

THE HIGH COURT

[2022] IEHC 48

RECORD NO. 2020/840JR

BETWEEN

W.L.C

APPLICANT

AND

THE MINISTER FOR JUSTICE

RESPONDENT

JUDGMENT of Ms. Justice Niamh Hyland delivered on 28 January 2022

Introduction

1. This is an audacious application. To succeed on the principal grounds raised in this challenge, the applicant must persuade me that I ought to ignore a decision of the Court of Appeal, *Rughoonauth v Minister for Justice and Equality* [2018] IECA 392, a determination of the Supreme Court, *Rughoonauth v Minister for Justice and Equality* [2019] IESCDT 124 (whereby it refused leave to appeal the decision of the Court of Appeal), a decision of the High Court in *SA v The Minister for Justice and Equality* [2020] IEHC 571, and a further decision of the High Court in *MK v The Minister for Justice and Equality* [2021] IEHC 275. In short, I consider that, not only am I not entitled to ignore the determination of the Supreme Court, the decision of the Court of Appeal and the two High Court decisions (unless, in the case of the High Court, the *Re Worldport Ireland Limited (In Liquidation)* [2005] IEHC 189 criteria are satisfied), but that there is no reason in principle for ignoring those decisions. They correctly reflect the jurisprudence of the European Court of Human Rights (“the ECtHR”) in respect of the application of Article 8 of the European Convention on Human Rights (“the ECHR”) to immigration and deportation decisions. In seeking to argue they are wrongly decided, the applicant has failed to correctly interpret the Supreme Court decision of *Luximon v Minister for Justice and Equality; Balchand v Minister for Justice and Equality* [2018] 2 IR 542.

Factual background

2. The applicant was born on 13 December 1983 in Malaysia and is a Malaysian national. She arrived in Ireland and registered as a student on or about 26 September 2012. She was granted Stamp 2 permission to reside in the State on student conditions, which permission was extended from time to time until its expiration on 30 September 2019. Ultimately, she graduated with a Bachelor of Business (Honours) degree from the College of Computing Technology.
3. The applicant lived with her sister and their family in Malaysia whilst growing up. The applicant’s sister moved to Ireland before her and gave birth to her son on 17 December 2003. Since moving to Ireland in 2012, the applicant has at all times lived either with, or in close proximity to her sister and nephew, both of whom are Irish citizens.
4. On 30 October 2019, Abbey Law, solicitors for the applicant, made an application for permission for the applicant to remain in the State pursuant to s.4 of the Immigration Act 2004 and/or the respondent’s executive discretion, and enclosed supporting documents including the applicant’s education records, employment records, her current and expired

passports, evidence of her financial situation and health insurance, and evidence of her close relationship with her sister and nephew.

5. By letter dated 14 October 2020, the respondent refused the application to vary the applicant's permission to remain in the State, noting that she was not eligible for Stamp 1G permission as she had exceeded the 7 year limit on residence in the Student Guidelines. In respect of the leave to remain application, the Minister referred to the test in *R (Razgar) v Home Secretary* [2004] 2 AC 368 and held that given that the applicant's status has at all times been precarious, it is not accepted that any potential interference with her private life rights would have consequences of such gravity as to engage the operation of Article 8 and therefore the refusal was not in breach of her right to respect for private life. The Minister further concluded that a refusal of permission to remain did not constitute an interference with the right to respect for family life, on the basis that no evidence had been submitted to suggest that the applicant's relationship with her sister or nephew extended beyond normal emotional ties.

Procedural history

6. Leave to challenge the Minister's refusal to grant permission to remain by way of judicial review was granted on 23 November 2020.

Alleged breach of article 8 by the minister

7. The correct approach by the Minister when making a decision in respect of permission to remain insofar as Article 8 is concerned is identified in the UK Court of Appeal decision of *Razgar*. The Minister identified in her decision that the first test in that case was met but concluded that the applicant had not overcome the second test, i.e. that the applicant had failed to establish the gravity of the infringement of the Article 8 rights with the consequence that no proportionality review was required.
8. The applicant essentially makes two arguments to support her contention that this approach was misconceived. The first is that *Rughoonauth* was erroneously decided insofar as it does not exclude students from being treated as persons whose status is precarious. It is argued that I should instead adopt the approach of the Supreme Court in *Luximon*, which, on the applicant's case, requires that students not be treated as persons whose status is precarious.
9. In my view it is not open to the applicant to make that argument. The decision of the Court of Appeal in *Rughoonauth* is binding upon me. Moreover, the Supreme Court has declined to grant leave to appeal against the decision of *Rughoonauth*. *Rughoonauth* makes it clear that it is not unlawful to conclude that a person who lawfully resides on a temporary and time-limited basis, as the applicant did in this case, has a precarious status such that Article 8 is not sufficiently engaged in the case so as to necessitate a proportionality review. As Humphreys J. found in *SA* (discussed below), the essential *ratio of Rughoonauth* may be found at paragraph 71 of the decision of Peart J. i.e.

"As I have said, it is highly unlikely that a person here on a temporary student permission could acquire the same level of private life rights as a person to whom the description of 'settled migrant' might normally be attached, given the certain

knowledge that the student has from the outset known that their presence in the State is temporary only and for a limited and defined purpose. In my view some exceptional circumstances would have to arise for the status of 'settled migrant' to be applied. But it is wrong to rule out on an a priori basis the possibility that a migrant student can never be properly considered to be a 'settled migrant' in the sense that the phrase has come to be understood, and who as a result is considered to be entitled to a proportionality assessment under Article 8.2 ECHR."

10. The principles governing the application of Article 8 in an immigration context have been identified in some considerable detail in the judgments referred to in the first paragraph of this judgment. In SA, Humphreys J. noted that the Court of Appeal in *Rughoonauth* had rejected the proposition that a student permission is a grant of settled status and that deportation of a person in possession of such a permission requires a proportionality assessment under Article 8 of the ECHR (leaving aside the inevitable possibility of exceptional circumstances). He observed that the Supreme Court had refused leave to appeal against the decision of the Court of Appeal in *Rughoonauth*.
11. Having carried out a detailed review of the case law of the ECtHR on Article 8 in the context of deportation and expulsion decisions, Humphreys J. went on to summarise the principles in relation to the ECtHR case law relevant to reliance upon Article 8 i.e. the right to respect for private or family life, insofar as they are applicable to immigration cases.
12. The detailed summary of those principles may be found at paragraph 35 of S.A. but in short, Humphreys J. notes that settled migrants, as that term is used in the ECtHR case law, means people who have already been formally granted a right of residence in a host country that is not temporary or provisional in nature. Persons who have a lawful permission that is temporary and provisional and falls short of a formal grant of a right of residence may be described interchangeably as precarious, unsettled, non-settled, insecure or uncertain in their status. Where private and family life interests arise at a time when an applicant's right to stay is precarious in the Strasbourg sense, they cannot be taken into consideration in the Court's examination (apart from in exceptional circumstances). That means no proportionality analysis is required for the removal of non-settled migrants in the absence of exceptional circumstances. That follows from the applicant being unable to rely on such asserted interests or rights built up during a period of precariousness. The obligation on national authorities to conduct a proportionality analysis only arises under the ECHR where the person had settled status or where exceptional circumstances apply.
13. In *MK*, Burns J. again reviewed in some considerable detail the jurisprudence of the Irish courts regarding the engagement of Article 8, and considered the decisions of *CI v Minister for Justice* [2015] 3 IR 385, *P.O. & Anor v Minister for Justice and Equality & Ors* [2015] 3 IR 164, the decision of the Court of Appeal in *Rughoonauth*, the Supreme Court determination in *Rughoonauth* and SA referred to above. I do not intend to replicate that

review but, having carefully considered the case law referred to by Burns J., I respectfully adopt the conclusion that she identifies at the end of her review as follows:

"The jurisprudence of the Irish Courts is extremely well settled to the effect that a migrant with a non-settled or precarious residential status cannot assert Article 8 rights unless exceptional circumstances arise. Accordingly, a proportionality assessment does not arise" (paragraph 27).

14. I should add that even absent this substantial volume of case law fatal to the applicant's case in this regard, I would not have necessarily have been persuaded that *Luximon* requires the Minister to carry out a proportionality review of a person in the applicant's situation or precluded the Minister from treating the applicant as a person in a precarious situation. Before identifying my interpretation of *Luximon*, it may be helpful to explain why, in respect of persons post 2011, such an unambiguous view has been taken that non-EU students are, in principle, capable of being treated as being in a precarious position.
15. In 2011, the year before the applicant came to Ireland, the Irish Naturalisation and Immigration Service ("INIS") issued guidelines making it clear that a person can only stay in Ireland as a student for a maximum aggregate time of 7 years. Therefore, a person who has permission to remain granted by reason of student status is treated as having temporary/provisional status, falling short of a formal grant of a right of residence.
16. Returning to *Luximon*, the challenge concerned a complete failure by the Minister to consider Article 8 in any way when refusing permission to remain. On the other hand, in this case, the Minister applied the legal framework identified in *Razgar* in respect of Article 8. Thus, the Supreme Court was considering the question of the engagement of Article 8 in an entirely different context to that which is being considered here. That is clear from paragraph 86 of the decision of McMenamin J. where it is stated that the judgment affects only the respondent's entitlement to an Article 8 consideration when the ministerial decision is being made.
17. Second, in *Luximon* the guidelines requiring that students stay a maximum of 7 years were not in existence when the applicants in those cases arrived in Ireland. The significance of this distinction is clear in paragraphs 13 and 14 of the judgment of McMenamin J. where it is stated:

*"13. In July, 2011, the conditions of the 2001 Educational Scheme were altered, after a process of consultation. It is unclear whether the 2001 scheme did actually contain any time limitation. Nonetheless, the 2011 alterations undoubtedly had an impact on applicants from non-EEA countries who had entered the State prior to 1st January, 2011. Whatever about the pre-2011 position, the new conditions certainly did impose time limitations. It is true, as the High Court judge observed in *Balchand*, that an earlier lack of formality can be administratively "tightened up". But the question remained as to whether such new limits could have retrospective*

effect on these respondents' applications for renewal or variation under s.4(7) of the 2004 Act.

14. The 2011 time-limitation on presence in the State consisted of an overall limitation of 7 years, and a shorter, 3 year limitation, for students involved in certain categories of educational courses. The Minister's position was that, by virtue of these administrative changes, both Ms. Luximon and Mr. Balchand came within a category of what are now described as "timed out students", and, absent obtaining a change in their residence and employment status, they were no longer to be permitted to remain in the State."

18. The reference in those paragraphs to January 2011, the date upon which the guidelines came into force, is of considerable importance. It puts clear blue water between the situation where there was no limit on the time upon which a person could seek to stay as a student and the position post 2011, where there was a 7 year time limit. I am also influenced by paragraph 4 where McMenamin J. refers to the fact that the applicants' legal status in the State was altered, not because of some unlawful act on their part, but rather by an alteration in government policy, i.e. the adoption of the 2011 INIS Guidelines.
19. The applicant only arrived in 2012 and therefore she always knew her residence was subject to a seven-year cap, quite unlike the position of the applicants in *Luximon*. The applicant has argued that it may be possible to stay in Ireland after the completion of studies in order to seek employment under the Irish third level graduate scheme (limited in time to a maximum of one year). Alternatively, she points out that a student may obtain a green card or work permit. She argues that students should not therefore be treated as precarious. The fact that there is a possibility of staying in Ireland on a different basis if permission is granted on that alternative basis does not, in my view, provide certainty to a student such that they are no longer in a precarious position.
20. There is no ambiguity about the fact that a student cannot stay *qua* student for more than 7 years. Indeed, this was well understood by the applicant as submissions made on her behalf from her solicitors of 30 October 2019 demonstrate. In those submissions, it is stated that certain family relationships developed at a time when "*the applicant could have no expectation of remaining permanently in Ireland*". Equally at the end of that letter, a request was made that the Minister "*on an exceptional basis*" grant the applicant permission to remain in Ireland.
21. The applicant also argued that she was lawfully in Ireland for the seven years of her studies and therefore she should be treated as someone who has a right of residence. An attempt was made to rely on the Determination of the Supreme Court in *Rughoonauth* in this regard, where it was stated as follows:

"For the purposes of Article 8(2), the underlying point is the distinction between the situation of persons who create a family life within the host jurisdiction at a time when they are lawfully resident, and perhaps have a history or an expectation of long-term residence, and those who do so when they are aware that the

continuation of that life within that State is precarious. The jurisprudence of the ECtHR has established that in the latter circumstances the removal of a non-national family member will constitute a violation of Article 8 rights only in exceptional circumstances."

22. Counsel for the applicant valiantly sought to make a virtue of that paragraph, focusing upon the reference to persons being "*lawfully resident*" and the word "*perhaps*" being put before the reference to having a history or expectation of long-term residence. He emphasised that the applicant had indeed been lawfully resident for the period of time during which she was in the State apart from the period after which her time expired as a student. However, it seems to me that support cannot be garnered from that wording given that the Supreme Court went on to refer to persons who are "*aware that the continuation of that life within that State is precarious*" and the jurisprudence of the ECtHR in that respect. Given the case law of the ECtHR, dealt with above, the Minister was correct to treat the applicant as a person who had a precarious status within the State, where she had only a temporary, time limited, right of residence.
23. In the circumstances, I am compelled to agree with the submissions made by the Minister that the applicant has sought to expand the application of *Luximon* far beyond what was intended by the Supreme Court.
24. In conclusion, the applicant must be treated as having been aware of the seven-year cap applicable to non-EU students. Accordingly, she was in a precarious position during those years within the meaning of that phrase as interpreted by the ECtHR. Therefore, she cannot rely on those years to establish the acquisition of interests necessary to entitle her to a proportionality review under Article 8. The Minister had no obligation to afford her a proportionality review in those circumstances.

Impermissible binary nature of assessment

25. Having sought to avoid the effects of the judgment of the Court of Appeal in *Rughoonauth* in her first argument, the applicant seeks to rely upon it in her second argument. She argues that a binary assessment of the kind deprecated by Peart J. in *Rughoonauth* was carried out by the Minister, in that she failed to consider the particular facts and circumstances pertaining to the applicant but rather refused the application simply on the basis that she was in a precarious situation as a student.
26. In my view it is clear from paragraph 71 of *Raghoonauth* referred to above that the Minister is absolutely entitled to take into account the fact that a person is a student, in a context where students are not under any circumstances permitted to remain in Ireland on the basis of their student status for more than 7 years. However, I am also satisfied that the decision by the Minister did not rule out the applicant from a proportionality review automatically on the basis that she was a student but rather considered the substance of her application, thus permitting a review as to whether exceptional circumstances existed that might warrant a proportionality review. The decision to refuse permission to remain discloses the factors taken into account by the Minister:

"It should be noted that you were permitted to enter the State as a non-EEA national student to pursue your studies in accordance with the Student Guidelines. These guidelines were introduced in January 2011 and provide the conditions for a non-EEA national to study in Ireland for 7 years progressing along a student pathway towards a work permit. All information and documentation submitted has been read and fully considered.

...

Information on file shows that you have achieved academic qualifications in the State. Information and documentation on file demonstrates that you have worked in the State since your arrival in 2012. It is submitted on your behalf that you live in close proximity to your sister and that you have formed a close relationship with your sister's son. It should be noted that all non-EEA national students are admitted to the State in accordance with the student guidelines. You state that it is your wish to remain in Ireland and that you have been here since 2012. All information and documentation in your individual case has been read and fully considered.

...

All information submitted by and on behalf of you has been considered, and it is not accepted that any exceptional circumstances arise. In addressing the second question raised in the aforementioned Razgar, having regard in particular to the fact that your status has at all times been precarious, it is not accepted that any potential interference with your private life rights will have consequences of such gravity as to engage the operation of Article 8. Accordingly, a decision to refuse to grant you a further permission on student conditions is not in breach of the right to respect for private life under Article 8 of the ECHR."

27. The Minister is clearly considering the situation of the applicant looking at her student status, the applicable student guidelines, the relationships she has formed and the question of exceptional circumstances. She concludes that the applicant is a person whose status has been precarious during her tenure in Ireland. That factual conclusion is based upon the material before the Minister put forward by the applicant and no mistake in respect of the analysis of that material is identified. Indeed, as noted above, the submissions from Abbey Law request that she be allowed stay on an exceptional basis. This suggests that the applicant recognised that her status as a student would very likely mean that she would be treated as a person in a precarious situation within the meaning of the ECtHR case law, thus preventing her from acquiring interests or rights built up during that period of precariousness.
28. In fact, the applicant failed to identify any exceptional circumstances. However, the decision makes clear that, had such circumstances been identified, the Minister would have considered same and did not exclude the applicant from putting forward such

arguments merely because she was a student. There was no *a priori* exclusion of such arguments by the Minister. Accordingly, this ground of challenge also fails.

Family circumstances

29. A distinct argument was made in relation to family circumstances. I think it is fair to say that considerably less weight was given to this ground and the applicant chose to simply rely on the written legal submissions in this respect.
30. In those submissions, the applicant contends that the Minister failed to consider the individual circumstances of the applicant's family ties for the purpose of identifying whether or not they were sufficient to be considered family life within the meaning of Article 8. She argues that that the respondent's analysis of the applicant's family rights was unduly circumscribed by reference to the dicta of the English Court of Appeal in *Kugathas v Home Secretary* [2003] EWCA Civ 31 which set out that family life will not be established between an adult child and his parents or other siblings unless something more than "normal emotional ties" exists.
31. The applicant argues that no individual analysis of the relationship between the applicant and her nephew was undertaken, despite the very close relationship between the applicant and her nephew. The applicant asserts that the consideration of family life requires a close analysis of the particular ties in question. She submits that the evaluation necessary in the circumstances is best captured by Cooke J. in *A (K) (Nigeria) v Refugee Appeals Tribunal* [2012] IEHC 109 at paragraph 15;

"To constitute "family life" for the purpose of Article 8, mere residence, even over a prolonged period and even when legal, is not sufficient. There must be evidence of some more substantial existence lived with close relatives in which the individual concerned can be shown to have established personal roots in the Contracting State through personal relationships, parenthood, education, employment or other indicators that the Contracting State has become the real centre of the individual's settled way of life."

32. The applicant claims that it was not sufficient for the Minister to simply assert that there was no evidence of a relationship beyond normal family ties. She argues that the Minister should have had regard to individual features of the relationship in coming to her decision, identifying that she cohabited with her sister and nephew and cared for her nephew from a young age.
33. The Minister accepts that a relationship between adult siblings or between an aunt and a nephew can give rise to Article 8 family rights. It is argued that the correct test for the engagement of such rights is well established as requiring that it be demonstrated that more than "normal emotional ties" exist between the family members. Humphreys J.'s discussion of the test is relied upon and his use of that very phrasing at paragraph 6, in *Nagra v The Minister for Justice and Equality* [2018] IEHC 398 by way of example. The Minister argues that this was the test stated and applied by her in coming to her determination.

34. The respondent argues that in applying that test it was reasonable to conclude, as was done, that *"no evidence has been submitted to suggest that your relationship with your sister or sister's son extends beyond normal emotional ties"*. It is claimed that notwithstanding the assertion by the applicant to the effect that she had close relationships with both her sister and nephew, there were no particular facts advanced by the applicant that demonstrated anything beyond normal emotional ties. It is submitted that the case made by the applicant was so non-specific and lacking in detail that it was not necessary for the Minister to go any farther in the decision than she did.
35. An examination of the material before the Court on this point is necessary to adjudicate on this argument. Turning first to the affidavit of the applicant of 9 November 2020, she avers at paragraph 8 that she has always lived with or near her sister and nephew and enjoys a close relationship with them both. She further notes that she was involved in caring for her nephew from the age of nine. At paragraph 12 she again avers that she has a close relationship with both her sister and nephew.
36. Moving to the legal submissions made on behalf of the applicant pursuant to an application under s.4 of the Immigration Act 2004, it is stated that the applicant *"has spent the past seven years of her life living with or in close proximity to her sister and her sister's son"*. Included with those submissions is a letter from the applicant's sister where she notes that the applicant was *"very close"* with her nephew and that she helped, travelled with them and carried out the duties of a sister. Further, an affidavit of the applicant's mother dated 18 October 2019 was also included, where she avers that her two daughters have *"a close relationship"* and that the applicant is *"very close"* to her nephew.
37. In other submissions, under the heading *"Nature of connection with the State"* it was stated on behalf of the applicant that she had *"resided in the State for more than eight years. She has close family members who are Irish nationals, namely, her sister and nephew"*. A similar submission is found under the heading *"Humanitarian considerations"* where it is argued that the applicant's *"long period of residence in the State and her close family ties are strong humanitarian arguments"* in favour of her remaining in Ireland.
38. The submissions made on behalf of the applicant throughout this case bear a striking degree of homogeneity in both form and substance. It is submitted repeatedly on the applicant's behalf that she lived with or near her sister, that she helped care for her nephew and that they each had close relationships. At no point are any specific or particular facts advanced to illuminate these submissions in any significant way e.g. it is never specified when or for what amount of time she lived with her sister or in what ways she cared for her nephew.
39. Accepting that a relationship between an aunt and a nephew can in principle give rise to Article 8 family rights, the case law makes it clear that for such rights to arise, the applicant must have established that more than *"normal emotional ties"* exist between the family members. No such evidence was put forward by the applicant in this case. No detail was provided that the Minister was required to analyse. For example, taking the

applicant's argument at its height that the Minister must have regard to the individual features of the case, it is not clear how a bare description of a relationship as "close" is to be parsed beyond the recognition given to it in the determination. The Minister makes clear in her determination that she has: "*considered...that your sister is resident in the State and that you have a close relationship with your sister's son*".

40. Similarly, as regards the periods of cohabitation and the care provided by the applicant to her nephew, no detail whatsoever is provided. In those circumstances, it was reasonable for the Minister to conclude that cohabitation and the provision of care were normal features of the relationships in question. It was therefore open to the Minister to conclude, *simpliciter*, that there was nothing beyond the normal emotional ties attendant on those relationships.
41. Accordingly, the applicant has failed to establish any breach on the part of the Minister in respect of the treatment of family rights under Article 8.

Family rights of the applicant's sister and nephew

42. The applicant makes a further argument to the effect that the respondent erred in failing to consider the impact of her decision on the Article 8 and constitutional rights of the applicant's sister and nephew.
43. In making this argument the applicant submits, relying on *MA v MJELR* [2009] IEHC 245, that the position in this jurisdiction is substantially similar to that identified by the House of Lords in *Beoku-Betts v Home Secretary* [2009] 1 AC 115 in that when a potential breach of Article 8 is in question, the family must be assessed as a whole. She contends that this broader analysis is absent in the Minister's determination.
44. The respondent does not dispute that such an analysis is required and argues that the applicant's argument proceeds on the mistaken premise, analogous to the previous ground, that such an analysis was not carried out. The Minister concluded that there was no family life for the purposes of Article 8 and in reaching that conclusion she assessed the family as a unit, as required.
45. She relies, as the applicant does on *Betts* for the proposition that "*there is only one family life*". That is to say, when the Minister is assessing the impact on the "*family life*" of an applicant, it is implicit that she has regard to the impact on the family as a unit, given the family life of an applicant subsists in the strength of their ties to their other family members. She refers to the decision of Dunne J. in *EMS v Minister for Justice, Equality and Law Reform* [2007] IEHC 398 where the Court dealt with a similar claim that the Minister failed to consider the impact of a decision in relation to Article 8 on the so-called third party family members. In a particularly apposite passage, Dunne J. held;

"it seems to me that it is not necessary for the Minister to spell out specifically that he has considered the impact of the making of an order in circumstances where on the stated facts it must be abundantly clear that there would be an impact".

46. The applicant submits that in *MA*, Clark J. considered this dicta but nonetheless held that the facts before the Court in that case required further analysis than the “*somewhat formulaic*” treatment she was given by the Minister. She held there was “*nothing...to indicate that those special facts were appreciated and thus I have concluded that the Minister did not fully consider the effect*” on the third party family member in question. The applicant argues that this determination applies equally to this case.

47. I cannot agree. The special facts contemplated in that judgment, namely the effective orphaning of the applicant and her half-brothers in wholly unique circumstances, are not in any way analogous to the instant case. Indeed, in this case, as has been analysed above, it was entirely reasonable for the Minister to conclude that there were no facts before her that detailed anything beyond the normal emotional ties that would be expected in the applicant’s situation. Thus, this case falls within the “*vast majority*” of such cases as discussed by Clark J. at para. 53 of *MA*;

“I reiterate that special and peculiar facts prevail in this case which required special consideration. They do not apply to the vast majority of cases where the Minister makes decisions to deport even if that decision separates a family.”

48. Beyond this, the applicant argues that the constitutional rights of the applicant’s nephew under Article 40.3.1 required that his welfare and best interests be expressly considered. Again, I cannot agree. No particular personal right under Article 40.3.1 is specified as being at issue and no authority is cited for the proposition that any such putative right must be expressly considered by the Minister in these circumstances. No specific material relating to the welfare of the applicant’s nephew, or his best interest was identified.

49. In light of the foregoing I am satisfied that it was open to the Minister to come to her determination without a discursive analysis of the impact of her decision on the rights of the applicant’s sister or nephew.

Conclusion

50. In those circumstances set out above, the applicant’s challenge fails in its entirety.