

**THE HIGH COURT
JUDICIAL REVIEW**

**[2023] IEHC 291
[2021 No. 753 JR]**

BETWEEN:

**MA
AND
YB**

APPLICANT

**AND
THE MINISTER FOR JUSTICE**

RESPONDENT

**JUDGMENT of The Hon. Mr. Justice Alexander Owens delivered on the 21st day of
March 2023.**

1. This application for judicial review is concerned with duties of decision-makers in public administration when material is presented for consideration in a form which may require clarification or further explanation.
2. Those who provide such material are responsible for any deficiencies in content and presentation. They cannot complain of maladministration if, as a result of such deficiencies, a decision-maker misinterprets, disregards or places little weight on such material. For example, an application for a visa may include material which is incapable of meaningful interpretation. A decision-maker must work within what is provided and is not obliged to seek out what has been omitted or inadequately explained.
3. However, decision makers must act fairly. If a decision-maker needs clarification or further explanation of material provided, the provider should be given an opportunity to comment. This obligation does not extend to cases where an applicant has failed to adhere to specified requirements of the process. It does not extend to material which contain obvious inconsistencies which ought to have been addressed.
4. Proper presentation and consideration of applications for administrative decisions is not a game of cat and mouse. Professionals representing parties seeking decisions from public bodies may not turn consequences of failures of presentation into judicial review points. If material proffered contains an obvious inconsistency which requires explanation, this must be addressed at the outset. If material is presented in a form which is confusing or incapable of meaningful interpretation, an applicant cannot then be heard to complain that its content has not been considered.
5. These rules apply to applications for visas. Every applicant for a long-stay visa based on marriage in any state is taken to know that those charged with examining these applications will require relevant personal information in an intelligible format. That applicant must establish genuineness and strength of a marriage relationship. There is no basis on which any applicant for this type of visa could possibly think that it could be sufficient to provide untranslated copies of material evidencing marital communications.

6. In considering an application for judicial review of administrative decisions relating to visas and the like, the first step is to examine whether the decision-maker has incorrectly excluded material which ought to have been considered. If the Court identifies that any significant error has been made, the decision will be remitted for reconsideration. It is then unnecessary to consider any further issues which depend on the result of the decision-maker's fact-finding exercise.
7. MA is an Irish Citizen. YB is a Kenyan citizen. They met in 2012 when MA was on holiday, visiting relations in Kenya. MA and YB were married in Mombasa in August 2013. Their relationship prior to and since their marriage has been maintained by use of social media and telephone communications. MA visits YB in Kenya every summer. They also met in the Middle East on one occasion.
8. YB made three applications for a long-stay visa to enter Ireland and join his wife. The Minister refused these applications. The most recent application was made on 18 April 2019 and was refused on appeal on 30 June 2021.
9. This application for judicial review challenges the validity of that decision. This Court is not an administrative appellate tribunal. It cannot substitute its view for that of the Minister.
10. In order to succeed in this application for judicial review, MA and YB must show that the decision-maker failed to take some relevant matter into consideration or took irrelevant matters into account or fell into some other serious error which would justify an order requiring remitting the matter for reconsideration.
11. The Minister has power to permit a non-citizen who is married to an Irish Citizen permission to enter and reside in the State. A non-citizen does not have a right to reside in the State and does not acquire that right by marriage to an Irish Citizen. However, that is not the end of the matter. Constitutional rights of MA as an Irish citizen are relevant. The Minister must have regard to factors set out in para. 75 of the judgment of O'Donnell J in *Gorry v. The Minister for Justice and Equality* [2020] IESC 55. A number of matters must be considered. The Minister must also make an assessment in the context of rights conferred by Article 8 of the European Convention on Human Rights.
12. In summary, the main reasons for the latest refusal to grant a visa to YB were failure to provide sufficient evidence of a relationship between MA and YB showing mutual social support and information which demonstrated a likelihood that YB would become a financial burden on the State if granted a visa to remain in Ireland with MA.
13. The decision-maker concluded that there was insufficient vouching evidence of social contact to show a relationship and that MA and YB of a type that warranted exercise of discretion to permit YB to reside with MA in the State and that their relationship could be maintained in the same manner as that in which it has existed to date without granting a visa to YB.

14. The decision-maker also considered that there were no special circumstances which would warrant, grant of a visa to YB notwithstanding that MA lacked means to support YB. The fact that MA was considered unfit to work due to illness and had limited means as a result was not of itself considered to be a special circumstance.
15. Guidance issued by the Minister in 2013 assists both applicants and decision-makers dealing with these issues. It is entitled "Policy Document on Non- EEA Family Reunification."
16. The visa application by YB and the appeal were processed through solicitors. YB and MA were aware that MAs financial resources were insufficient to support YB without State subvention and requested that ministerial discretion be exercised. MA was in receipt of disability allowance and had previously been in receipt of jobseeker's allowance.
17. The application was initially rejected for reasons set out in a letter dated 16 September 2020. These included "ID:- Insufficient documentation submitted in support of the application:- please see link to 'Documents Required' as displayed on our website – www.inis.gov.ie." Included in the list of reasons for rejection was "...Insufficient evidence of on-going routine communication between applicant and sponsor both prior to and since the marriage submitted."
18. This letter also drew attention to an apparent inconsistency in information submitted. The marriage certificate showed signature by MA and YB of the registration section of the certificate of marriage on 6 July 2013. This date appears on the document twice. The date of the marriage is given on the document as 6 August 2013. Flight information showed that she did not depart from Ireland until 27 July 2013. The registrar's signed certification on the second page of this document is dated 7 August 2013 and appears to show that the registrar recorded registration on 6 August 2013. The certificate was accompanied by a document from an official in Nairobi authenticating its genuineness.
19. Letters setting out reasons for previous visa refusals also drew attention to this inconsistency.
20. The solicitors for MA and YB addressed this issue in a letter dated 16 November 2020. The explanation suggested that the date of registration of the marriage had been incorrectly recorded on one part of the document and pointed out that the certificate recorded that the marriage had taken place on 6 August 2013. This letter stated that their clients were seeking an amended certificate of registration. The solicitors asked for immediate return of the original marriage certificate for this purpose. They concluded by stating: "In the absence of the amended certificate, we trust that the above explanation will satisfy the concerns of the visa officer."
21. Applicants for visas must produce acceptable verifying documentation. If there are discrepancies in documents, these must be explained. In this case an explanation was provided, and the solicitors requested that if the decision-maker was not prepared to

accept this explanation, they should be advised. This would give MA and YB an opportunity to obtain further documentation from Kenya clarifying the position.

22. The decision states that: "The original documents have been returned to the applicant and as stated on the letter of appeal 'Our clients are currently in the process of seeking an amended certificate of registration.' No amended documents or official letter stating that this was a typographical error has been submitted since."
23. The basis of the visa application was that YB and MA were married and that they had a genuine and subsisting relationship. The decision-maker proceeded on the basis that their marriage was formally valid. YB and MA did not challenge entitlement of the Minister to take this unresolved discrepancy into account in evaluating their social contact before and after their marriage.
24. A website giving guidance to visa applicants states that documents in foreign languages must be accompanied by translations. The "Join Family" checklist provided by the Minister requires that all documentation be submitted in English or be accompanied by a notarised translation. MA and YB presented screen shots of social media messages and printouts of telephone text messages without any translation of non-English content of these messages.
25. Notarised translation would be unnecessary if a document in a foreign language has been translated in Ireland. The requirement for notarised translation relates to documents translated abroad. The context is that these applications, which are submitted initially through an Irish embassy or consulate in the home state of a visa applicant, may include official and other documents in the language of the home state.
26. The onus is on an applicant to establish a basis on which the Minister should exercise discretion to grant the visa by producing persuasive supporting material. Applicants for visas must put their best foot forward if they wish to receive favourable consideration. A person seeking a favourable administrative decision has a self-serving duty to present material relevant to proof of the matter claimed in a manner which assists the decision-maker. This obligation to present an intelligible application is known to professionals assisting applicants.
27. Officials may seek clarifications relating to material provided by an applicant. This will often be appropriate and necessary as part of proper decision-making.
28. However, officials are not obliged to assist applicants in the sense of reminding them of what documents are necessary or in the sense of advising them on how to present their application. Guidance provided by the Minister sets out what must be produced. A decision-maker may reject or refuse an application where an essential proof stipulated in the guidance is absent. A decision-maker may also proceed to determine an application by disregarding material which has not been provided in the manner stipulated in the guidance.

29. In this application it was obvious that timing, and context WhatsApp voice calls or video calls or text messages and any e-mails and the content of any written or recorded messages were relevant to assessment of the relationship between MA and YB and that the Minister's officials would wish to read and understand this material.
30. This visa application and the schedule to it listing supporting documents merely stated that the pages submitted were "Sample records of communications (calls and messages) between MA and YB via WhatsApp during the years 2016-2019..." The vast majority of these communications are in a foreign language. Correspondence relating to their appeal stated that the first additional item provided at that stage comprised screenshots from YB's phone showing calls to and from "Lovely wife." The second item provided at that stage comprised screenshots of WhatsApp messages taken from their phones. This material was presented in a manner which made it difficult to evaluate.
31. Fifty-six photographs were provided as evidence of interaction between MA and YB in the relevant period. No dates were given. Eleven of the photographs appeared to be from their wedding. No information was given indicating when these photographs were taken. This presentation did not address proof by photographs or other independent verification of contact before or during the marriage or cohabitation during visits by MA to Kenya.
32. The decision-maker referred the social media and phone related material. As was pointed out in the reasoning explaining the decision to refuse a visa, some of the WhatsApp calls listed appear to relate to people other than MA and YB. WhatsApp communications appear to run to some date after 3 May 2019. This date is slightly different from the date discerned by the decision maker. The quality of reproduction of some of the screenshots is poor.
33. The decision-maker stated that the identities of the participants in the 104 pages of telephone text messages are unknown, and the phone numbers of the participants were not shown. Dates and times of these messages were provided as evidence of communication between MA and YB. Their content is mostly in a foreign language. It could be inferred that they passed between MA and YB and that MA is "Lovely wife" and that "Y...." is YB.
34. There is nothing disproportionate in a requirement that content of social media messages be translated into English. It would be possible to work around issues such as any requirement to have an official translator. This material is relevant to the nature and extent of the relationship between MA and YB.
35. There might, in exceptional circumstances, be a valid reason for withholding content of an exchange of text messages between spouses. Any such reason would require explanation. If there was a concern relating to particular content, that issue could be addressed, and detail redacted. No privacy-based concern was advanced to officials dealing with this visa application to justify omission to translate any social media messages.

36. The contention of MA and YB that provision of dates and times of contact was adequate and that they were entitled to withhold content of messages on privacy or convenience grounds is misconceived. Any decision-maker would wish to examine the records of calls and content of messages to assess matters such as frequency and nature of daily contact and of communication on significant anniversaries, religious and family events. Evidence of texts relating to marital agreement or disagreement might be relevant. If there is a failure or unjustified refusal to provide translation, it is inevitable that less weight will be given to claims of contact between spouses.
37. However, this Court does not agree with the view of the decision-maker that material in the form provided by MA and YB "cannot be considered" because it had not been translated. Obviously, content of messages in a foreign language could not be considered. Such material, even without translation, was capable of being evaluated as it could demonstrate duration and frequency of communications and attempted communications between MA and YB, using WhatsApp video calls, voice calls and messages.
38. The decision-maker erred in discounting this material completely. If issues relating to identification of participants and phone numbers in calls and messages or in relation to clearer copies or more coherent presentation of material required clarification, the solicitors for MA and YB should have been given an opportunity to address these matters.
39. While it was not necessary to remind the solicitors of the obvious necessity to provide translations, it is probable that any request for clarification relating to these other matters would have addressed this issue.
40. On this narrow ground MA and YB have demonstrated to this Court that the appeal decision dated 30 June 2021 was invalid.
41. This matter will be remitted to the Minister for reconsideration of the visa appeal. MA and YB and their advisers should use this opportunity to provide and fully explain any material which should have accompanied this application in a manner which presents available evidence persuasively. They have the advantage of being able to work off a fully explained decision which points to deficiencies in evidence produced to date.
42. This Court is not expressing any view on other grounds advanced in this application for judicial review. Any strength of these grounds may depend on strength of evidence of a significant relationship between MA and YB.