

THE HIGH COURT
JUDICIAL REVIEW

[2023] IEHC 580
[2022 No. 609 JR]

BETWEEN

AS

APPLICANT

-AND-

THE MINISTER FOR JUSTICE

RESPONDENT

JUDGMENT of The Hon. Mr. Justice Alexander Owens delivered on the 20th day of October 2023.

1. AS is a citizen of the People’s Republic of Bangladesh. He was born in June 2003. He entered the State from the Hellenic Republic on 30 July 2021. He then applied for international protection here.
2. AS entered the Hellenic Republic in 2019. He was an unaccompanied minor. He applied for international protection there on 27 July 2020. He gave an account of travelling to Greece from Bangladesh via Pakistan, Iran, and Turkey. He stated that he travelled in a group and that his trip was funded by a relative in Bangladesh.
3. His sister resides in Ireland. She was born in Bangladesh in 1988. She married in 2008. She first came here on foot of spousal visa to join her husband. She is now an Irish Citizen. She has resided in the State for over a decade. She and her husband have three children aged 11, 7, and 3. This family lives in Dublin. AS has lived with this sister and her family since his arrival in Ireland.
4. The State was obliged by law to receive AS from the Hellenic Republic and to assume responsibility for processing and determining his application for international protection because investigations established that he was a minor and verified his familial relationship with his sister and that it was in his best interests to move to Ireland to live with her.
5. These investigations included a check to ensure that his sister in Ireland was capable of providing him with a home and of looking after him, was willing to undertake this responsibility and was fit and proper to so act. The International Protection Office obtained a report from social workers attached to The Child and Family Agency to establish that a proposal that he come to Ireland to live with his sister was in his best interests. These social workers interviewed his sister and ascertained her circumstances. Other checks included DNA verification his relationship with his sister and verification of his date of birth.
6. The International Protection office considered these materials. On 30 April 2021, a decision was made that Ireland should assume responsibility for examining his application for international protection. Arrangements were made to have him

transported from the Hellenic Republic to Ireland. His transfer was delayed because of restrictions on international travel arising from Covid. By the time he arrived in Ireland he was an adult.

7. This application for judicial review challenges the validity of a subsequent decision dated 17 June 2022 which recommended that he not be permitted to stay in Ireland.
8. AS is also appealing recommendations that he be refused refugee status and subsidiary protection through a separate review process.
9. This Court is confined to considering grounds advanced in the statement dated 18 July 2022, referred to in the order which gave to AS leave to apply for judicial review. This Court is expressing no view on merits of any point made at the of this application hearing which strayed beyond the scope of permitted enquiry.
10. AS attempted to introduce further criticisms of the impugned decision in written legal submissions and in oral argument. These points should have been advanced by his legal advisers when they availed of an opportunity to make representations on his behalf to the decision-maker and then in his application for leave to seek judicial review.
11. AS claims that the statutory decision-maker did not adequately address "the significance" and "the circumstances of (his) transfer to Ireland as a humanitarian consideration" or as "a generally relevant consideration" in an analysis which led to the recommendation that he be refused permission to stay in Ireland. He also asserts that this decision-maker failed to consider these circumstances in considering whether there was "a relationship of dependency" between AS and his sister that: "...could be deemed more than normal emotional ties such that there was no Article 8 family life between them."
12. AS complains that reasoning which led to the recommendation that he refused permission to stay in Ireland did not refer to the report of the social workers attached to The Child and Family Agency. AS asserts that a finding by these social workers that it was in his best interests to come to Ireland to live with his sister and her family was "significant" and that this was ignored.
13. Judicial review is not concerned with what might lead an anxious mind in the middle of the night to conjure up fanciful scenarios in which every conceivable issue, circumstance or point becomes the stuff of nightmare; to be anticipated and covered exhaustively for fear that a judge might complain that what went unmentioned merited detailed consideration.
14. An applicant for judicial review must demonstrate that reasoning for the conclusion which is being challenged includes significant error which is capable of invalidating that conclusion. It is necessary to show that something serious has gone awry which justifies judicial intervention.

15. This application for judicial review has not succeeded and it will be dismissed. AS has not demonstrated that relevant material was disregarded by the decision-maker when deciding to recommend that he not be permitted to stay in Ireland. The circumstances of his transfer to Ireland from the Hellenic Republic had no bearing on issues which this decision-maker was obliged to consider. The social workers' report did not contain material which could have a significant bearing on any of the statutory criteria which that decision-maker was obliged to consider.
16. A decision-maker cannot be criticised for omitting to consider or mention material that does not merit a mention. In this case a hypothetical reasonable decision-maker writing-up a recommendation would be at a loss to identify anything in the social workers' report or in their conclusion which could give material support to AS in establishing any of the statutory criteria which must be considered when deciding whether to recommend that a person who has been refused protection be permitted to stay in the State.
17. Section 49(1) of the International Protection Act 2015 (the 2015 Act) provides that the Minister for Justice (the Minister) is obliged to consider whether to give a permission to stay in the State under that section to a person who has been refused a recommendation for refugee status or subsidiary protection under s.39(3)(c) of that Act.
18. The Minister must advise any applicant for international protection of this and request that person to provide any information relevant to criteria set out in s.49(3) of the 2015 Act.
19. Section 49(3) of the 2015 Act specifies, that in deciding whether to give permission to stay in the State to a person who has been refused a recommendation for refugee status or subsidiary protection, the Minister "shall have regard to the applicant's family and personal circumstances and his or her right to respect for his or her private and family life, having due regard to- (a) the nature of the applicant's connection with the State, if any, (b) humanitarian considerations, (c) the character and conduct of the applicant both within and (where relevant and ascertainable) outside the State (including any criminal convictions), (d) considerations of national security and public order, and (e) any other consideration of the common good."
20. The Minister acts through officials in the International Protection Office who are charged with investigating and making recommendations on whether or not the Minister should give a person permission to stay in the State.
21. Each of the criteria set out in s.49(3) of the 2015 Act must be considered by a decision-maker who investigates the matter on behalf of the Minister and makes a recommendation based on assessment of any information received.
22. The State is entitled to control immigration in the interest of the common good. The common good requires that immigration and settlement in the State of aliens be controlled and confined to those who have been permitted to enter or stay here in

accordance with law and that the Minister has a right to refuse permission to stay here to aliens who do not fulfil qualifying criteria prescribed by law.

23. Exercise of this statutory discretion to allow a person who is not otherwise entitled to stay in the State must be based on material which demonstrates that statutory criteria such as humanitarian considerations or right to family life which favour a decision to permit that person to stay here outweigh the interest of controlling immigration for the common good and other statutory criteria which favour a decision not to permit that person to stay.
24. An item of information presented to a decision-maker may be relevant to more than one of the criteria set out in s.49(3) of the 2105 Act. That decision-maker will attach appropriate weight to information which may have a bearing on the overall assessment. If material before a decision-maker establishes that removal of a person from the State would involve failure to respect a right to family life recognised by Article 8 of the European Convention on Human Rights (ECHR), it will generally be appropriate to vindicate that right by recommending that such a person be allowed to stay in Ireland.
25. Article 8 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 Establishing the criteria and mechanisms for determining the Member state responsible for international protection lodged in one of the Member states by a third country national or a stateless person (the Dublin III Regulation) was applicable. Article 8(1) of the Dublin III Regulation provides that; "Where the applicant (for international protection) is an unaccompanied minor, the Member State responsible shall be that where a family member or a sibling of the unaccompanied minor is legally present, provided that it is the best interests of the minor."
26. The Hellenic Republic submitted "a take charge request" to the State in respect of AS under Article 21 of the Dublin III Regulation. Officials of the International Protection Office examined this request. As part of this exercise materials were obtained which demonstrated and verified that AS has a sister lawfully residing in Ireland and that she was willing, suitable, and able to receive and look after him.
27. These materials have been exhibited in this application. They disclose that AS wished to join his sister in Ireland. They include a report on the family from social workers in the Child and Family Agency dated 15 April 2021. This discloses that AS found his sister's location using social media and that she became aware of his whereabouts through the International Protection Office. While he was in the Hellenic Republic they were in regular communication. She had not met him in person since 2010.
28. The State has a duty to protect children in its control. It had received a request under the Dublin III Regulation to accept responsibility for the care and welfare of AS on the basis that he was child who was unaccompanied by any responsible adult. The State was obliged to ensure that his sister was fit and proper to act in loco parentis and care him while he was a minor. Accordingly, it was necessary for the State to engage with The Child and Family Agency to investigate and provide this report.

29. The social workers investigated the circumstances of AS's sister and ascertained that she and her family were willing to receive him and had capacity to look after him. They considered that it was in his best interests that he be relocated from the Hellenic Republic to live with this sister in Ireland. His sister expressed a strong desire to take him into her home and establish a stable home environment for him in Ireland.
30. The International Protection office considered these materials. A decision was made that the State was the Member State responsible for examining his application for international protection on 30 April 2021. Arrangements were put in place to have him transferred from the Hellenic Republic to Ireland. This transfer was delayed because of restrictions on international travel arising from Covid. By the time he arrived in Ireland he was an adult.
31. AS made an application for international protection in Ireland on 16 August 2021. He did not nominate a legal representative at that stage in the process. He was interviewed for the purposes of s.13(2) of the International Protection Act 2015 (the 2015 Act) and Article 5 of the Dublin III Regulation on 30 September 2021 in the presence of an interpreter and signed an interview note at the conclusion of that interview.
32. An applicant for international protection will usually wish to stay in the State if a recommendation is not made in favour of refugee status or subsidiary protection. The Minister is obliged in all cases to consider whether to allow an applicant for protection to stay in the State and in making this decision the Minister applies the criteria set out in s.39(3) of the 2015 Act.
33. The prescribed form for the interview under S.13(2) of the 2015 Act includes a requirement to provide any information relevant for the purposes of s.39 of that Act. This is required by s.15(5)(c) of the 2015 Act.
34. This procedure enables an interviewer to advise an applicant for protection that the issue of whether permission will be granted to that applicant to stay in the State will be considered at the same time as an application for protection. Information relevant to a decision on whether to recommend that an applicant be given protection may also be relevant to the issue of whether to recommend that the be permitted to stay in the State.
35. The part of the standard form note of the interview with AS which dealt with permission to stay in Ireland was left blank. A copy of this document was provided to AS at the conclusion of the interview along with a questionnaire form. The standard form note is in English and appears to have been completed by the interviewer on a computer and printed off. It was signed by AS and the interpreter.
36. An English language copy of this questionnaire discloses that it was completed on 18 October 2021. This questionnaire was provided in Bengali, and it was completed in Bengali. It was accompanied by a signed statement of AS in Bengali.

37. AS was assisted by his sister when he completed this document. He did not avail of the option of obtaining legally qualified assistance. He did not complete Part 9 of this form. This part of the form drew attention to the matters which the Minister must consider under s.49(3) of the 2015 Act and invited AS to "... provide any other reasons why you should be permitted to remain in Ireland in the event that your protection application is refused."
38. The next stage in the process was an interview of AS, by an international protection officer examining his application, as required by s.35(1) of the 2015 Act. The purpose of this interview is set out in s.34 of that Act. This process relates to the decision on whether or not to recommend that an applicant be given a refugee declaration or a subsidiary protection declaration. However, s.35(13) requires that the report in writing of the interviewer on the interview under s.35(12) must include a part which "shall include anything that would, in the opinion of the international protection officer, be relevant to the Minister's decision under section...49, in the event that the section concerned were to apply to the applicant." This interview took place on 23 May 2022 and the accompanying report is dated 9 June 2022.
39. On 24 May 2022 solicitors acting for AS sent a letter to the International Protection Office. This letter made representations on his behalf. It was accompanied by copies of some of documents which the International Protection Office already held in connection with the decision under Article 8 of the Dublin III Regulation. These consisted of copies of the passport pages of his sister, her husband and two of her children, a DNA report, and a copy of an undated letter which his sister had composed prior to the decision to transfer him to Ireland. This letter made a case that he should be sent to Ireland.
40. The focus of these representations addressed the nature and strength of relationships which had developed between AS and his sister and her family and their mutual wish not to be split up by sending him back to Bangladesh. The Solicitors also provided a letter from a prospective employer and a testimonial from The City of Dublin Educational and Training Board. These were relevant to issues set out in s.49(3) of the 2015 Act. The solicitors contended that a relationship of "dependence" existed which engaged rights under Article 8 of the ECHR.
41. The solicitors quoted an extract from the report of The Child and Family Agency social workers dated 15 April 2021 which expressed their view that it was in the best interests of AS to be relocated from Greece to be "reunited" with his sister.
42. This report was not specifically listed as one of the documents provided by the solicitors under cover of their letter dated 15 April 2021, nor is it referred to in the decision-maker's reasoning. It is not listed as a document supplied by the solicitors in the report prepared on examination of the file for the purposes of s.49(3) of the 2015 Act or in a report prepared pursuant to s.39 of that Act.

43. The decision-maker was aware of the circumstances in which the AS came to be in Ireland and of representations made on his behalf by his solicitors under s.49(6) of the 2015 Act. These are referred to in part 2 of the decision-maker's report and again in part 5, under the heading "Humanitarian Considerations." The decision-maker was aware of the submissions made by AS's solicitors and referred to them.
44. AS complained at the hearing of this application that the decision-maker did not refer to this social work report and argues that the decision-maker failed to take its contents into account.
45. This report was available to the decision-maker in the sense that it was "on file" in the International Protection Office as part of the materials obtained in connection with the decision to accept AS from Greece. These materials included an assessment by the Ministry for Child Protection of the Hellenic Republic dated 12 August 2020.
46. AS makes no complaint about absence of consideration by the decision-maker of this Greek report. His complaint is that the decision-maker did not consider as a relevant factor the view of the Child and Family Agency that it was in the best interests of AS to come to Ireland to live with his sister.
47. The evidence does not establish that the decision-maker had this social work report to hand when making a recommendation. This Court must proceed on that basis.
48. The decision-maker had the letter from the solicitors for AS. It follows that he was aware of the recommendation of the social workers. He knew that the Child and Family Agency concluded that the adult sister of AS was suitable to assume responsibility for his care and welfare and that it was in his best interests to come to Ireland to live with her, rather than remain in Greece. It was unnecessary to make any specific reference to these conclusions in reasoning for the decision on 17 June 2022.
49. AS was enabled to join his sister and her family in Ireland once it was established that his claim for international protection came within Article 8 of the Dublin III Regulation. His move to Ireland gave him an opportunity to establish a degree of security and home life which he could not enjoy if he had stayed in Greece. His case for a recommendation that he be permitted to stay in Ireland is based on humanitarian and personal and family considerations. He makes the case that after he arrived in the State he was in a safe environment and that he has established familial bonds with his sister and her family and other links with Ireland which should not be broken by requiring him to return to Bangladesh.
50. The decision-maker knew the circumstances of how AS came to be transferred from Greece to Ireland. The decision-maker knew that social workers had reported that it was in his best interests to come to Ireland to live with his sister. The decision-maker knew that that AS's sister desired that the authorities permit him to come from Greece to Ireland to live with her. The decision-maker knew that AS has been living with this sister and her family since he arrived in Ireland.

51. AS was in Greece when the social workers' report was prepared. The social workers relied on information supplied by AS's sister. Their report disclosed that there had been little or no contact between AS and his sister for years prior to his request for international protection in Greece.
52. The view of social workers that it was in the best interests of AS to live with his sister was relevant to the decision to accept AS into Ireland. This had no bearing on whether he should be permitted to stay here if his application for international protection was unsuccessful. Their report contained nothing which could be relevant to any of the criteria set out in s.49(3) of the 2015 Act. It could not assist in establishing any "relationship of dependency" between AS and his sister. It could not speak to the nature or extent of familial or other relationships which were yet to be developed.
53. Any humanitarian considerations or rights to family life or private life which might weigh on a decision on whether or not to permit AS to stay in Ireland did not arise as a result of "the circumstances" of his transfer from the Hellenic Republic. They arose because of his presence in Ireland and flowed from development of relationships with his sister and members of her family and others while he has been living in the State.
54. Acceptance by a Member State of the European Union of an unaccompanied minor under Article 8 of the Dublin III Regulation does not impose on that Member State a humanitarian duty to treat an adult as a child. When AS arrived in Ireland the State did not owe him a duty to treat him as a child. Adults are not entitled to the same legal protections as children.
55. Unaccompanied children who enter the State and then pass into adulthood may develop close relationships and family life with adults who act in loco parentis to them. They receive education and may become integrated into a new family and the wider community. As time passes, their linguistic and other connections with place of origin may fade. These developments may continue into adulthood. Unaccompanied young adults who enter the State may be in a similar position. A decision-maker may consider these circumstances when applying the statutory criteria in evaluating whether a to recommend that such a person be permitted to stay in Ireland.
56. AS was approaching what the law regards as autonomous adulthood when he entered the European Union. Prior to his arrival in Greece, he took and acted on decisions which involved emigration from Bangladesh and travel through a number of states. The decision-maker was aware that AS entered Greece as an unaccompanied minor and that he had ceased to be a minor and was a young adult by the time when he arrived in Ireland.
57. The decision-maker evaluated whether or not to recommend that AS should be allowed to stay in Ireland by considering information relating to his circumstances and his relationships with his sister and her family since his arrival here. If AS had still been a minor when he arrived in Ireland, the same information would be relevant. Nothing has

been advanced which shows that this approach to decision-making was in error or that AS enjoyed some special status because of the conclusion in the social workers' report.

58. This judgment is being delivered electronically. A further oral hearing or direction for written submissions can be arranged if the parties are unable to agree amongst themselves on an order dealing with the costs of these proceedings.