

**AN ÁRD-CHÚIRT
THE HIGH COURT
JUDICIAL REVIEW**

RECORD NO.: 2019/664JR

BETWEEN

VS

APPLICANT

AND

MINISTER FOR JUSTICE

RESPONDENT

JUDGMENT of Ms Justice Tara Burns delivered on the 28th day of January, 2021.

General

1. The Applicant is an Indian national who arrived in the State on 26 June 2010 and obtained permission to remain on a Stamp 2 (student permission) basis. This was renewed until 24th May 2013.
2. The Applicant married a Hungarian national (hereinafter referred to as "AN") on 17 January 2013 at the Registrar's office in Castleblaney, County Monaghan. Both the Statement of Grounds and the Amended Statement of Grounds refer to this marriage taking place in Dundalk Civil Register Office. The Statement of Opposition notes the error in this regard. The Applicant swore a second affidavit on 17 June 2020, averring that he got married to AN in the Registrar's office in Castleblaney but he pointed out that that is within the Superintendent Registrar's Registration area of Dundalk, in the County of Louth. His grounding affidavit averred that he married AN at Monaghan Civil Registrar's Office. The paragraph had initially referred to Dundalk Civil Registrar's Office, but "Dundalk" has been crossed out and "Monaghan" was written in handwriting.
3. AN arrived in the State in March 2012. The Applicant asserts that they met the same month and commenced residing with each other eight weeks later at a Dublin address. A notice of intention to marry was submitted by them on 17 October 2012.
4. The Applicant applied for a residence card on the basis of his marriage to an EU National who was exercising her free movement Treaty Rights. By decision of 31 July 2013, he was granted a residence card which was valid until 30 July 2018.
5. However, the Applicant's wife returned to Hungary in December 2013 and other than a brief period residing here between April to August 2014 and again in 2018, she has remained residing in Hungary ever since. The Applicant did not inform the Minister of this change in circumstances. The Applicant asserts that he travelled to Hungary to visit his wife in 2015, although his passport is not stamped in this regard. Information was furnished by the Hungarian authorities to the State which indicated that the Applicant's wife is recorded as residing in Hungary since 2012 and has been working and receiving State benefits there. She has a child, which is accepted not to be the Applicant's, and is registered as a single mother with the Hungarian Authorities.

6. The Applicant applied for a further residence card on 29 May 2018 which application was refused on 23 November 2018. The Applicant sought a review of this decision on 13 December 2018. The Respondent confirmed the refusal to issue a further residence card on review on 26 June 2019 on the basis that his marriage was one of convenience.
7. The Respondent revoked the Applicant's current residence card on 28 January 2019. The Applicant sought a review of this decision. The Respondent confirmed this revocation on review on 26 June 2019 on the basis that his marriage was one of convenience.
8. The Applicant was granted leave to apply by way of Judicial Review for Orders of Certiorari quashing the review decisions of the Respondent revoking the Applicant's residence card and refusing to issue a new residence card.
9. The grounding affidavit sworn by the Applicant does not make the assertion that his marriage to AN was not a marriage of convenience. This issue is simply not dealt with in the affidavit. In his second affidavit, already referred to, he avers that he has not engaged in a marriage of convenience. In an affidavit sworn by AN on 10 September 2019, she avers that "we" did not engage in a marriage of convenience. She further avers to the fact that she is currently receiving medical treatment for a serious medical condition in Hungary but her intention is to return to Ireland to reside with her husband as soon as her medical treatment allows for this. She avers that she continues to be in a marital and family relationship with her husband. She avers to marrying the Applicant at Dundalk Civil Registrar Office.

Grounds of challenge

10. The grounds relied on by the Applicant in seeking an order of Certiorari of the First Respondent's decisions are that she:-
 - a) failed to give any or any adequate reasons for the impugned decisions;
 - b) failed to apply the correct legal test to her decisions;
 - c) failed to provide the Applicant with details of the information provided by the "Hungarian Authorities" thereby breaching natural and constitutional justice and the principle of *audi alteram partem*; and
 - d) failed to engage adequately or at all with the submissions of AN, as provided to the Respondent by way of representations dated 12 June 2019, thereby constituting a failure to take relevant factors into account.

Review of refusal to issue a new residence card

11. In her letter to the Applicant dated 26 June 2019, the First Respondent stated that the review application of the refusal to issue a new residence card was not successful as the Applicant did not fulfil the relevant conditions set out in the European Communities (Free Movement of Persons) Regulations 2015 (hereinafter referred to as "the Regulations") and Directive 2004/38/EC on the right of citizens of the Union and their family members to

move and reside freely within the territory of the Member States (hereinafter referred to as "the Directive"). The reasons for this were stated to be:-

"It is noted that you and [AN] married in the State on 17/01/2013, but you do not appear to have lived in Ireland as a married couple for very long. The EU citizen returned to Hungary in December 2013 and remained there until April 2014. She lived in Ireland between April 2014 and August 2014 but returned to Hungary thereafter. It appears that she lived in Hungary between August 2014 and November 2017. [AN] worked in Ireland for a brief period in 2018 before returning to Hungary in August of that year. She has remained there since that date.

Of the six years you have been married, the EU citizen has spent about four and on half years in Hungary. Although you claim to have taken some short holidays with her in Hungary and although [AN] has worked for brief periods in the State, there is little to suggest that she considers this country to be her home. It would not be unreasonable to suggest that a couple engaging in a genuine marriage would reside in the same country as each other. The Minister notes, moreover, that you did not advise him of the change in your circumstances as was required of you.

Indeed, information from the Hungarian authorities indicates that the EU citizen is permanently resident in Hungary and has been since 2012. She has been working and claiming State benefits in that jurisdiction and is recorded there as being single. It is also stated that [AN] has become a mother in Hungary and that you are not the father of this child. There is nothing on file to suggest that the EU citizen intends to bring her child to Ireland.

In this connection, your legal representative states that the EU citizen neglected to update her domestic records in Hungary to show that she is married, and the EU citizen contends that her mother has been taking her social benefits in Hungary in her absence. However, this does not explain why she is recorded as working and residing in that jurisdiction. Having considered the explanations provided by the EU citizen and your legal representative, the Minister prefers the information provided by the Hungarian authorities. [AN] has been living, working, and received social benefits in Hungary.

The Minister notes that the EU citizen, while she was in Ireland in 2018, worked for a number of months at a McDonalds restaurant in Dublin City. In this respect, you have submitted a number of payslips and a letter confirming employment. The Minister also notes, however, that the EU citizen has been on sick leave from that employment since September 2018 and is seeking care for a serious medical condition in her country of origin. Despite the fact that the EU citizen has been living in Hungary for the last nine months, she retains her employment in Dublin and may be considered to retain the status of "worker" under the Regulations and the Directive.

In this regard, the Minister observes that Regulation 8(5)(c) of the Regulations 2015 states that the validity of a residence card shall not be affected by one absence of a maximum of 12 consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in a Member State or a third country.

The Minister notes that the initial decision maker in this case was concerned that you may have submitted false and/or misleading information and/or documentation in support of your application. Specifically, the decision maker noted that you had submitted a tenancy agreement dated 02/07/2016 which was signed by yourself and the Union citizen. However, [AN] was not in the State at the time the document was signed, which indicates that this document was produced to facilitate the documentary requirements for this application.

In reference to this, your legal representative assert you signed a tenancy agreement in 2016 and that this was the effective date of the agreement. [AN] subsequently signed the document in 2017 but did not add a date to the document. This would appear to provide a reasonable explanation of the issue raised. Although the Minister remains concerned about the provenance and authenticity of this document and its signature, he is cognisant of the fact that it may not be possible to authenticate same. As such, the Minister is not satisfied that this document is false and/or misleading as to material fact.

There is little information or documentation on file in respect of your relationship with the Union citizen in this case. That is, there is nothing to suggest that you have made any financial commitments to each other, have any joint assets or liabilities, have lived together outside the State for any length of time, or have 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 marriage. It is noted, moreover, that [AN] is registered as single in her country of origin and is the mother of a child born there in recent years to another father.

[AN] arrived in the State in March 2012 and met you that month. You moved in together in May 2012 and married in January 2013. It appears that you had known each other for just ten months before you married, which indicates that you submitted a notice of your intention to marry to the Registrar's Office in or around October 2012, just seven months after you met for the first time. The Union citizen returned to Hungary soon after your marriage and has, except for brief visits to Ireland, remained there since. The accelerated nature of your relationship with and marriage to [AN] is of some concern.

The evidence available to the Minister strongly indicates that your marriage to EU citizen [AN] was one of convenience in accordance with Regulation 28 of the Regulations that was contracted in an attempt to obtain an immigration permission to which you would not otherwise be entitled.

Having considered all the information, documentation, and submissions on all of your files, the Minister finds that the decision of 28/01/2019 should be set aside and substituted with the following determination.

The Minister is of the view that the EU citizen in this case may be considered to be exercising her EU Treaty Rights, and he is not satisfied that you submitted false and/or misleading documentation in support of your application. However, he finds that your marriage to [AN] was one of convenience in accordance with Regulation 28 of the Regulations that was contracted in an attempt to obtain an immigration permission to which you would not otherwise have been entitled. The Minister finds moreover that you have failed to adequately address the concerns that were raised in his letter of 28/11/2018. Against this background the Minister has decided to refuse your application for a residence card as a family member of an EU citizen.”

Review of revocation of residence card

12. In her letter to the Applicant dated 26 June 2019, the First Respondent stated that the review application of the decision to revoke the Applicant’s residence card was not successful as the Applicant did not fulfil the relevant conditions set out in the European Communities (Free Movement of Persons) Regulations 2015 (hereinafter referred to as “the Regulations”) and Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (hereinafter referred to as “the Directive”). The reasons for this were stated to be:-

“It is noted that you and [AN] married in the State on 17/01/2013, but you do not appear to have lived in Ireland as a married couple for very long. The EU citizen returned to Hungary in December 2013 and remained there until April 2014. She lived in Ireland between April 2014 and August 2014 but returned to Hungary thereafter. It appears that she lived in Hungary between August 2014 and November 2017. [AN] worked in Ireland for a brief period in 2018 before returning to Hungary in August of that year. She has remained there since that date.

Of the six years you have been married, the EU citizen has spent about four and half years in Hungary. Although you claim to have taken some short holidays with her in Hungary and although [AN] has worked for brief periods in the State, there is little to suggest that she is ordinarily resident in this country. It would not be unreasonable to suggest that a couple engaging in a genuine marriage would reside in the same country as each other. The Minister notes, moreover, that you did not advise him of the change in your circumstances as was required of you.

Indeed, information from the Hungarian authorities indicates that the EU citizen is permanently resident in Hungary and has been since 2012. She has been working and claiming State benefits in that jurisdiction and is recorded there as being single. It is also noted that [AN] has become a mother in Hungary and that you are not the father of this child. There is nothing on file to suggest that the EU citizen intends to bring her child to Ireland.

The Minister notes that the EU citizen, while she was in Ireland in 2018, worked for a number of months at a McDonalds restaurant in Dublin City. In this respect, you have submitted a number of payslips and a letter confirming employment. The Minister also notes, however, that the EU citizen has been on sick leave from that employment since September 2018 and is seeking care for a serious medical condition in her country of origin. Despite the fact that the EU citizen has been living in Hungary for the last nine months, she retains her employment in Dublin and may be considered to retain the status of "worker" under the Regulations and the Directive.

In this regard, the Minister observes that Regulation 8(5)(c) of the Regulations 2015 states that the validity of a residence card shall not be affected by one absence of a maximum of 12 consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in a Member State or a third country.

The Minister notes that the initial decision maker in this case was concerned that you may have submitted false and/or misleading information and/or documentation in support of your application. Specifically, the decision maker noted that you had submitted a tenancy agreement dated 02/07/2016 which was signed by yourself and the Union citizen. However, [AN] was not in the State at the time the document was signed, which indicates that this document was produced to facilitate the documentary requirements for this application.

In reference to this, your legal representative assert you signed a tenancy agreement in 2016 and that this was the effective date of the agreement. [AN] subsequently signed the document in 2017 but did not add a date to the document. This would appear to provide a reasonable explanation of the issue raised. Although the Minister remains concerned about the provenance and authenticity of this document and its signature, he is cognisant of the fact that it may not be possible to authenticate same. As such, the Minister is not satisfied that this document is false and/or misleading as to material fact,

There is little information or documentation on file in respect of your relationship with the Union citizen in this case. That is, there is nothing to suggest that you have made any financial commitments to each other, have any joint assets, have lived together outside the State for any length of time, or have 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 marriage. It is noted, moreover, that [AN] is registered as single in her country of origin and is the mother of a child born there in recent years to another father.

[AN] arrived in the State in March 2012 and met you that month. You moved in together in May 2012 and married in January 2013. It appears that you had known each other for just ten months before you married, which indicates that you submitted a notice of your intention to marry to the Registrar's Office in or around

October 2012, just seven months after you met for the first time. The EU citizen returned to Hungary soon after your marriage and has, except for brief visits to Ireland, remained there since. The accelerated nature of your relationship with and marriage to [AN] is of some concern.

The evidence available to the Minister strongly indicates that your marriage to EU citizen [AN] was one of convenience in accordance with Regulation 28 of the Regulations that was contracted in an attempt to obtain an immigration permission to which you would not otherwise be entitled.

Having considered all the information, documentation, and submissions on all of your files, the Minister finds that the decision of 28/01/2019 should be set aside and substituted with the following determination

The Minister is of the opinion that the EU citizen in this case may be considered to be exercising her EU Treaty Rights, and he is not satisfied that you submitted false and/or misleading documentation in support of your application.

However, the Minister finds that your marriage to [AN] was one of convenience in accordance with Regulation 28 of the Regulations that was contracted in an attempt to obtain an immigration permission to which you would not otherwise have been entitled. This marriage was never genuine, and the Minister has decided that it should be disregarded for the purpose of immigration. As such, the permission that you held between 31/07/2013 and 31/07/2018 was not a valid permission.

The Minister also finds that you have failed to adequately address the concerns that were raised in his letter of 28/01/2019. Against this background the Minister has decided to affirm the decision of 28/01/2019 to revoke your residence card."

Failure to give Reasons

13. The Applicant submits that the Respondent failed to give adequate reasons for each of her decisions. He specifically relies on *TAR v Minister for Justice, Equality & Defence* [2014] IEHC 385, wherein Mc Dermott J held:-

"I am satisfied that though reasons were given, it is not possible to determine accurately what the reasons meant in the context of the particular case. It was not possible for the applicants to readily determine from the terse nature of the reasons or the materials submitted in the course of the application why it had been refused. [...] The reasons given were inadequate for the purposes of judicial review and any further application for a visa by the applicants.

14. In *Connelly v. An Bord Plenala* [2018] IESC 31, Clarke CJ set out, at paragraph 5.4 of the judgment, the purpose behind the duty to give reasons which illuminates a decision maker's duty in this regard. He stated:-

"One of the matters which administrative law requires of any decision maker is that all relevant factors are taken into account and all irrelevant factors are excluded

from the consideration. It is useful, therefore, for the decision to clearly identify the factors taken into account so that an assessment can be made, if necessary, by a court in which the decision is challenged, as to whether those requirements were met. But it will be rarely sufficient simply to indicate the factors taken into account and assert, that as a result of those factors, the decision goes one way or the other. That does not enlighten any interested party as to why the decision went the way it did. It may be appropriate, and perhaps even necessary, that the decision make clear that the appropriate factors were taken into account, but it will rarely be the case that a statement to that effect will be sufficient to demonstrate the reasoning behind the conclusion to the degree necessary to meet the obligation to give reasons.

Having considered a number of cases in this area, Clarke CJ continued at paragraph 6.15 of the judgment:-

“Therefore it seems to me that it is possible to identify two separate but closely related requirements regarding the adequacy of any reasons given by a decision maker. First, any person affected by a decision is at least entitled to know in general terms why the decision was made. This requirement derives from the obligation to be fair to individuals affected by binding decisions and also contributes to transparency. Second, a person is entitled to have enough information to consider whether they can or should seek to avail of any appeal or to bring judicial review of a decision. Clearly related to this latter requirement, it also appears from the case law that the reasons provided must be such as to allow a court hearing an appeal from or reviewing a decision to actually engage properly in such an appeal or review.”

15. Dealing with a situation where the reasons for a decision are not apparent on the face of a document issuing a determination, Clarke CJ referred to the decision of Fennelly J in *Mallak v. Minister for Justice* [2012] IESC 59 wherein Fennelly J stated at paragraph 66 of the judgment:-

“The most obvious means of achieving fairness is for reasons to accompany the decision. However, it is not a matter of complying with a formal rule: the underlying objective is the attainment of fairness in the process. If the process is fair, open and transparent and the affected person has been enabled to respond to the concerns of the decision maker, there may be situations where the reasons for the decision are obvious and that effective judicial review is not precluded.”

16. In *YY v. Minister for Justice* [2017] IESC 61, O’Donnell J., made the following remarks regarding the question of whether adequate reasons had been given for the issuance of a deportation order, at paragraph 80 of the report:-

“I consider that a court should be astute to avoid the type of over-refined scrutiny which seeks to hold civil servants preparing decisions to the more exacting standards sometimes, although not always achieved by judgements of the Superior

Courts. All that is necessary is that a party, and in due course a reviewing court can genuinely understand the reasoning process.”

Having analysed the reasons given in that case, O’Donnell J continued:-

“I cannot have the level of assurance that is necessary that the decision sets out a clear and reasoned path, and moreover one that was not flawed or incorrectly constrained by unjustifiable limitations of irrelevant legal considerations.”

17. I have set out each decision of the Respondent which is under challenge extensively so that the details of the reasons why the Respondent determined that this marriage was one of convenience can be viewed. It is not the case, as is suggested by the Applicant, that the Respondent simply made the finding that this was a marriage of convenience but did not explain why she was of the view. The Respondent engaged in an analysis of the information which she had regarding the relationship between the Applicant and NS; the accelerated time in which they married; the periods of time they spent together; the fact that the Applicant did not inform the Respondent that AN was absent the jurisdiction for such an extended period of time; the fact that AN had a child to another man in Hungary since her marriage to the Applicant; the information which she had from the Hungarian authorities; and the representations made regarding that information from AN. She determined the import of that information and came to a conclusion, which was entirely open to her to make, that this marriage was not genuine but was one of convenience. It is also clear that submissions made on behalf of the Applicant were considered as each review decision altered the original decision in two respects, namely that AN was exercising treaty rights in 2018 and the tenancy document submitted by the Applicant and signed by AN was not considered by the Respondent to be a false or misleading. The reasons for the decision are quite apparent on the face of each decision.

Incorrect Test applied to determination?

18. The Applicant asserts that the Respondent determined this issue on the basis of an incorrect test. The basis for this submission is that a paragraph of each decision states that “the evidence available to the Minister strongly indicates” that the marriage is one of convenience. This submission, fails to have regard to the determining conclusion by the Respondent to the effect that the Respondent “*finds*” the marriage to be one of convenience. Again, it was important to set the decisions out extensively so that what actually was found by the Respondent can be properly analysed.

Failure to provide the details of the information received from the Hungarian authorities

19. The Applicant asserts that the failure by the Respondent to provide the details of the information received from the Hungarian authorities is a breach of fair procedures and the *audi alteram partem* principle.
20. By letter dated 23 May 2019, the Respondent informed the Applicant that she was proposing to uphold the decision to refuse to issue him a new residence card on review. In that letter it was stated:-

"Information available to the Minister indicates that the EU citizen is permanently resident in Hungary and has been since 2012. The information also indicates that the EU citizen is recorded as being single and has had children in Hungary in this time. Moreover the EU citizen has been working and has been claiming State benefits in Hungary."

21. By letter dated 12 June 2019, the Applicant's solicitor replied as follows with respect to the Hungarian information:-

- "1. [AN] is not permanently resident in Hungary. She is there to receive medical treatment. The Minister that there is "information available" that the EU citizen is permanently resident in Hungary and has been since 2012. In the interest of procedural fairness and natural and constitutional justice along with the right to good administration pursuant to Article 41 of the Charter of Fundamental Rights of the EU and (the general principle of good administration in EU Law) we would ask you to provide us with details of that information so that we may deal with it.
2. [AN] has been recorded as single in Hungary. This registration would need to be updated. Clearly, she did not update the domestic records in Hungary. I attach an email from her dated the 7th June 2019 which addresses this issue....
3. As noted above I attach copy email dated 7th June 2019 received by us from [AN] in relation to her claim of State benefits in Hungary. She was a carer for her grandmother. She left Hungary and her mother became her grandmother's carer. Her mother was to transfer the payment to her own name but did not do that. Clearly this raises issues in Hungary, but [AN] has explained matters in her email. She denies personal wrongdoing.
4. Your letter states "it would not be unreasonable to assume that if you were the father of the children you would have informed this office in order to substantiate your assertion that the marriage between you and the EU citizen was genuine given that the Minister has in the past raised concerns about the genuineness of the marriage." Your statement correctly identifies this as an assumption. [The Applicant] is not the child's father and there is no obligation under the Directive/Regulation to speak as to an extra-marital child in circumstances where it does not alter the immigration position. [AN] has had a child in Hungary. You refer to "children". She has a single child. This child is as a result of an extra-marital relationship that she had which is not ongoing. She had returned home to Hungary for a period of time and fell pregnant. This was a matter of considerable distress within their marriage and one that this couple had to work through. The child's existence does not alter the legal position in relation to [the Applicant] in any way. Therefore, it is not a "material" fact. As evidenced by your letter, it is a fact which may lead to assumption being made, including wrong assumptions. The applicant and his wife, [AN] deny engaging in a marriage of convenience and deny engaging in an abuse of rights within the Regulations and Directive."

22. The principle of *audi alteram partem* requires that a person in respect of whom a decision is to be made be given an opportunity to make his case about any relevant matter. If such a person is unaware of a relevant issue, then he should be made so aware, so that he can make submissions thereon. Providing information to such a person does not require that the underlying documentation be provided unless that, in itself, is of relevance. In the instant case, the information which the Minister was in receipt of, which was of relevance to the Applicant, was made known to him. He was given an opportunity to make representations regarding the information which he did extensively. It transpired that the only portion of the information which the Applicant controverted was with respect to AN having "children" rather than "a child" which he was not the father of. The remainder of the information was accepted by AN to be the case, although it was asserted that there were reasons why this information was erroneously recorded, the fault for which lay with AN and her mother.
23. Having regard to the detail provided to the Applicant regarding information relating to AN from Hungary; the representations made by his solicitor in respect of that information; and the fact that the information was factually correct except for the reference to children rather than child, which was ultimately accepted by the Respondent, I fail to see how an argument can be successfully made that the Applicant was not given an opportunity to advance his case regarding this information. No breach of the *audi alteram partem* principle arises in this regard.

Failure to take relevant factors into account

24. The Applicant asserts that the Respondent failed to take relevant factors into account, namely the submissions of AN, as provided to the Respondent by way of representations dated 12 of June 2019.
25. It is not correct to say that the Respondent failed to take account of the submissions of AN forwarded to the Respondent by way of email and included in representations from the Applicant's solicitor on 12 June 2019. The Respondent clearly took account of the fact that she disputed that she had "children" but instead had a "child" and reflected this in her decisions. What had been asserted by AN was also noted by the Respondent in the course of her decision reviewing the refusal of a residence card wherein it was stated:-
- "In this connection, your legal representative states that the EU citizen neglected to update her domestic records in Hungary to show that she is married, and the EU citizen contends that her mother has been taking her social benefits in Hungary in her absence. However, this does not explain why she is recorded as working and residing in that jurisdiction. Having considered the explanations provided by the EU citizen and your legal representative, the Minister prefers the information provided by the Hungarian authorities. [AN] has been living, working, and received social benefits in Hungary."
26. Clearly, the Respondent preferred the information provided by the Hungarian authorities. Considering and discounting information submitted on behalf of the Applicant does not equate with failing to have regard to it. The Respondent was entitled to accept the

information she had received regarding AN from the Hungarian authorities having considered the Applicant's representations which comprised information from AN. No error is established on the part of the Respondent in this regard.

27. At the hearing before me, submissions were made regarding the Respondent failing to consider joint bank account details and Viber calls allegedly made between the Applicant and AN which had been submitted to her during the process. No complaint had been made about these issues in terms of a pleading that the Respondent failed to take these specific matters into account in the Statement of Grounds filed in this matter. Neither had any averments been made by either the Applicant or AN in their affidavits, relating to these issues. It is completely inappropriate that these issues are advanced at the hearing before me without having properly been put before the Court. There were also assertions made that some of the time period during which AN was absent this jurisdiction could be explained by illnesses on the part of her grandmother, her mother and the Applicant. Nothing was put on affidavit in this regard. Indeed, there was scant enough evidence averred to regarding AN's own medical situation although there was a reference to it in her affidavit. This is a wholly unsatisfactory manner to raise what are asserted to be significant issues before a Court. Again, these are matters which were not specifically pleaded in the Statement of Grounds. There was a generalised plea that the Respondent had failed to take relevant factors into account in terms of AN's representations to the Respondent, but no detail is placed on what exactly it is asserted that she failed to take into account. A further assertion was made that AN's father and step mother resided with the Applicant. Again, no evidence was placed before the Court in this regard and there is no specific pleading asserting a failure to consider this issue.
28. The Respondent has failed to establish any error on the part of the Respondent with respect to either of the decisions challenged. Accordingly, I am refusing the relief sought and make an order for the Respondent's costs as against the Applicant to be adjudicated upon in default of agreement.