THE HIGH COURT

[2022] IEHC 439

RECORD NO. 2019/773/JR

BETWEEN

MOHAMMAD KHAYRUL ALAM

- and -

RALUCA LETITIA MIHAI

APPLICANTS

- and -

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Ms. Justice Niamh Hyland delivered on 6 July 2022

Introduction

1. The applicants challenge a decision of the respondent of 9 October 2018 revoking the first applicant's permission to remain in the State, a review upholding that decision on 6 March 2019 and a subsequent deportation Order made by the respondent on 26 August 2019. They seek an extension of time to challenge the first two decisions identified above, Orders of *certiorari* quashing all three decisions and various ancillary Orders and declarations.
2. I have concluded that the application in relation to the decision to revoke the first applicant's permission to remain is out of time and that there is no basis upon which to extend time.

3. Insofar as the deportation Order is challenged, the applicants have failed to identify any grounds that go the reasonableness of the Minister's decision as opposed to the merits, and, in the circumstances, they are not entitled to relief in that respect either.

Facts

4. The first named applicant is a Bangladeshi national who travelled to the UK from Bangladesh in 2007 on a student visa. He avers that he came to the State in the winter of 2013. He applied for international protection on 28 August 2014. The second named applicant is a Romanian citizen who avers in her affidavit of 7 January of 2020 that she too came to Ireland in the winter of 2013. Both applicants aver that they met for the first time in a restaurant in January 2014.

5. The applicants lodged their notice of intention to marry on 28 May 2014. They got married in Tullamore, County Offaly on 12 September 2014. In his asylum application the first applicant completed a questionnaire on 4 September 2014 just four days before his marriage. He ticked the box indicating that he was single. Two days after the marriage, on 14 September 2014, the first applicant completed an EU1 form and submitted his application to be treated as a qualifying family member of his EU citizen spouse on 1 October 2014. He was informed on 15 October 2014 that he could obtain a temporary permission to remain while his application was pending. He withdrew his asylum claim on 30 December 2014.

6. The first applicant's application for a residence card was initially refused as the purported employer of the second applicant had ceased trading. He sought a review of the first instance decision on 31 March 2015. On 7 October 2015 his review was successful in light of updated documentation and a claim that the second applicant had a new employer. He was granted a residence card for five years. The respondent later learnt that the applicant's marriage ended in August 2016 and that the second applicant was no longer exercising her EU treaty rights in the State. Despite being under an

obligation to do so, the first applicant did not disclose this change of circumstance to the respondent at the relevant time.

7. Ian Murphy, an officer in the EU Treaty Rights Division of the Department of Justice and Equality, avers in his affidavit of 12 February 2020 at paragraph 7 that the first applicant's case was examined as part of Operation Vantage. The purpose of same is to investigate whether certain marriages are genuine or whether they are marriages of convenience. The limited employment records of the second applicant, the authenticity of the documents relied upon and the accelerated nature of the marriage to the second applicant raised concerns that an abuse of rights and fraud had occurred. Information available to the respondent indicated that the PPS number provided for the second applicant and recorded on her payslips did not exist. It also became clear that the second applicant had ceased employment shortly after the first applicant obtained his residence card.

8. On 1 September 2018, the first applicant received a letter setting out the respondent's concerns in relation to the first applicant's residence card under the European Communities (Free Movement of Persons) Regulations 2015 ("the free movement regulations") and gave him 21 days to respond. The concerns included the following;

> *"Information available to the Minister via the Department of Employment Affairs & Social Protection indicates that the PPS number ... which you provided on payslips, and on both the EU1 & EU4 application forms does not exist, and relates to no Department of Employment Affairs & Social Protection customer. It is, therefore, evident that information and documentation which you provided as part of your application was false and misleading as to a material fact.*

In addition, information available to the Minister indicates that Raluca Letitia Miahi has a limited record of employment in the State. Raluca Letitia Miahi worked for 19 weeks during 2014, 48 weeks during 2015, and for only 8 weeks during 2016. There is no record of any employment thereafter. In addition, Ralluca Letitia Miahi has not been in receipt of any State benefits. It is, therefore, evident that Raluca Letitia Miahi has ceased exercising her rights in the State, in accordance with Regulation 6(3) of the Regulations.

Considering also that your application for a Residence Card was approved on 07/10/2015, it is apparent that your EU citizen spouse, Raluca Letitia Miahi, ceased employment within a short period following you registering for this immigration permission. It is noted that you failed to inform the Minister of this significant change of circumstances, despite the obligation for you to do so, in accordance with Regulation 11(2) of the Regulations. This is indicative of a contrived activity, with your EU citizen spouse working for the duration of your application and ceasing employment soon after its approval, therefore facilitating you in obtaining an immigration permission."

9. In addition to these concerns it was identified that the first applicant applied for asylum on 27 August 2014 and got married on 12 September 2014, some two weeks later. In circumstances where that application recorded a number of relatives including the first applicants' mother, father, brother and sister, it was noted that the failure to record his imminent marriage lead "*to significant credibility concerns surrounding the relationship between you and Raluca Letitia Miahi*".
10. The letter then went on to note that Ms. Miahi obtained her PPS number on 25 November 2013. In circumstances where a notification of intention to marry must be submitted three months prior to a marriage, they point out that the first applicant must

have made such a notification at the latest on 12 June 2014, some seven months after the second applicant obtained her PPS number. In conjunction with the other factors previously outlined this accelerated timeline was identified as a cause for concern with respect to their relationship. It was ultimately concluded that the respondent believed the applicant had provided false and misleading material and had entered a marriage of convenience and indicated that if confirmed, this would result in the revocation of his residence card.

11. The original solicitors for the applicant wrote to the respondent on 27 September 2018 seeking an extension of time in which to make representations. On 1 October 2018 the respondent indicated that the decision would be made on the content of the file. The first applicant appears to have written a letter of 17 September 2018 containing representations to the respondent, but the first applicant's original solicitor did not forward this to the respondent until 14 October 2018.

Decision of 9 October 2018

12. The respondent issued her first instance decision to the first applicant on 9 October 2018 informing him that his permission had been revoked on the basis that he had submitted information and documentation as part of his application which was false and misleading and that he had entered a marriage of convenience, essentially affirming a summarised version of the concerns outlined in the letter of 1 September.

13. A review pursuant to Regulation 25 of the free movement regulations was sought on 30 October 2018 which included the representations submitted by the first applicant dated 17 September 2018 but not provided until 14 October 2018. The first applicant claimed the respondent had made a mistake as regards the PPS number and he gave a different PPS number to the one that had been provided in the original forms and payslips. The first applicant claimed that the PPS number on the payslips was that of

the second applicant's employer. He claimed that the marriage was a genuine one but that his wife (as she was at the time) left the family home in August 2016 and left the State around February 2017.

Decision of 6 March 2019

14. By letter dated 6 March 2019 the decision to revoke his residence card was upheld. The respondent was fully satisfied that the original PPS number submitted was not the employer's PPS as was claimed by the first applicant. There was no doubt in the respondent's view that the payslips recorded a PPS number for the second applicant which turned out not to exist. The respondent was also satisfied that the first applicant had entered into a marriage of convenience to obtain for himself an immigration advantage which he would not otherwise have been entitled to. The decision to revoke the residence card was made in accordance with Regulations 27 and 28 of the 2015 Regulations and Article 35 of the Citizens' Rights Directive 2004/38/EC and the first applicant's permission to be in the State was withdrawn.

15. The first applicant was also served with a notification on 6 March 2019 pursuant to s.3 of the Immigration Act 1999 of the respondent's proposal to deport and representations were invited. The first applicant did not submit any s.3 representations. An "*Examination of File*" was prepared on 12 August 2019 and approved by the Director General on 23 August 2019.

16. The deportation Order was signed on 26 August 2019 and the applicant was notified of same by letter dated 2 October 2019.

Procedural History

	9 October 2018 (first instance Decision revoking EU residence card) 6 March 2019 (Decision revoking EU residence card) 6 March 2019 (Proposal to Deport) 26 August 2019 (Deportation Order) 2 October 2019 (Deportation Order provided to applicant)
Leave granted:	4 November 2019
First return date:	11 November 2019
Amended Statement of Grounds:	16 December 2019
Statement of Opposition:	13 February 2020
Amended Statement of Grounds:	17 June 2020
Amended Statement of Opposition:	28 July 2020 (filed 5 August 2020)
Amended Statement of Grounds:	14 December 2020
Amended Statement of Opposition:	11 February 2020
Applicants' legal submissions:	26 February 2020
Respondent's legal submissions:	24 March 2020

Analysis

17. As identified above, this case revolves around the applicants' challenge to three decisions of the respondent. The decisions can be usefully separated into those dealing with the first applicant's right to reside, being the decisions of 9 October 2018 and the review of that decision of 6 March 2019 ("the residence decisions"), and the deportation Order made on 26 August 2019. I will deal with the residence decisions before addressing the challenge to the deportation Order.

18. Before addressing the decisions, I should note that there was a controversy between the parties as to whether the respondent was entitled to rely on the affidavit of Inspector Cleary, Detective Garda, of 21 October 2020. That affidavit deals with matters that came to the attention of the respondent after the decisions in question were made. In those circumstances, I think it inappropriate to rely on same and I have not done so.

Decision of 9 October 2018

19. The respondent makes a preliminary argument to the effect that the applicants should be precluded from challenging the original residence decision of October 2018 in circumstances where they had a duty to exhaust all alternative remedies. She argues that where they did so in the form of the review procedure, they should be confined to challenging the outcome of that procedure i.e. the decision of 6 March 2019. It is the March decision that now adversely affects the first applicant. The decision of 9 October has been superseded by the March decision. The applicant is therefore only entitled to challenge the March decision.

Extension of time

20. Under Order 84, rule 21(1) of the Rules of the Superior Courts ("the RSC") an application for judicial review must be brought within three months from the date when

the grounds for the application first arose. As the respondent points out, in commencing their challenge to the residence decisions on 30 October 2019, the applicants are four months too late in respect of the decision of 6 March 2019.

21. To extend time under Order 84, rule 21(3), the Court must be satisfied that:

> *"(a) there is good and sufficient reason for doing so, and*
>
> *(b) the circumstances that resulted in the failure to make the application for leave within the period mentioned in sub-rule (1) either:*
>
> *(i) were outside the control of, or*
>
> *(ii) could not reasonably have been anticipated by the applicant for such extension."*

22. The first applicant provides various arguments in respect of the application for an extension of time. The first is found at paragraphs 22 and 23 of his supplemental affidavit of 16 June 2020 where he avers that the decision to revoke his residence card was fundamentally flawed, in breach of his and the second applicant's rights, unjustifiable and unreasonably burdensome. He argues that the foregoing, in addition to the absence of correspondence between the respondent and the second applicant constitutes good and sufficient reason for the extension of time.

23. In respect of this ground the respondent refers to the decision of the Supreme Court in *GK v Minister for Justice* [2002] IR 418 where the Court declined to extend time to seek leave for judicial review. In that case Hardiman J. noted as follows;

> *"The application is grounded on two affidavits sworn by the applicant's present solicitor. Neither of these affidavits addresses in any way the question of the delay in applying to quash the decision of the 15th of February 2000.*

In those circumstances no basis whatsoever for extending the time for proceedings in relation to the first decision has been put before the court, quite part from any question of underlying merits."

The respondent argues that the applicants have failed to put forward any reason as to why they could not challenge the decisions of the respondent in the time prescribed by Order 84 despite the first applicant being legally represented at all relevant times. She submits that in circumstances where no adequate reasons have been provided, it must be concluded that that there are no relevant reasons.

24. It is clear from Order 84, rule 21(3)(b), and the decision in *GK*, that the applicant must address the circumstances leading to the delay. That has not been adequately done. For obvious reasons, substantive flaws in a decision cannot constitute good and sufficient reason for an extension in and of themselves. Moreover, there was not an absence of correspondence. The Minister wrote to the first applicant seeking submissions and in the context of the appeal, those submissions were considered.

25. Considering the foregoing, it seems clear to me that the applicants have failed to put sufficient evidence on affidavit before the Court to justify an extension of time in respect of the residence decisions. No good and sufficient reason was identified for the extension. In the absence of any such reason or explanation for the delay, there is no basis for extending the time for proceedings in relation to the decision of 6 March 2019.

26. In his legal submissions the applicant sought to make the argument that in fact time flowed from the deportation Order of 26 August 2019 and on that basis the applicants were not out of time. It was argued that the deportation Order was the end point of a process commenced in 2018, culminating in the Respondent's decisions dated 9 October 2018 and 6 March 2019. Separately, it was sought to argue that time should be

extended because the Respondent had suffered no prejudice from the failure to observe the time limit. The applicants are within time to challenge the deportation Order.

27. In addressing the first argument the respondent submits that there is no basis in law for the contention that the processes are to be construed as one continuous whole. She argues that it would be a novel feature of the system of judicial review to allow applicants to await the outcome of subsequent procedures before challenging a decision. She further points out that the applicant has cited no authority in support of this proposition and that it directly contravenes the wording of Order 84, rule 21 which establishes that time runs when the grounds "*first arose*".

28. The crux of the issue is whether the process of revoking a residence card and issuing a deportation Order is continuous, or a series of decisions such that they must be challenged individually. In this respect the decision of McKechnie J. in *MKFS v Minister for Justice* [2020] IESC 48 is of particular relevance. In that case the Court had to consider*, inter alia*, whether the Minister was permitted to rely on a finding of a marriage of convenience under the free movement regulations in deciding to make a deportation Order. In his preliminary discussion of the matter McKechnie J. noted that the applicant had never sought to challenge the original decision to revoke his residence card and that:

> *"…it is too late to do so now for several reasons (see, for example, Order 84, Rule 21(1) RSC) and also because trying to unravel decisions along this pathway could create uncertainty and unacceptable unpredictability in what is otherwise a defined and sequential administrative system. Thus, the case must proceed on the basis that the Minister has made a determination…"*

29. The foregoing is fatal to the contention of the applicant that the process beginning with the revocation of the residence card through to the issuing of the deportation Order may

be viewed as continuous. As McKechnie J. sets out, a decision to revoke a residence card is a discrete determination subject to the requirements of Order 84, rule 21. As he observed, even though the "*two processes in question were interlinked…were based on the same factual matrix and…were made within a quite narrow and confined timeframe*", the revocation of the residence card and the deportation remained two discrete processes which necessitated separate applications for judicial review.

30. Moreover, accepting this argument would require me to ignore the reference in Order 84 to the date when the grounds first arose. The grounds for challenging the decision revoking the residence card clearly first arose when that decision was communicated to the applicant on 6 March 2019. The applicant knew a final decision had been made, and not a conditional one and he had all the facts within his knowledge that would allow him to decide whether to challenge the decision. He was not entitled to wait until an entirely different decision i.e. one relating to deportation, was made before challenging the complete and final decision of 6 March 2019.

31. The applicants also assert that the respondent has not suffered any prejudice as a result of the delay on their part. The respondent strongly contests this, arguing that the courts have repeatedly affirmed the importance of the finality of decision making and beyond this, highlights that a system of official decision making cannot operate effectively if its decisions are to be treated as contingent. In addition, she argues that at a minimum the reopening of decisions requires the expenditure of finite resources that necessarily impacts on the ability of the decision maker to consider other files.

32. The proposition that there is a public interest in administrative decisions being final, subject to the ordinary avenues of appeal and judicial review, is uncontroversial. In the circumstances, I agree that there is some prejudice to the respondent in an extension being provided in this case. But in any case, the question of prejudice is moot to some

extent in this case, given the applicant's wholescale failure to identify either good and sufficient reasons or provide any evidence in relation to the circumstances that resulted in the failure to make the application within the specified period.

33. Given the above conclusions, I refuse to grant the applicants an extension of time to challenge the residence decisions of the respondent. Notwithstanding that finding, for the sake of completeness, I will briefly address the substantive arguments made by the applicants in respect of those decisions.

Substantive arguments

34. The applicants' arguments substantively challenging the residence decisions have two broad strands, first, that the respondent failed to obtain representations from either of them and second, that the Minister had no plausible evidence before her justifying the decision to review the residence card and that consequently the decisions were inherently unfair.

35. They argue that the respondent has not provided any grounds for holding that the material submitted was false and misleading or that there was a marriage of convenience. They contend that there was nothing deliberate or contrived about the material submitted to the respondent and that the evidence of the second applicant's employment history was of limited relevance and was unreasonably exaggerated in the context of the decisions. Finally, they submit that it was incorrect and premature to make the decision of 9 October 2018 in circumstances where the first applicant's submissions were not taken into account and where the second applicant was not notified of the decision or given an opportunity to be heard.

36. The latter argument is without any merit. The reason the first applicant's submissions were not taken into account in respect of the October decision was because his solicitor failed to submit them on time. That was not the fault of the respondent. But in any case,

on the appeal, determined by the decision of 6 March 2019, the submissions were fully considered. In the premises, there is no substance to this argument.

37. The applicant also argues that the Minister ought to have sought representations from the second named applicant. The respondent quite correctly points out that Regulation 27 makes no reference at all to the EU national in question, and indeed they need not even be notified under Regulation 27(3). In contrast, it may be seen from the extract from Regulation 28 above that the Minister "*may*" seek representations from the "*parties to the marriage*", which clearly encompasses the second applicant, but is framed in purely discretionary terms. But in any case, it was open to the second applicant to make whatever submissions she wished. The notification letter was sent to the address provided to the Minister as the address for the marital home. She was apparently not living there: but no other address was provided for her. It is impossible to seriously entertain an argument that the Minister could not assume she was living there, given that the right of the first applicant to his residence card depended upon him residing with his spouse so as to benefit from EU Treaty rights. In the premises, there is no basis for the contention that the Minister was either required to seek representations for the second applicant or that the Minister failed to do so.

38. In relation to the argument as to the lack of grounds for the respondent's substantive conclusions that this was a marriage of convenience I am of course solely concerned with the lawfulness of decision making and not with the merits of any decision. The Minister correctly argues she is empowered by Regulation 27 of the free movement regulations to investigate and raise further enquiries in respect of residence cards granted. Regulation 27 sets out the following;

> *"27. (1) The Minister may revoke, refuse to make or refuse to grant, as the case may be, any of the following where he or she decides, in accordance with this*

Regulation, that the right, entitlement or status, as the case may be, concerned is being claimed on the basis of fraud or abuse of rights:

(b) a residence card, a permanent residence certificate or permanent residence card;

(2) Where the Minister suspects, on reasonable grounds, that a right, entitlement or status of being treated as a permitted family member conferred by these Regulations is being claimed, or has been obtained, on the basis of fraud or abuse of rights, he or she shall be entitled to make such enquiries and to obtain such information as is reasonably necessary to investigate the matter."

39. There is a statutory power entitling the Minister to investigate where reasonable grounds exist for suspecting an abusive claim, the scope of which grounds the actions of the Minister to review the residence card in this case. Equally, where there is a finding of an abuse of rights, such as a marriage of convenience per Regulation 27(4), she is empowered to revoke the residence card.

Impugned evidence

40. The applicants argue broadly that there are no grounds supporting the Minister's contention that false and misleading documentation was provided or that there was a marriage of convenience in this case and thus both those findings are unfair and unreasonable. They argue first that the incorrect PPS number provided in the EU1 and EU4 forms was a clerical/typographical error, that the correct PPS number was forwarded to the respondent in the initial application in letters dated 15 December 2014 and 14 April 2014 and that the significance of that error was exaggerated. The respondent's position is that it remains satisfied that the provision of a false PPS number on payslips provided and the EU1 and EU4 forms amounts to the provision of false and

misleading information regardless of the later provision of another PPS number by way of correspondence.

41. Beyond this, the applicants identify that the reliance on the work history of the second applicant was misplaced, submitting that it was irrelevant, and its import exaggerated. The respondent's position is that the Minster is entitled to investigate and to consider, as a relevant feature of dishonesty, that the second applicant ceased employment shortly after the first applicant succeeded in obtaining a residence card.

42. Parsing these arguments, it seems the core of the applicant's complaint on these two points is that the respondent either improperly considered the above factors, in her determination to review under Regulation 27, and in finding a marriage of convenience under Regulation 28 or alternatively gave the factors undue weight. Under Regulation 27(2) there must be "*reasonable grounds*" for suspecting an abuse of rights in order to permit an investigation. Regulation 28 governs marriages of convenience and provides, *inter alia*, that the Minister shall determine whether a marriage is one of convenience, per 28(5)(a), with regard to "*any information furnished under these Regulations*" and further under 28(5)(b)(xiv); "*any other matters which appear to the Minister to raise reasonable grounds for considering the marriage to be a marriage of convenience*".

43. The traditional test for administrative unreasonableness as exemplified in *O'Keeffe v An Bord Pleanala* [1993] 1 IR 39 requires that that there simply be some minimum amount of relevant material before the decision maker. This broad perspective, encompassing the entirety of the decision-making process, militates against any granular examination of what are essentially the merits of the consideration given to individual relevant factors within the decision.

44. Turning firstly to the issue of whether the PPS number should be considered at all, I reject the argument of the applicant that there is no basis for the contention that the

incorrect PPS number was false or misleading. It is common case that the PPS number provided on the form EU1 and EU4 was incorrect. The provision of another PPS number by way of correspondence does not and should not erase from the Minister's consideration, information provided on the EU1 and EU4 forms. Where the Minister was furnished with two conflicting PPS numbers I am satisfied, at a minimum, that that conflict is capable of providing a reasonable ground for suspicion for the purposes of Regulation 27(2), Regulation 28(5)(b)(xiv) and Regulation 28(5)(a). As such it was permissible for the Minister to consider it.

45. With respect to the issue of the relevance of the employment history of the second applicant I am similarly satisfied that it is capable of constituting both a reasonable ground for investigation under Regulation 27(2) and satisfies the requirements of Regulation 28(5)(b)(xiv). In circumstances where the Minister is concerned about a potential abuse of rights derived from an EU citizen residing in the State, and the free movement regulations condition that residence on the employment or employment prospects of that EU citizen (see for example Regulation 6), it seems entirely reasonable for the Minister to consider their employment history. Beyond this, the Minister is given a wide discretion under Regulation 28(5)(b)(xiv) to consider "*any…matters which appear to the Minister to raise reasonable grounds"*. In light of the foregoing, I am satisfied it was open to the Minister to consider the employment history of the second applicant.

46. This brings me to the question of "*exaggeration*" as the applicant puts it, or rather the weight the Minster has afforded to the PPS number and the employment history of the second applicant. It would not be appropriate for me to undertake to analyse the specific weight afforded to two factors the Minister is entitled to consider, where no detailed argument has been made as to why those reasons have allegedly been given outsized

influence. This is particularly the case where there are a variety of other factors set out in the decisions that also bore on the Minister's determination.

47. In addition to making submissions on the specific claims of the applicants, the respondent goes on to refer to the broad swathes of caselaw both domestically and from the CJEU that establish a prohibition on the abuse of rights or fraudulent conduct. She notes, *inter alia*, the decision in Case C-359/16 *Omer Alun* where the Grand Chamber noted "*The application of EU legislation cannot be extended to cover transactions carried out for the purposes of fraudulently or wrongfully obtaining advantages provided for by EU law*". Similarly, she notes the Commission guidelines on the application of Article 35, which allows Member States to, among other things, revoke free movement rights in cases of abuse and fraud.

48. In the light of the above analysis, I adopt the approach of Barrett J. in *Khan v Minister for Justice, Equality and Law Reform* [2019] IEHC 222 where he noted;

> "*5. Clearly, if Ms Khan is engaged in an abuse of rights (as the Minister has found) then that is the end of the within application. Moreover, a judicial review application is a constrained exercise that does not involve a full appeal. In essence, the court has to find e.g., an error of fact/law, unreasonableness, or some breach of rights by the Minister in the Decision or how it was reached. The court sees no legal deficiency to present in the Decision or the process whereby it was reached: the Minister was entitled at law to reach the conclusion that he did on the evidence that was before him when the Decision was made.".*

The deportation Order

49. In its legal submissions, the applicants had relied upon the case C-94/18 *Nalini Chenchooliah v Minister for Justice and Equality* ground, arguing that the respondent impermissibly proceeded to make a deportation Order under s.3 of the Immigration Act

1999 ("the 1999 Act") in circumstances where *Chenchooliah* applied, meaning the Minister should have been precluded from using the 1999 Act and should instead have proceeded to use the exclusion provisions under the free movement regulations. Counsel for the applicants correctly accepted at the hearing that if the applicants were unsuccessful in disturbing the finding that their marriage was one of convenience, the decision in *Chenchooliah* would not be relevant and as such it would have been permissible for the Minister to proceed to apply the procedure for a deportation Order under the 1999 Act. Given my conclusion above, I do not need to consider this argument since, as noted by Humphrey J. in *M.K.M (Bangladesh) v Minister for Justice* [2019] IEHC 708, "*Chenchooliah has no application to a marriage of convenience situation*".

The examination of file

50. The arguments of the applicant in challenging the deportation Order revolve around the requirements of the procedure for such an Order under s.3 of the 1999 Act. Firstly, they argue that the decision was fundamentally flawed as it mischaracterised the first applicant as having provided false and misleading information and in having entered a marriage of convenience.

51. In addressing the first argument the respondent makes two points. Firstly, she notes that the Minister is perfectly entitled to incorporate the findings of her residence decisions in her determination of whether to deport. She draws attention to the judgment of McKechnie J. in the Supreme Court in *MKFS* where the Court was presented just such a situation. After a thorough analysis of the interaction between the two regimes the Court ultimately concluded "*I am satisfied that the Minister was entitled to carry into the immigration process the decision previously made by him under the 2015 Regulations*".

52. It is therefore clear that the Minister is entitled to incorporate the findings of a residence decision into a s.3 consideration. As such, I dismiss the argument that such an incorporation renders the consideration fundamentally flawed.

53. As regards the second argument, the respondent notes that the applicant has no cause for complaint in respect of the manner of the Minister's consideration of his file where he made no representations when it was open to him to do so. She also draws my attention to the fact that the applicant is seeking to make an impermissible merits-based argument.

54. On inspecting the examination of file, I am satisfied that the respondent has had regard to each of the criteria and has made repeated reference to correspondence from the applicant dated 17 September 2018. Where the applicants did not make any representations on the proposed decision and have not in these proceedings identified any concrete objection to the s.3(6) findings, I must reject the argument that the Minister failed to give sufficient weight to the factors outlined in s.3(6).

Conclusion

55. For the reasons identified above I refuse the reliefs sought by the applicants.

56. I will hear submissions on any costs applications, and I propose **13 July** at **10am** remotely for those submission. The parties have liberty to apply for a different date but if they wish to do so, they should agree a date and propose same.