THE HIGH COURT

[2024] IEHC 58

[Record No. 2022/577JR]

BETWEEN

YMA

APPLICANT

AND

MINISTER FOR JUSTICE

RESPONDENT

JUDGMENT of Ms Justice Marguerite Bolger delivered on the 6th day of February 2024

1. This is the applicant's application for *certiorari* of the Minister's decision of 11 April 2022 that the applicant's residence card ought to be revoked. For the reasons set out below, I am refusing this application.

Background

2. The applicant is a citizen of Pakistan and was born on 20 October 1983. He first entered Ireland on 18 September 2006 on a student visa which expired on 30 September 2012. He said he met an EU citizen from Slovakia in August 2012 who had entered the State on 6 July 2012 to work as an *au pair* for which she did not require a PPS number. They began a relationship and on 14 November 2012 they moved into an apartment together and he said in his Statement of Grounds that they thereafter made plans to marry. They married at a Galway hotel on 17 January 2013 for which they must have given the necessary three months notification of intention to marry by 17 October 2012. The applicant, in reliance on his marriage to an EU citizen, applied for a residence card on 20 March 2013 and furnished various documents in support of his application. He was asked for further documents in correspondence throughout May, June and July 2013, which he furnished, including evidence of his EU spouse's health insurance, a utility bill in their joint names, a tenancy agreement in the names of the applicant, his EU spouse and two other people, confirmation of his EU

spouse's registration with a Cork college and a letter from the Residential Tenancies Board addressed to the applicant and his EU spouse confirming registration of their rental property.

3. The applicant was illegally in the State from the date on which his student visa expired in September 2012 until he applied for a residence card in March 2013, at which time he was granted temporary permission to live and work in the State until his residence card was granted on 20 September 2013. The letter confirming the approval of his application for a residence card said that the onus was on him to keep the office up to date at all times of any change in his circumstances.

4. The applicant says that his marriage broke down at the end of 2014. He did not advise the Minister of that change in his circumstances at that time, as he was required to do. He first advised the Minister of the change in his circumstances in July 2018 when he applied for permission to continue to live and work in the State and explained that his EU spouse was resident in the UK where divorce proceedings were in train. That application was made some three months before his Stamp 4 EU visa was due to expire.

5. By letter dated 16 August 2018 the Minister advised the applicant of her opinion that the documentation he furnished in support of his application to evidence the residence of himself and his spouse in the State was false and misleading as to a material fact and that his marriage may have been of convenience. The letter set out the following concerns:

i. That the applicant may have been residing illegally in the State from 30 September 2012 when his visa expired, to 21 March 2013 when he applied for a residence card.

ii. That the EU spouse, who obtained her PPS number on 12 October 2012, may have entered the State shortly before that date.

iii. That the three month notification of intention to marry was served five days after the EU spouse obtained her PPS number.

iv. The accelerated nature of the relationship is not typical of a genuine marriage.

v. The employment history of the EU spouse confirmed she was employed for 20 weeks in 2013 earning €2,722 and for four weeks in 2014 earning €123, with no evidence of having engaged in further studies or having made any claim for state benefit. The Minister was therefore not satisfied that the EU

spouse was at that time residing in the State in exercise of her right in accordance with the Regulations.

vi. The applicant's failure to notify the office of a change in circumstances in 2014 when he said his spouse left Ireland and moved to live in the UK.

6. The applicant was asked to provide the Minister with information as to why his permission to reside should not be revoked and to address the Minister's concerns. He was expressly asked to include a detailed immigration history of the EU spouse and a detailed relationship history along with any other information/documentary evidence he might wish to provide as to why his application for permission to remain in the State should not be refused.

7. The applicant responded by way of written submission via his solicitor in which he set out how he met his EU spouse in August 2012 when she was working as an *au pair* for which she did not need a PPS number, and that they decided a few months later to move in together and to get married. The letter set out his EU spouse's work and travel history throughout 2012 and 2013. Apart from saying that they got married to become a secure couple, there were no further details about their relationship or their lives together before or after the marriage. He said that after the parties married his EU spouse had two abortions and had abused alcohol which led to difficulties in the marriage. They separated in 2014 and the EU spouse went to the UK, but the letter stated that they remained in contact. The applicant had some photographs but said he needed his former spouse's consent to furnish them to the Minister.

8. By letter dated 25 October 2018 the Minister issued a first instance decision finding the applicant's marriage to have been a marriage of convenience on the basis of the following:

i. The maximum period of time the persons could have known each other before serving notification of their intention to marry was three months which raised concerns.

ii. The EU spouse applied for a PPS number three months after her alleged entry into Ireland, which raised concerns as to how she could reside in the State for three months without accessing the labour market or having recourse to social assistance.

iii. The notification of intention to marry which required a PPS number, was made five days after the EU spouse obtained her PPS number.

iv. The EU spouse had minimum employment in the State since she obtained her PPS number.

v. The applicant had permission to remain in the State until 19 September 2018 but did not inform the office of the change in his relationship circumstances in 2014 until the expiry of his then permission was imminent.

vi. The photographs the applicant's solicitor's letter had referred to had not been forthcoming.

vii. There were no accompanying documents which substantiated the assertions made.

9. The letter confirmed the Minister's decision to disregard the marriage and revoke the applicant's residence card. The applicant was afforded a right of review which he invoked by letter from his solicitor dated 12 November 2018. That letter essentially repeated the evidence previously furnished about how the parties met, moved in together and decided to marry and referred to the documentation furnished to evidence their living together in the applicant's original application for a residence card. The letter said the applicant paid the rent and shared income and outgoings with his spouse. In relation to whether the parties were familiar with each other's details, the letter simply said they were. No actual details about the EU spouse with which the applicant was familiar were provided. The letter offered that the applicant would attend for interview "*so as to dispel the concerns and to have the finding of the Minister overturned.*" The letter furnished documents that had not been furnished previously including emails between the parties in relation to a flight for the EU spouse, boarding passes for her in relation to flights in January and August 2013. Thereafter the letter was taken up with detailed legal submissions. The applicant's solicitors made further submissions by letter dated 25 March 2021 setting out details of the EU spouse's employment history prior to the marriage. The letter said the applicant had no access to the record of his ex-wife or ability to ask her questions about the events of nine years ago. This was in spite of the statement made in the earlier submission (set out at para. 7 above) that he and his former spouse remained in contact.

10. Some 33 photographs were furnished, four of which were of the applicant and his EU spouse together. There were two photographs of the applicant on his own, including one

apparently taken on the day of the wedding which was of the applicant in a car wearing a suit. The remaining photographs were of the EU spouse on her own, including a number that appear to have been taken in a bedroom and showing her in a state of semi undress. The letter repeated that the applicant could not ask his former spouse questions about the events of nine years ago. The remainder of the letter was made up of submissions on the evidence previously furnished.

11. The impugned decision was furnished to the applicant by letter dated 11 April 2022 and affirmed the previous decision to revoke the applicant's residence card. The decision confirmed having considered all the information, documentation and submissions on the applicant's file and highlighted the following concerns:

i. The maximum time of three months that the parties could have known each other before giving notification of intention to marry.

ii. The accelerated nature of their relationship and decision to marry at a time when the applicant's immigration position in the State was precarious.

iii. The departure of the EU spouse from the State one year after the marriage.

iv. The EU spouse's employment history in the State.

12. The applicant has raised a particular concern and criticism about the following extract from the decision:

> "*There is little information or documentation on file in respect of your relationship with the Union citizen in this case. That is to say, there is nothing to suggest that you as couple made any financial commitments to each other, had any joint assets or liabilities, travelled or lived together for any significant length of time outside the State, or lived together for any significant length of time in this State. Nor is there any useful information or documentation on file in respect of your relationship prior to your marriage or, indeed, after your marriage*".

The Parties' Submissions

13. The applicant pleads that the Minister's decision was irrational and unreasonable in making the findings set out at para. 12 above, given that the applicant had provided evidence of joint liabilities in the form of a tenancy agreement, a joint utility bill and had said they lived together for a year. The applicant contended it was fundamentally at variance with reason and common sense for the Minister to make those findings, given the "*relatively intimate photos*" taken during their time together and that the applicant had paid for his EU

spouse's flights home to Slovakia in 2013. The applicant claimed the respondent had failed to consider that evidence in spite of having claimed to have done so.

14. The applicant also claimed he had been denied fair procedures and natural or constitutional justice in not affording him a personal interview prior to determining the marriage to have been one of convenience, which he had offered to attend in his solicitor's letter of 12 November 2018 so as to dispel the concerns and have the finding of the Minister overturned.

15. The Minister disputed that the applicant had reached the *O'Keeffe* standard of unreasonableness or irrationality, as confirmed in *Meadows, i.e.,* that it flies in the face of fundamental reason and common sense. The issue was the quality of the documentation furnished. The limited information and recommendation provided by the applicant were of little probative value and overall, there was very little evidence to indicate a genuine marriage or relationship. The Minister's conclusions reasonably flowed from the facts put before her. There was no factual issue of dispute that required an oral hearing, which could only arise in exceptional circumstances such as a conflict as to fact. Fair procedures were adhered to where the applicant was on notice of the Minister's concerns and her basis for same and the applicant never identified any issue or factual matter requiring an oral hearing that could not have been addressed in his written submissions.

Discussion

16. The central issue in this case is the applicant's claim that an oral hearing should have taken place before a decision impugning the creditability and genuineness of his marriage could be made. A similar argument was successfully made before the High Court in *Z.K. v. Minister for Justice & Equality & Ors* [2022] IEHC 278 but was overturned by the Court of Appeal in *Z.K v. The Minister for Justice & Ors* [2023] IECA in a decision of Power J. which was handed down after the hearing of this application. The parties make further oral submissions on that decision. The applicant conceded that the decision of the Court of Appeal, which has much in common with this case, is binding on this court but asked the court to consider delaying giving judgement until the issue has been clarified by any appeal to the Supreme Court that may be allowed. The Minister urged me to proceed with my judgement and highlighted the fact that the decision of the Court of Appeal in ZK had been followed by two further decisions of the Court of Appeal, both of which found there was no definitive right to an oral hearing where an applicant's credibility was at issue (*MH v Minister*

for Justice [2023] IECA 267; *SK and JK v Minister for Justice* [2023] IECA 309). I see no basis for delaying my decision pending the outcome of a Supreme Court appeal for which leave has not yet been granted, particularly in the light of the now well established jurisprudence of the Court of Appeal that is binding on this court. I am satisfied that any prejudice the applicant may sustain, particularly if the issue is determined in his favour by the Supreme Court, can be addressed by an exercise of his right to appeal should he wish to do so.

17. Whilst *ZK* was focussed primarily on the asserted right to an oral hearing, the decision also addresses the process by which a decision impugning a marriage as one of convenience should be made, given the requirements of natural and constitutional justice and the significance of such a decision for the parties involved. Power J. confirmed that natural justice can require an oral hearing where issues of conflict arise on the evidence. She describes the applicant as having struggled to identify the nature of any unfairness visited upon him by reason of the absence of an oral interview (para. 150) and said that there had been a dearth of "*substantive and persuasive evidence coupled with the low probative value of the documentation actually provided, were matters to which the Minister had regard in her overall assessment*" (at para. 159). The decision maker was not confronted with contradictory testimony or spousal dispute that had to be resolved. The applicant's version was contradicted by no one. The difficulty, according to Power J., was that the applicant's version was not substantiated by evidence sufficient to dispel the Minister's doubts in relation to the marriage. At para. 177 she said, "*[i]t was the quality of his own evidence that was in issue here*". She went on to say (at para. 181) that "*the conditions for providing an opportunity to persuade are met where the reasons for a decision-maker's concerns about an applicant's account are put, clearly, before the individual in question where he or she is then invited to address and dispel those concerns"* which is best achieved by objective evidence corroborating the applicant's account and reinforcing their credibility. She found that the applicant had not shown that his arguments and submissions could not have been made within the paper-based process which the Minister properly conducted.

18. There are some similarities between the evidence and process applied in *ZK* and here. Both involved marriages of short duration following an accelerated notification of intention to marriage at a time when the applicant's immigration status was precarious. Both applicants failed to advise the Minister of the change in their relationship when they

separated from their EU spouses. Neither applicant was able to identify specific points that could only have been addressed at an oral hearing and could not have been addressed by way of written submissions. Both asserted a right to an oral hearing in order to defend what they viewed as an attack on their credibility rather than the inadequacies of the information and documentation they had furnished to dispel the Minister's concerns in relation to the *bona fides* of their marriages. I note that the applicant in *SK* had a similar situation to this applicant in that they advised the Minister that they were available for an interview, which Donnelly J in the Court of Appeal held did not equate to a request for an oral hearing.

19. I have little difficulty in identifying the application of the decision of the Court of Appeal in *ZK* to the process that the applicant seeks to impugn here. There is no factual conflict or contradictory testimony that the Minister had to resolve in making a decision on the applicant's application to renew his residence card. The Minister had to investigate whether the information and documentation furnished by the applicant was sufficient to dispel her stated concerns about the applicant's marriage, the basis of which had been put to the applicant. The applicant was given an opportunity to address the Minister's concerns with the benefit of legal representation and was afforded a right of review from the first instance decision that found against him. As Power J. pointed out (at para. 181) that is best achieved by reference to objective evidence corroborating the applicant's account and, thus, indirectly, reinforcing his or her personal credibility.

20. The evidence on which the applicant sought to rely was limited to a tenancy agreement to which the applicant, his EU spouse and two other people were party and a shared utility bill along with a bundle of photographs, only four of which showed the parties together. Only one photograph of the wedding was furnished, which was of the applicant on his own. The applicant explained the lack of more photographs by the fact he had lost his phone.

21. The Minister clearly did not find the evidence and information furnished by the applicant to have been sufficient to dispel her concerns. The applicant is particularly critical of the statement in the impugned decision set out at para. 12 above that says there was no evidence of joint liabilities, the parties living together etc. That is quite a definitive statement that makes no mention of the existence of the documentation furnished by the applicant that could have been viewed as corroborative of a genuine marriage *i.e.,* the documentation in relation to the shared tenancy, the shared utility bill and the applicant's statement,

consistent with the tenancy agreement, that the parties resided together for approximately one year. Nevertheless, in spite of that statement and its tone, it is clear from the decision that the quality of the information and documentation furnished was assessed by the Minister.

22. The type of information and documentation one might expect to see within a *bona fide* marriage was identified by Baker J. in *Pervaiz v. Minister for Justice* [2020] IESC 27 where she said at para. 91:

> *"It is almost inconceivable in the modern world that a couple would not have many examples which can be established by documentary proof, whether from social media, correspondence, utility bills, photographs, text or email messages, financial transactions, etc., which might establish the closeness of their interconnectedness and the nexus within which the relationship operates."*

A similar point was made by Donnelly J. in *MH* at paragraph 63:

> *"Indeed, even in a break-up of a relationship, one would not be surprised to see evidence of, perhaps, text or other messages expressing sadness, recrimination, or anger (as the case may be) at how the relationship had changed and/or how personal possessions/financial commitments must be dealt with."*

Very little such evidence or information was furnished by the applicant here.

23. Regulation 28(5)(vi) of The European Communities (Free Movement of Persons) Regulations 2015 identifies as one of the matters that the Minister shall have regard to when determining whether a marriage is one of convenience as "*whether the parties are familiar with the other's personal details*". The applicant suggests this could not be assessed in the absence of a personal interview. I do not agree. It is not for the Minister to establish such familiarity by asking questions of the applicant at an oral hearing. Rather it was for the applicant to respond to the request that was made here to provide the Minister with a detailed relationship history. It is to be expected that the applicant's familiarity with his EU spouse (and their familiarity with him) will be set out in any such history. The applicant's account of his relationship with his EU spouse was far from detailed. He set out, briefly, how he met his EU spouse in a pub in August, how they went for walks together and a mere two months later in October gave their notification of intention to marry and moved in together in November when his EU spouse fell out with her *au pair* family. There is even less detail provided about their relationship from then until their wedding in January 2013 other than

that they wanted to be together because they loved each other, that in Pakistani culture it is generally not socially accepted to live with a fiancé or engage in a sexual relationship in advance of marriage and that it is often the case that couples have only met a few times in advance of the marriage ceremony, if at all. The detail of the post wedding relationship provided by the applicant was limited to his claim that his EU spouse was violent, abused alcohol and had two abortions, all of which he said caused difficulties in their marriage.

24. In his solicitor's submissions seeking a review of the first instance decision, the matters that the Regulations require the Minister to consider are individually set out and applied to the applicant's situation. Under the heading "*Whether the parties are familiar with each others details*", the submission baldly states "*The parties were familiar with each other's details*" and goes on to point out that the applicant and his EU spouse had not been requested at any time to attend for interview to establish whether or not they are familiar with each other's details and had married before a Registrar who raised no issue in relation to the parties' familiarity or otherwise with each other's details. There is no evidence or information given about any of the details of the applicant's spouse with which he claimed to have been familiar. The applicant says that he did not have access to his former spouse at that stage (even though he had previously said they were still in contact) but even if that is so, it should not have prevented him from identifying whatever details of her with which he had been familiar before and after the marriage, as he claims to have been. He chose not to do so and cannot now criticise the Minister's conclusions that there is little information or documentation in respect of his relationship with his EU spouse or in respect of the relationship prior to or after the marriage.

25. Given the sparce detail the applicant chose to furnish about his relationship with his former spouse, I do not consider the Minister's finding, albeit expressed in strong language, that there was "*nothing to suggest*" joint liabilities *etc.* and that there was "*little information or documentation*" in respect of the relationship and no "*useful information or documentation in relation to the relationship prior to or during the marriage*" comes to the required level of *O'Keeffe* unreasonableness or irrationality to persuade me to exercise my discretion to quash the Minister's decision. It was open to the Minister, on the basis of the evidence and information furnished to her, to find that the applicant had entered a marriage of convenience and it was neither irrational nor unreasonable for her to so find.

26. The Minister said that all the information and documentation on the applicant's file had been considered. A thorough account of that information and documentation is given in both the first instance and the impugned decision. The conclusions the Minister reached reasonably flowed from the facts before her and there is no basis for the applicant's contention that the Minister acted irrationally or unreasonably or failed to take relevant factors into consideration. The totality of the information and documentation furnished by the applicant is referenced in the impugned decision, and it is clear that its quality and probative value was found to be so limited that it failed to assuage the Minister of her concerns of which she had put the applicant on notice and to which she had allowed him the opportunity to respond including by the furnishing of a detailed relationship history. The dearth of information provided by the applicant was such that it was open to the Minister to reach the conclusions that she did, find that the marriage was one of convenience and refuse the applicant's application for a renewal of his residence card.

Conclusions

27. The Minister's conclusions were neither irrational nor unreasonable and the process applied was in line with the applicant's rights to fair procedures and natural justice. I refuse this application.

Indicative view on costs

28. As the applicant has failed in his application and in accordance with the provisions of s. 169 of the Legal Services Regulation Act 2015, my indicative view on costs is that the Minister is entitled to her costs. I will put the matter in before me at 10.30am on 16 February 2024 in the event that either party wishes to make submissions in relation to final orders to be made.

Counsel for the applicant: Aengus Ó Corráin BL

Counsel for the respondent: Sarah Cooney BL