

THE HIGH COURT
JUDICIAL REVIEW

[2019 No. 14 J.R.]

BETWEEN

S.I. (BANGLADESH)

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 8th day of October, 2019

1. In *Kant v. Minister for Justice and Equality* [2019] IEHC 583 [2019] 7 JIC 2207 (Unreported, High Court, 22nd July, 2019), I dismissed two sets of judicial review proceedings. Mr. Colm O'Dwyer S.C. (with Ms. Leanora Frawley B.L.) for the applicants in the second of those cases now applies for leave to appeal and did his best to retrospectively reconfigure his points to maximise his chances of such leave to appeal but ultimately that attempt is implausible. There is literally nothing in this application.
2. The first and second proposed questions raise the issue of the interpretation of the Immigration Act 2004, the core aspects of which have already been decided upon by both the Court of Appeal and the Supreme Court as set out in the substantive judgment in *Kant*, so there is no particular benefit to the matter being re-agitated at appellate level as persuasively argued by Mr. David Conlan Smyth S.C. (with Mr. Anthony Moore B.L.) for the respondents. The fact that the applicant has come up with an inventive but implausible argument to circumvent that jurisprudence by asserting that permission under the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015) isn't permission under the 2015 regulations at all but rather is somehow permission under the 2004 Act does not convert the case into one of exceptional or indeed any public importance or render that existing appellate court jurisprudence irrelevant.
3. The third question is a new point that was not argued in remotely this form at the hearing. It only occurred to the applicant after the substantive judgment following the CJEU decision in Case-94/18 *Chenchoolia v. Minister for Justice and Equality* (10th September, 2019). The absence of an available judgment in *Chenchoolia* did not however prevent the applicant from making that point when initiating the proceedings. Mr. O'Dwyer submits that this is a good case to raise the issue, but that is not so because the point was not argued at the substantive hearing, which makes this a very bad case to raise the point for the first time at appellate level. That would make an appellate court into a court of first instance which is in principle constitutionally improper.
4. The application is therefore refused.