[2019] IEHC 708

THE HIGH COURT
JUDICIAL REVIEW

[2019 No. 654 J.R.]

BETWEEN

M.K.M. (BANGLADESH)

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY,
THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL,
IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 25th day of September, 2019

1. The applicant arrived in the state in 2009. He claimed asylum, and while I haven't been told what happened to that application, presumably it was rejected or withdrawn, otherwise he wouldn't be here. He then purportedly married a French national on 6th April, 2011 and was granted a residence card under the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015) on 3rd April, 2012. Despite claiming that the wife was resident in Ireland at that time, she apparently gave an address in the Netherlands when applying for a job in 2012.

2. On 19th February, 2018, the Minister determined that the marriage was one of convenience and on 27th March, 2018 refused to renew the applicant's residence card. No appeal or other challenge was taken in relation to these decisions and a deportation order was made on 14th September, 2018. In January, 2019 after the limitation period to challenge that order had already expired, the applicant says he paid €700 to an entity called T.H.L. Legal to assist with court proceedings. T.H.L. Legal does not appear to be a solicitor and correspondence has been produced in which, on the face of it anyway, the applicant was asked to sign an affidavit and post it back to T.H.L. Legal for purported "swearing", which obviously would be a matter of considerable concern and I propose to give the opportunity to have that matter properly investigated.

3. The applicant applied for leave to seek judicial review on 18th September, 2019, which I granted, the primary reliefs being *certiorari* of the deportation order, an extension of time in that regard, and *certiorari* of a decision of the International Protection Appeals Tribunal, sent to the applicant on 21st August, 2019, refusing to readmit the applicant to the protection process under s. 22 of the International Protection Act 2015. Declaratory and injunctive relief was also sought.

4. The applicant applied *ex parte* for a stay, which I refused, primarily on the basis that he had failed to present as required on 17th September, 2019, and therefore was an evader.

5. The applicant however has come back again leading with his chin in seeking an injunction, and I have received submissions in that regard from Mr. Sean Rooney B.L. for the applicant and Mr. Tim O'Connor B.L. for the respondents.

6. The first point to note is that not much has changed since the original stay refusal other than that the applicant has had second thoughts about evading and now says he wants to present. As a general proposition there is little point in simply keeping coming back after a stay has been refused without something tangible in the way of changed circumstances. Leaving that aside, the test is that set out in *Okunade v. Minister for Justice, Equality and Law Reform* [2012] IESC 49 [2012] 3 I.R. 152, and the four most important factors of that test in the context of the present application are as follows:

(i). Giving all appropriate weight to the orderly implementation of measures that are *prima facie* valid, which certainly militates against a stay.

(ii). Giving appropriate weight, if any, to any additional factors arising on the facts of the individual case which would heighten the risk to the public interest of the specific measure under challenge not being implemented pending resolution of proceedings. In that regard the applicant's status as an evader is a factor to be taken into account in the sense that it would, all other things being equal, fundamentally undermine the immigration system if applicants could obtain stays while simultaneously evading their presentation obligations.

(iii). The court should also give all due weight to the consequences for the applicant of being required to comply with the measure under challenge in circumstances where that measure may be found to be unlawful. In that context any inconvenience caused by deportation in the meantime will affect only the applicant. Even on the applicant's case he accepts that the "marriage" is long over, but more fundamentally the finding of a marriage of convenience was not challenged. Thus, there is insufficient in the way of adverse consequences of deportation for the applicant to make a significant counterbalancing impact on the presumption of giving effect to the deportation order that would arise from the other factors.

(iv). With certain qualifications, the court can place all due weight on the strengths or weaknesses of the applicant's case and indeed of the prospective defence to the proceedings where appropriate. Mr. Rooney thinks he has a strong case because of the judgment of the CJEU in Case C-94/18 *Chenchooliah v. Minister for Justice and Equality*, 10th September, 2019, but that is a totally different context. *Chenchooliah* has no application to a marriage of convenience situation, as Mr. O'Connor correctly submits. Indeed, as noted above, the determination that this marriage was one of convenience was not challenged. As such, the applicant's case under this heading is not one that could be considered particularly strong.

Order

7. Accordingly, the order will be:

(i). that the matter be adjourned to 18th November, 2019 to the asylum list for furnishing of opposition papers;

(ii). that the application for a stay be refused; and

(iii). that the respondents' solicitor be directed to refer the papers to the Garda Síochána Serious Economic Crime Investigation Unit to consider the alleged activities of T.H.L. Legal.