the Supreme Court in PNS v. Minister for Justice [2020] IESC 11. In the latter case McKechnie J. identified four matters relevant to the exercise of a discretion namely that the conduct had to be:

- (a) such as would amount to abuse;
- (b) serious and flagrant;
- (c) deliberately engaged in; and,
- (d) the applicant had to have shown a clear disregard for the asylum system.

56. In PF the Court of Appeal indicated that it would have exercised its discretion to refuse the relief in respect of what it had identified as four incidences of abuse of conduct where three of same were external to the judicial review proceedings. In indicating the basis why the Court of Appeal would exercise its discretion against the applicant the Court felt that it could not ignore the applicant's wrongful conduct because:

- (1) The breach by the appellant of the law was the very action which gave rise to the need for the proceedings in the first place; and,
- (2) the appellant had failed to provide a full and candid explanation of the circumstances in which they so conducted themselves.

57. In reliance on this decision the respondent argues that the applicant's conduct is within the relevant matters identified by McKechnie J. and is further within the realm of the additional factors identified by the Court of Appeal.

* * * * *

58. In the event that I am incorrect in my conclusion that the applicant is not entitled to an order of certiorari, nevertheless, I would refuse relief on discretionary grounds on the basis of the following:

(1) I am satisfied that the case of MKFS & Ors. v. Minister for Justice [2018] IEHC 103, McKechnie J. in the Supreme Court on the 24 July 2020 is not authority for the proposition that the Court will not take a marriage of convenience into account in a discretionary assessment. McKechnie J. stated the High Court Judge had erred in stating that if the marriage is held to be one of a marriage of convenience then it is a nullity for all times, and further the High Court Judge erred in concluding that because it was a marriage of convenience no family/private rights arise or require consideration. It was because of those errors of principle that McKechnie J. expressed himself reluctant to disentitle the appellants to reliefs sought on a discretionary basis.

(2) The following conduct does in my view come within the test identified initially by McKechnie J. in PNS and subsequently developed by the Court of Appeal in PF:

- (a) Entering into a marriage of convenience for the purposes of circumventing the procedures and provisions of the asylum and immigration system;
- (b) applying for a resident's card in 2017 on the basis that he was still residing with the Union citizen, whereas in his application to the Minister in respect of the Deportation Order the applicant has identified that he resided with the Union citizen from 2011 to 2016, and indeed the letter of 2018 from the Union citizen confirms this fact;
- (c) in his application to the Minister vis-à-vis the within Deportation Order the applicant effectively advised the Minister he could not be returned to Pakistan on the basis of fear of persecution or serious harm thereby raising the principles of prohibition against refoulement, whereas the applicant voluntarily returned to Pakistan in November 2021 and continues to reside there;
- (d) the applicant has filed a supplementary affidavit as late as April 2022, however, has not provided a full and candid explanation of the discrepancy identified at para (c);
- (e) the marriage of convenience was the basis of the Ministers proposal to deport and therefore the action giving rise to these proceedings; and,
- (f) the matters referred to at paras (a), (b) and (c) amount to an abuse, are serious and flagrant, were deliberately engaged in and comprise a clear disregard for the asylum and immigration system.

Conclusion

59. In the circumstances the relief claimed by the applicant is refused.

Costs

60. As to the issue of costs, I propose to list these proceedings for mention on 28 July 2022 at 11am. Should the parties wish to make written submissions on costs, submissions should be filed in hard copy in the High Court List Room and in soft copy by email to the High Court Submissions Inbox (highcourtsubmissions@courts.ie) by no later than 21 July 2022.