

**THE HIGH COURT  
JUDICIAL REVIEW**

**RECORD NO.: 2019 /962 JR**

**IN THE MATTER OF SECTION 5 OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT,  
2000 (AS AMENDED)**

**BETWEEN:**

**BMAM**

**APPLICANT**

**-AND-**

**THE MINISTER FOR JUSTICE AND EQUALITY**

**RESPONDENT**

**JUDGMENT of Ms Justice Judge Tara Burns delivered on 11 December, 2020.**

**General**

1. The Applicant is a citizen of Pakistan who arrived in the State in February 2014. He sought and was granted permission to remain on a student visa which he retained until 28 February 2018. When the Applicant sought to renew this visa, that application was refused due to the fact that the Applicant had been working in excess of the permitted maximum number of hours. By letter dated 11 April 2018, the Applicant was informed that the Respondent proposed making a deportation order in respect of him. Representations were made on the Applicant's behalf pursuant to s.3 of the Immigration Act 1999. On 29 October 2019, the Respondent issued a Deportation Order against the Applicant.
2. The Applicant seeks an Order of Certiorari quashing the decision of the Respondent on grounds that the Respondent failed to adequately consider the Applicant's representations with specific regard to the Applicant's employment history and employment prospects and that her decision, in this regard, was irrational and unreasonable.

**Consideration of the Applicant's employment history and employment prospects**

3. In the document entitled "*Examination of file under Section 3 of the Immigration Act 1999, as amended*", the consideration of the Applicant's employment record and employment prospects are set out, as follows:-

*"Section 3(6)(e) – Employment (Including self-employment) Record of the person*

*"It is submitted by Mr. Mirza in his representations that he works with "Synergy Security" since February, 2017. He has provided P60's, bank statements and payslips in this regard.*

*Mr. Mirza is in his fourth year of a four year BA (Honours) in Business Studies programme (validated by QQI) which academic year finalises in February, 2020. A letter dated 26th February, 2019 has been provided by "ICD Business School" confirming this position and advising that the tuition fee for this year has been paid.*

*Mr. Mirza has completed an OTHM Professional Certificate in "Tourism and Hospitality Management", which was a 26 week full time course, awarded by OTHM Qualifications (Oxford College International).*

*Mr. Mirza has completed an Occupational First Aid Course by QQI Award (Fetac) (undated) in the States.*

*Mr. Mirza has provided a letter confirming he was enrolled on a 1 year City and Guilds Diploma in ICT Systems Support during the academic year 10th February, 2014 to 13th February, 2015.*

*Section 3(6)(f) – Employment (including self-employment) Prospects of the Person*

*It is submitted by Mr. Mirza in his representations that his employment prospects include software testing and he also submits that this is an area of technology that is going to grow and that there will be a shortage of adequately qualified nationals in this area.*

*It is noted in representations made on his behalf on 2nd May, 2019 that "after his degree, he is looking to join industry preferably as a software tester (Black Box) or go for Masters/PHD program[sic]. It could be in Ireland or abroad ."*

*It is noted in representations made on his behalf received by the Residence Division on 16th October, 2019 that Mr. Mirza is "exploring all available future options including job or higher studies" and that he "could apply for various job positions after his degree, both inside and outside of Ireland". It is also noted in these representations that Mr. Mirza "might get admission in Master's program[sic] with no fee in Germany, Norway or Finland or in Ireland or other countries on scholarship basis".*

*It is noted that Mr. Mirza has provided no qualifications in software testing and he is currently in his final year of a Business Studies Degree.*

*Mr. Mirza is currently working in the State with "Synergy Security Solutions" who are a security company. He states that he has been working with them since February 2017. However, Mr. Mirza does not have the permission of the Minister to reside or work in the State at this time and there is no obligation on the Minister to grant Mr. Mirza permission to remain in the State in order to facilitate his employment in this State."*

4. On foot of a proposal to deport an individual, that individual is given the opportunity, pursuant to s. 3(3)(b) of the Immigration Act 1999 to make representations to the Respondent as to why he/she should not be deported. The Respondent is required pursuant to s. 3(3)(b)(i) of the 1999 Act to take into consideration any representations made by such person. The Applicant availed of that opportunity and submitted representations to the Respondent.
5. It is clear that the Respondent had regard to the Applicant's employment history, as notified to the Respondent by the Applicant. With respect to the Applicant's employment prospects, his representations to the Respondent were that he had employment prospects in software testing. It is to be noted that nothing in his employment history reflected that

he had been employed in the software testing industry. Further, he had not provided the Respondent with any information regarding qualifications in respect of that area, although it is now asserted by him that he had some relevant qualifications from his home country. These are not referred to in the s.3 representations made by him or the further communications from his solicitor in this regard. Within this jurisdiction, he was pursuing a degree course in Business Studies, which was noted by the Respondent. It was further noted by her that his work within the State since 2017 was with a security company.

6. The Respondent did take account of the Applicant's representations, as is clear from the document quoted from above. Simply because the Respondent did not agree with the representations made by the Applicant does not mean that she did not consider them. The Respondent did not accept that the Applicant had the employment prospects which were being asserted by him. This was a decision which was entirely open to the Respondent to make. Based on the Applicant's educational history and employment history, as notified to the Respondent in the course of representations made to her pursuant to s. 3 of the Immigration Act 1999, a career in software testing was not made out by the Applicant. The Respondent did not act irrationally or unreasonably in her assessment of these considerations.
7. The Applicant's real complaint is that he clearly is someone who has worked extremely hard since coming to this jurisdiction and because of that, he asserts that the Respondent incorrectly determined his employment prospects when the evidence establishes that he has good employment prospects in general and would continue to work hard and not be a financial burden on the State. That is not what the Respondent was considering or was obliged to consider pursuant to s. 3 of the Immigration Act 1999. The Applicant specifically referred to his employment prospects in software testing and this is what the Respondent was considering rather than the Applicant's general employment prospects when this was not submitted by the Applicant.
8. Cases law referred to by the Applicant does not have a relevance to the present case. In *Lin v. Minister for Justice and Equality (No.2)* [2017] IEHC 745 and in *A v. Minister for Justice and Equality* [2020] IEHC 60, the Respondent relied on factual errors he made in the course of his considerations which vitiated the subsequent deportation decision reached. No factual error was made by the Respondent in this matter, nor does the Applicant make that suggestion. *Babatunda v. Minister for Justice and Equality* [2019] IEHC 759, can be distinguished from the facts of this case as it relates to a different specific issue of the Respondent determining that the economic wellbeing of the State required that Applicant's deportation.
9. The Respondent's decision to issue a deportation order in relation to the Applicant took account of a range of considerations as set out in s. 3(6) of the Immigration Act 1999 including the interest of the common good to uphold the integrity of the asylum and immigration procedures of the State which the Applicant was in breach of in light of his non-compliance with the limitation on hours which could be worked having regard to his now expired student visa, which grounded his legal presence in the State.

10. The Respondent's consideration of the Applicant's employment history and employment prospects was not irrational, unreasonable or unlawful
11. I therefore refuse to grant the Applicant the relief sought and I will make an order for costs in favour of the respondent as against the Applicant.