

**THE HIGH COURT  
JUDICIAL REVIEW**

[2021] IEHC 630  
**RECORD NO. 2020/671JR**

**BETWEEN**

**JIN PING HUANG**

**APPLICANT**

**-AND-**

**THE MINISTER FOR JUSTICE**

**RESPONDENT**

**JUDGMENT of Ms. Justice Tara Burns delivered on 30 September 2021**

**General**

1. The Applicant is a Chinese national who entered the State without permission through Northern Ireland in 2007 and has remained here on that basis ever since.
2. The Applicant's sister and her husband resided in Ireland prior to his arrival. They have two adult Irish citizen children living in the State with whom the Applicant is very close. The Applicant's nephew, who is also a business partner, refers to him as a person who gave him more influence than his father. The Applicant lives with his niece, her husband (whom he also employs) and their young daughter, with whom it is asserted he has a strong connection.
3. The Applicant initially worked as a qualified chef in a take away Chinese restaurant after his arrival in the State. However, in 2010 he began operating his own take away restaurant. He currently is the proprietor of two formal successful restaurants in which he continues to act as head chef. It is asserted that he spent €60,000 fitting out his most recently established restaurant. In 2017, the Applicant was granted an employment permit by the Department of Business, Enterprise and Innovation. However, as he did not have a work visa from the Respondent, the permit was revoked.
4. On 21 March 2019, the Applicant made a request for permission to remain to the Respondent. On 1 August 2019, that application was refused and the Respondent issued the Applicant with a proposal to deport him. Representations were made to the Respondent on foot of this proposal. These representations included letters of support and recommendation from his nephew and niece, but also references from various individuals to include a letter from ORM Licensed Vintners Ltd attesting to the Applicant's success as a businessman.
5. On 9 March 2020, a Deportation Order was made against the Applicant. In a letter to the Applicant notifying him of the making of the Deportation Order, it was stated:-

"The reasons for the Minister's decision are that you have remained in the State without the permission of the Minister for Justice and Equality. Having had regard to the factors set out in section 3(6) of the Immigration Act 1999 (as amended), including the representations received on your behalf, the Minister is satisfied that the interests of public policy and the common good in maintaining the integrity of

the asylum and immigration systems outweigh such features of your case as might tend to support your being granted leave to remain in the State.”

This reflects a document headed “Recommendation of file under Section 3 of the Immigration Act 1999”, which stated:-

“Section 3(6) of the Immigration Act 1999, as amended:

I have considered all of the facts arising in this case, as outline in the attached submission. Having done so, it is concluded that the interests of public policy and the common good in maintaining the integrity of the asylum and immigration system outweigh such features of this case which might tend to support a decision not to make a deportation order in respect of Mr. Jinping Huang.”

6. Leave to apply by way of Judicial Review seeking an order of Certiorari of the Deportation Order was granted by the High Court on 14 October 2020 on the grounds that the Respondent had failed to properly consider the Applicant’s private and family life rights and failed to properly consider his employment history, employment prospects and economic contribution. It also was asserted that, having regard to the Applicant’s circumstances, it was disproportionate to deport him

#### **The Legislative Requirements**

7. Section 3(6) of the 1999 Act requires the Respondent to consider certain specified matters when considering whether to make a Deportation Order. It provides:-

“In determining whether to make a deportation order in relation to a person, the Minister shall have regard to—

- (a) the age of the person;
- (b) the duration of residence in the State of the person;
- (c) the family and domestic circumstances of the person;
- (d) the nature of the person’s connection with the State, if any;
- (e) the employment (including self-employment) record of the person;
- (f) the employment (including self-employment) prospects of the person;
- (g) the character and conduct of the person both within and (where relevant and ascertainable) outside the State (including any criminal convictions);
- (h) humanitarian considerations;
- (i) any representations duly made by or on behalf of the person;
- (j) the common good; and
- (k) considerations of national security and public policy,

so far as they appear or are known to the Minister.”

### **The Respondent’s Decision**

8. An “Examination of file under Section 3 of the Immigration Act 1999, as amended” document sets out the following relevant considerations of the Respondent:-

“Section 3(6)(c) – Family and Domestic Circumstances of the Person Abbey Law Solicitors submitted on behalf of Mr. Jinping Huang in their correspondence of 19 August 2019... that:

*“...he lives with his Irish citizen niece..., her husband and their Irish citizen daughter..., in Ballymun. The family have lived at their Ballymun address for the last 6 years. We are instructed that Mr Huang is very close his niece and in particular his grand niece... - he has resided with her in the same family unit since she was born.*

*Mr Huang originally came to Ireland in 2007 to join his sister.. and her husband... who are long term settled migrants in this State and have three adult children living in Ireland who have Irish citizenship. He is particularly close to his nephew... and niece... who have provided letters of support of their uncle’s application...”*

Section 3(6)(e) – Employment (including self-employment) Record of the Person Abbey Law Solicitors submitted on behalf of Mr Jinping Huang that:

*“Mr Huang works as head Chef in a restaurant in Maynooth, The Golden palace, which he also runs. He is a Director of the company GHRN which owns the business. Mr Huang has extensive experience in the Chinese restaurant business, having trained as a Chef in China. He has worked in restaurants in Ireland since his arrival in 2007 and opened a takeaway in Rathmines in 2010 with family members. In 2013 he opened his restaurant in Maynooth, the Golden palace. He also owned another restaurant called the Golden Palace in Whitehall, Dublin from 2015 – 2017. He has also recently taken a lease on a premises for a restaurant in Cellbridge with his nephew... (an Irish citizen by naturalization).*

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

Mr. Jinping Huang is currently working in the State “as head Chef in a restaurant in Maynooth, The Golden Palace, which he also runs. He is a Director of the company GHRN which owns the business.” However, Mr. Jinping Huang 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 him a permission to remain in the State in order to facilitate his employment in the State.

Consideration under Article 8 of the European Convention on Human Rights

It is noted that Mr. Jinping Huang claims to have integrated into society and that he has made many acquaintances since his arrival in the State purported to be during 2007. It is equally noted that Mr. Jinping Huang wishes to settle in the State and he claims to have a lot of experience in the restaurant industry having worked in the State in either an employee or self employed capacity whilst always being unlawfully present in the State.

I acknowledge the representations on file attesting to the good character of Mr. Jinping Huang. However, I also note that Mr. Jinping Huang has been residing in the State without the permission of the Minister for Justice in disregard/contravention of the immigration laws of the State since 2007

I have considered that whilst claiming to be in the State since 2007, Mr. Jinping Huang only made representations to the Minister 12 years later during 2019 when seeking to have an immigration permission bestowed to him pursuant to Section 4(1) of the immigration Act 2004 and/or Ministerial discretion.

I have considered that this correspondence gave rise to the Minister issuing him with a notification proposing his deportation pursuant to Section 3 of the Immigration Act 1999, as amended.

I acknowledge that whilst Mr. Jinping Huang now seeks to be afforded a Stamp 1 or 4 immigration permission, Mr. Jinping Huang's immigration status in the State has always been precarious.

All information submitted by and on behalf of Mr. Jinping Huang has been considered and it is not accepted that any exceptional circumstances arise. In addressing the second question raised in...*R (Razgar) v. Home Secretary*, having regard in particular to the fact that the status of Mr. Jinping Huang has at all times been precarious, it is not accepted that any potential interference with his private life rights will have consequences of such gravity as to engage the operation of Article 8.

Accordingly, a decision to deport Mr. Jinping Huang is not in breach of the right to respect for private life under Article 8 ECHR.

### **Family Life**

Submissions by and on behalf of Mr. Jinping Huang in response to the Minister's notification of 01/08/2019 have been read and fully considered.

It is noted that Abbey Law Solicitors submitted on behalf of Mr. Jinping Huang in their correspondence of 19 August 2019..., that:

*"...he lives with his Irish citizen niece..., her husband and their Irish citizen daughter, now aged 4...The family have lived at their Ballymun address for the last 6 years. We are instructed that Mr Huang is very close his niece and in particular his grand niece... - he has resided with her in the same family unit since she was born.*

*Mr Huang originally came to Ireland in 2007 to join his sister...and her husband... who are long term settled migrants in this State and have three adult children living in Ireland who have Irish citizenship. He is particularly close to his nephew... and niece... who have provided letters of support of their uncle's application..."*

I have considered that while Mr. Jinping Huang's sister... and her husband... reside in the State, the relationship between adult relatives is not usually covered by Article 8. In the case of *Ezzoudhi v. France* [No. 47160/99] the ECHR determined that relationships between adult relatives do not necessarily attract the protection of Article 8 without elements of dependence involving more than normal emotional ties. Mr. Jinping Huang is a 45 year old male who has been apparently working in the State since 2007 by his own admission. I have considered that he joined his sister and that of her family in Ireland during 2007 when he would have been in or around 33 years of age.

No information has been advanced, or is contained on file, to suggest that there is a relationship of dependency between Mr. Jinping Huang and his sister and her husband, which could be deemed more than normal emotional ties.

Whether family life within the meaning of Article 8 arises may be decided on a case-by-case basis: in principle, it may depend on whether there are close personal ties between the parties. It is noted that in the case of *Boyle v. The United Kingdom* (1995) 19 EHRR 179, family life was found to exist between a nephew and his uncle who was deemed by the domestic authorities to be a "good father figure" to him. So, in order to assess whether family life, within the meaning of Article 8 arises in this case, it is appropriate to consider whether *de facto* family ties currently exist in practice between Mr. Jinping Huang and his extended family.

Based on all the information submitted, it is evident that Mr. Jinping Huang has bonded with his extended family including his nieces, nephews and grandniece however, while no doubt, performing an uncle role within his extended family, no claim has been made that the parents of his niece, nephew, grandniece, etc., are failing or unable to discharge their parental role/duties.

As to whether the relationship could be considered to constitute "family life" within the meaning of Article 8, while Mr. Jinping Huang appears to be particularly close to his extended family, there is no suggestion that his niece, nephew, grandniece parents have ever neglected or abdicated their parental responsibilities, so it is considered that Mr. Jinping Huang has not established that his involvement in his extended family constitutes *de facto* family life within the meaning of Article 8.

Also, family life does not automatically arise in respect of the relationships between an uncle and his nephews and nieces and little evidence has been submitted in support of the existence of close personal ties between Mr. Jinping Huang and his sister's children...While [his niece] has asserted that "He loves my daughter so much. Always play with her." While such assistance may be welcome, it does not demonstrate the existence

of family life, within the meaning of Article 8, between Mr. Jinping Huang and his grandniece.

Therefore, it is submitted that a decision by the Minister to deport Mr. Jinping Huang does not constitute an interference in the right to respect for family life, under Article 8(1) of the ECHR."

**Failure to Properly Consider the Applicant's Employment History and Employment Prospects**

9. The Applicant submits that the Respondent, whilst noting his employment history, erred in her consideration of his employment record and prospects by observing that he did not have permission to work and that there was no obligation on the Respondent to grant him a visa to facilitate his work.
10. This Court considered a similar complaint recently in *ANA v. Minister for Justice* [2021] IEHC 589, wherein I stated:-
  - "13. The argument is made that the Respondent did not have proper regard to the job offer as she negated the positive effect of this offer by reference to the fact that the Applicant did not have permission to reside or work in the State and that there was no obligation on the Minister to grant him permission to remain so as to facilitate his employment. However, that is not a misstatement of fact or law by the Respondent or something which the Respondent should not take into consideration in the overall balancing exercise which the Respondent must engage in. It is an entirely accurate summation of the position which the Respondent found himself: he had an offer of work but did not have permission to remain in the country or have a work visa. The reference to not having such permissions did not override the job offer which the Applicant had, as asserted by the Applicant, nor has the Respondent treated them as such.
14. The Applicant seeks to rely on a judgment of this Court in *MAH v. Minister for Justice* [2021] IEHC 302 in support of the proposition that having regard to a lack of permission to remain or work is not an appropriate consideration pursuant to s.3(6)(f) of the 1999 Act. In *MAH*, the Respondent had positively found that that Applicant had reasonable work prospects for reasons which were specified. Having made that finding, the Respondent relied on the fact that the Applicant did not have permission to remain or a work visa to nullify the finding that her work prospects were reasonable. This Court set out at paragraphs 28 and 29:-

"Section 3(6) clearly places a mandatory onus on the Respondent to consider particular, specified issues when determining whether a deportation order should issue in respect of a proposed deportee. Whilst the Respondent did consider the Applicant's employment prospects, she reversed the clearly positive outcome in respect of that heading by having regard to the fact that the Applicant does not hold a work visa in respect of such employment prospects, nor has permission to remain in the State. These are inappropriate matters to have regard to under this sub-heading. Had the

Applicant a work visa or a permission to remain in the State, a consideration pursuant to s.3(6) of the 1999 Act would not arise in the first place.

Accordingly, what s.3(6) requires of the Respondent is to initially consider each of the sub-headings on a standalone basis and to then engage in a balancing act to determine whether a deportation order should issue having regard to all issues mandated to be considered pursuant to s.3(6).

29. Incorrectly, the Respondent nullified the separate consideration of the good employment prospects which the Applicant was found to have by reference to her not having a work visa or permission to be in the State. These issues are separate to her employment prospects: they can clearly be taken into account by the Respondent in the balancing exercise which she must conduct but they should not be utilised in a compartmentalised determination regarding her employment prospects simpliciter. This was an error on the Respondent's part."
15. The error which the Respondent fell into in *MAH* did not occur in the instant case. The fact that the Applicant does not have permission to remain or a work visa is noted as a fact, but it is not utilized to make a determination that the Applicant does not have reasonable work prospects, which was the error which the Respondent made in *MAH*. Instead, it is noted as a fact to be considered as part of the balancing exercise which the Court referred to in *MAH*.
16. Neither is *Lin v. Minister for Justice and Equality* (No.2) [2017] IEHC 745 relevant to the instant matter. In *Lin*, the Respondent made factual errors in the course of her considerations which vitiated the subsequent deportation decision reached. No factual error was made by the Respondent in this matter."
11. Accordingly, referring to the fact that the Applicant does not have permission to work in the State and that there is no obligation on the Respondent to grant him such permission, is not an error in approach by the Respondent once an applicant's employment prospects are not nullified by these considerations. In the instant case, that error did not occur. The Respondent accurately noted the Applicant's employment history and the Applicant's current business endeavors. However, the Respondent's primary focus was that the Applicant had engaged in this activity without permission for such a significant period of time. She determined that the interests of public policy and the common good in maintaining the integrity of the asylum and immigration systems outweighed such features of the Applicant's case as might tend to support him being granted leave to remain in the State. This was a finding entirely within the Respondent's remit in respect of which she has sole responsibility and extensive expertise. The decision cannot be described as an irrational or unreasonable finding. It was open to her to make. This Court cannot operate as an appeal Court and must concern itself with the decision-making process rather than the decision made, once the decision made does not fly in the face of

fundamental reason and common sense. Accordingly, an error does not arise in relation to this aspect of the Respondent's determination.

### **Private and Family Life Rights**

12. Article 8(1) of the European Convention on Human Rights states:-

"Everyone has the right to respect for his private and family life, his home and his correspondence."

13. This Court has recently considered the jurisprudence of the Irish Courts with respect to the engagement of Article 8 rights in relation to a person who is a non-settled migrant or who has a precarious existence within the State in *MK v. Minister for Justice and Equality* [2021] IEHC 275. Having considered *CI v. Minister for Justice* [2015] 3 IR 385; *P.O. & Anor v Minister for Justice and Equality & Ors* [2015] 3 IR 164; *Rughnoonauth v The Minister for Justice and Equality* [2018] IECA 392 and *S.A. (South Africa) v The Minister for Justice* [2020] IEHC 571, I concluded at paragraph 27 of my judgment that:-

"[T]he 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."

### **Private Life Rights**

14. The Applicant does not demur from this statement of the law. However, it is argued that contrary to what was found by the Respondent, exceptional circumstances are established having regard to his length of time in the State; his successful business activities and the relationships built up as a result; his connection with his niece and nephew; and his connection with his grandniece. It is submitted that arising from such exceptional circumstances, Article 8 private life rights are engaged as a result of which a proportionality assessment should take place pursuant to the principles in *R (Razgar) v. Home Secretary* [2004] 2 AC 368. It is also argued that the Respondent failed to consider, as required, the effect of deportation on the Applicant's mental stability.

15. With respect to his private life rights, the Respondent clearly had regard to his connection with his nephew, niece, grandniece and wider family as this is specifically set out under the section headed "Family and Domestic Circumstances" and repeated on several occasions throughout the decision. She also had regard to the length of time he had been resident in the jurisdiction and the successful business which he had built up. However, she noted that these relationships were developed at a time when his presence in the State was unlawful, a fact known to him. The determination by her that exceptional circumstances had not been established is not irrational or unreasonable and was a determination which was open to her to make.

16. With respect to the assertion of failing to consider the effect on the Applicant's mental stability, *CI v. Minister for Justice and Equality* [2015] 3 IR 385 is instructive in this regard. Ms. Justice Finlay Geoghegan stated as follows in various paragraphs of the judgment:-



- “33. [I]n a case where the private life primarily relied upon was established social ties and connections in the host State the ECtHR identified, at least at the level of principle, that what has to be considered is the gravity of adverse impacts on the “physical and moral integrity” of the individual... Hence, whilst the inevitable consequence of expulsion may be the severing of the social ties which may be considered to form part of the private life, it appears that what requires to be examined by the decision maker is not just the obvious impact on the private life in the sense of the social ties but rather the gravity of the impact of severing the social ties on the proposed deportee or on his/her physical and moral integrity.
35. Where the relevant aspect of the right to private life is the right of the individual to establish and develop relationships with other human beings and insofar as it concerns education, the right to personal development, then it appears to me that what an adjudicator must consider is the gravity of the consequences for the individual of deportation including the inevitable rupture of relationships and social ties formed whilst in the State.
42. It appears to me that in relation to interference with a right to respect for private life it follows that in order to engage Article 8 the gravity of the consequences for an illegal immigrant or for his physical or moral integrity must be above the normal consequences of the impact on an individual and his physical and moral integrity of enforcement of immigration law, including deportation.
45. All of the social, educational and other ties established in the State were at a time when the mother knew their continued existence in Ireland was precarious and objectively the continued existence of the children in Ireland was also precarious. There was no evidence put before the Minister by the facts presented and referred to in the examination of file to indicate that the bringing to an end of the particular private life they had created in Ireland would have any significant impact on the right of the applicants, mother or children, to personal development including to education or their right to establish and develop relationships with other human beings on their return to Nigeria. There was no evidence of any grave impact on the physical or moral integrity of the mother or children by reason of the cessation of the relevant activities and social relationships in Ireland”
17. Applying the CI principles in the instant matter, no submissions were made to the Respondent detailing that the effect on the Applicant, should he be deported, were above the normal consequences for an individual if deported. Accordingly, the Respondent was entitled to assume that the effect on the Applicant of deportation would be of a normal consequence. Accordingly, an error does not arise with respect to the Respondent’s determination in this regard.

### **Family Life Rights**

18. With respect to the assertion that the Respondent was incorrect in her determination that family life within the meaning of Article 8 has not been established, regard must be had to the underlying facts and the submissions actually made regarding this issue. The

Applicant's niece and nephew are adults; the Applicant lives with his niece and her family; the Applicant's nephew stated that the Applicant gave him more influence than his father and the Applicant's niece stated that "He loves my daughter so much. Always play with her." While clearly the facts establish a close bond between these parties, the determination that family life did not exist within the meaning of Article 8, is not an irrational or unreasonable determination to make.

### **Proportionality**

19. As already stated, this Court can only review the impugned decision within the confines of judicial review principles. The decision when taken as a whole, is not unreasonable or irrational. The reason for deportation is stated to be that the interests of public policy and the common good in maintaining the integrity of the asylum and immigration systems outweighs such features of the Applicant's case as might tend to support him being granted leave to remain in the State. That is a legitimate interest for the Respondent to uphold. Having carried out a balancing exercise with respect to the competing interests in the case, she was of the opinion that this interest outweighed permitting the Applicant to remain which was a decision open to her to take.

### **Constitutional Rights**

20. The Applicant asserts a breach of Article 41 family rights. That argument is simply not sustainable in light of the familial relationship between these parties which is not a family unit arising from marriage. Accordingly, Article 41 does not arise for consideration.

21. The Applicant also asserts a breach of his Article 40.3 personal rights. It is correct that the Respondent did not refer to such rights in the course of her decision. However, it is not explained how the Respondent's decision would differ had this Article of the Constitution been considered or what different considerations would have arisen for her. In the absence of a submission detailing same, the Court is not in a position to determine that the Respondent erred in her consideration by failing to consider same.

### **Conclusion**

22. The Applicant has failed to establish any of the grounds of challenge asserted on his behalf. Accordingly, I will refuse the reliefs sought and make an order for the Respondent's costs as against the Applicant.