

APPROVED



**AN ARD-CHÚIRT
THE HIGH COURT**

[2025] IEHC 102

Record No. 2023/1382JR

BETWEEN/

MUHAMMAD HARIS MUSHTAQ

APPLICANT

-AND-

THE MINISTER FOR JUSTICE

RESPONDENT

JUDGMENT of Mr. Justice Conleth Bradley delivered on the 19th day of February 2025

INTRODUCTION

1. This application for judicial review seeks to quash the decision of the Minister for Justice (“the Minister”) dated 4th September 2023 refusing the applicant’s application for a long stay “D” employment visa.
2. The applicant is a national of Pakistan, born on 19th August 2000.
3. The Statement of Grounds sets out that he has worked in the hospitality sector and as a chef in Pakistan since in or around March 2018.
4. On 22nd February 2022, following a hiring process, the applicant was offered employment by Zaib Foods t/a Namaste India, located at 83 King Street North, Dublin 7 as a chef de partie (station chef).
5. On 24th June 2022, the applicant was granted a General Employment Permit by the Minister for Enterprise, Trade and Employment (it was submitted on behalf of the applicant that the permit cost €1,000 and was paid for by his prospective employer).
6. In or around July 2022, being a visa-required national, the applicant applied to the Minister for a long stay “D” employment visa in order to take up this employment. It is the refusal of this visa, first on 17th August 2022 and confirmed on appeal on 4th September 2023, which is the subject of this challenge by way of judicial review.

7. Leave was granted to apply for judicial review by the High Court (Hyland J.) on 22nd January 2024.
8. The applicant's Statement of Grounds was dated 27th November 2023 and was grounded on an affidavit of the applicant sworn on 13th November 2023. An affidavit was sworn by Mr. Kamran Rasheed on 14th November 2023, who, at the time, was the applicant's prospective employer and a director of Zaib Foods Limited trading as Namaste India. Mr. Muhammad Hasan, Director of Bee Quality Foods Limited, later swore an affidavit on 11th October 2024 by way of update, stating that Zaib Foods Limited had ceased trading and its business and operations had been transferred to Bee Quality Foods Ltd and he confirmed the company's intention to employ the applicant on a full time basis in Namaste India subject to his visa application. Ms. Helen Moakley Solicitor of Thomas Coughlan & Co solicitors, who were instructed on the applicant's behalf, also swore an affidavit for the purposes of satisfying the requirements of Practice Direction HC81.
9. On behalf of the Minister, an affidavit was sworn by Ms. Melissa Brennan, Higher Executive Officer, Visa Division, Immigration Service Delivery of the Department of Justice, which was date stamped as filed in the Central Office of the High Court on 5th July 2024 and which grounded the Statement of Opposition dated 4th July 2024.
10. Colm O'Dwyer SC and Cillian Bracken BL appeared on behalf of the applicant. David Leonard BL appeared on behalf of the Minister.

FIRST INSTANCE DECISION DATED 17th AUGUST 2022

11. On 17th August 2022, the Minister (through the Visa section of the Irish Consulate) communicated the decision of the Irish Immigration Service to refuse the applicant's application for an Irish Visa ("the first instance decision").
12. Whilst a number of reasons were set out in the first instance decision, the reasons given for refusal which are relevant to this application for judicial review related to insufficient documentation and finances which were deemed insufficient.
13. This letter stated *inter alia* as follows:

"The application was rejected due to the following reasons:

ID:-Insufficient documentation submitted in support of the application:-please see link to "Documents Required" as displayed on our website-www.irishimmigration.ie

The strength of the overall application has been diminished due to the failure to provide sufficient supporting documentation in the following areas:

- Insufficient evidence submitted to demonstrate that you have the relevant qualifications/employment experience to undertake your proposed employment in the State. No training/qualification certificates have been submitted with your application...*

F:- Finances shown have been deemed insufficient.

- *You have not submitted a bank statement to cover the six-month period prior to application. Your submitted statement runs from 4th July to 20th July.*
- *Although you have submitted letters from employers and wage slips, there is no evidence of you being paid for your stated employment in the form of lodgements to your bank account.*
- *The letter from your proposed employer states that accommodation will be arranged for you on your arrival at Apartment 17, Crosby Yard, Oscar Road, Dublin 3, D03 RY6 65, but no evidence of how this would be financed has been submitted. No proof of ownership has been provided. No bank statements from proposed employer have been submitted.*
- *It is also not stated who will pay for this accommodation or how much it will cost...”*

OC:- Observe the conditions of the visa – the visa sought is for a specific purpose and duration:- the applicant has not satisfied the Visa Officer that such conditions would be observed.

OB:- Obligations to return to home country not shown – e.g. no social, economic or professional ties in home country shown...”

APPEAL DATED 13th OCTOBER 2022

14. On 13th October 2022 the applicant's solicitor, Thomas Coughlan & Co., Solicitors, submitted a very detailed appeal which enclosed a number of certificates and letters.

APPEAL DECISION DATED 4th SEPTEMBER 2023

15. By letter dated 4th September 2023, Ms. Jenny Holmes, Visa Appeals, Visa Division in the Immigration Service Delivery Section of the Department of Justice, informed the applicant that his visa appeal application had been examined by a Visa Appeals Officer in the Visa Division. The letter stated that the Visa Appeals Officer had taken all the documentation and information submitted with the application, at first instance and on appeal, into consideration and that his application had not been successful and the visa application had been refused.

16. The letter from Ms. Holmes, on behalf of the Minister for Justice, dated 4th September 2023, set out the reasons for the refusal of the visa application as follows:

“ID:- Insufficient documentation submitted in support of the application:

- Insufficient evidence submitted to demonstrate that you have the relevant qualifications/employment experience to undertake your employment in the State.*

It is accepted the applicant has provided a number of employment letters to evidence his stated employment in Pakistan. A letter from New Zebaish Banquet and Restaurant has been provided to state that the applicant worked at the company from March 2018 – May 2020. This letter contains a mobile phone contact only, it does not contain a landline telephone number or an email address or a website address for verification purposes, this is not sufficient in respect of official letters as per the website www.irishimmigration.ie.

An employment letter from Zanzibar Restaurant stating the applicant was employed there from June 2020-2021 was provided, it states he was employed as a “supervisor”, this does not appear to be a cooking role; there are no contact details on this employment letter for verification purposes.

The applicant has provided an employment letter issued by Bandham Restaurant and Wedding Hall dated the 2nd July 2022, the letter contains a mobile number only for a Kaleem Khan M.D., there is no landline telephone number, no email address or website address, it is also noted that two other branches of the company do have their landline numbers listed however the branch the applicant is employed at does not which would appear odd.

It is noted that for his employment from 2018 to 2021 the applicant has not provided any payslips, the applicant has not provided any evidence of his salaries being lodged to any

bank account and the applicant has not provided an FBR document showing his income and taxes paid etc. for his entire employment history.

As per the website www.irishimmigration.ie. available at Employment Visa-Immigration Service Delivery (irishimmigration.ie):- 'All letters submitted from a business, company or other organisation must be on official headed paper so they can be verified, and show the organisation's:

Full name

Full postal address

Telephone number (fixed line – not mobile/cell phone)

Website address

Email address (Yahoo and Hotmail email addresses are not accepted)

A contact person's name and title/position

Written signature of an authorised representative (electronic signature is not accepted)'

- *On appeal, the applicant has provided three training certificates, a certificate in Fire Safety dated the [1st December 2021], a certificate in Food Safety and Hygiene issued in August 2022 and a certificate in First Aid issued on the [7th March 2021]. The applicant did not provide these certificates at first instance application. While certificates are noted the subject matter of this issued certificates, while no doubt helpful in the*

catering industry, cannot be reasonably considered to amount to documentary evidence that the applicant is qualified to undertake a qualified chef du partie role in a professional kitchen in this State.”

17. The second reason in the appeal decision contained in the letter dated 4th September 2023 for refusing the applicant’s appeal was because the “*Finances shown had been deemed to be insufficient*” and set out the following:

“- At first instance application and on appeal the applicant has not submitted a bank statement to cover the six month period prior to his application, it is noted the applicant only opened a bank account in July 2022 and therefore states he was not in a position to provide the six month statement. The applicant’s legal advisers in their letter of the 13th October 2022 state that the applicant is paid in cash and has always been paid in cash however he was paid to his bank account in September and October 2022 to evidence his salary to this visa office. It is unclear as to why a company who pays its salaries in cash and/or cheque as indicated on the payslips provided would accommodate one individual’s request to pay the salary to a bank account if this is not the policy of the company in question. It is noted the applicant has provided payslips in respect of his employment at Bandham Restaurant and Wedding Hall but much of the detail on the payslips is handwritten, as the payslips printed are not¹ generic, it is a Visa Appeals Officer’s considered opinion, that it is highly unusual to have

¹ Underlining as per the original letter.

a payslip half printed and half written with the employee's details and not one or the other especially taking into consideration that the printed parts are not generic but include personal information in respect of the employee.

It is further noted that the applicant provided a Pakistani Federal Board of Revenue 'Taxpayer Registration Certificate', it states that the applicant registration date was the [4th September 2022] however the applicant has provided statements to say he was employed since March 2018, it is unclear as to why he would only register an FBR account as a taxpayer in September 2022 approximately four years after undertaking employment in Pakistan. It is also noted that the FBR document provided is a "front cover or first page" only and does not include the applicant's financial affairs by year to include his income and taxes paid which would be normal to expect for such documents issued by the FBR in Pakistan.

While it is accepted that that persons in employment in Pakistan may be paid in cash, on balance when taking into consideration the aforementioned on the whole the Visa Appeals Officer is not satisfied that the applicant has shown a clear picture of his financial position in Pakistan including his income from employment; employment which is valid to this visa application in respect of the applicant's ability to undertake the employment in this State. Further, a detailed 6-month duration bank statement is a minimum documentary

requirement in support of all visa applications. In the absence of a bank statement, an assessment of the applicant's financial position could not be undertaken. The applicant has not sufficiently demonstrated/evidenced a consistent financial income; subsequently the applicant has failed to sufficiently demonstrate his income as a chef in Pakistan, this directly connects to evidencing his experience/suitability to undertake the proposed employment as a chef in this State".

18. Whilst the details and further extracts of this letter are referred to later in this judgment, the correspondence went on to point out that the functions and powers of the (then) Minister for Business, Enterprise and Innovation to regulate the labour market under the Employment Permits Acts 2006 (as amended) were quite distinct from the executive power of the Minister for Justice to control entry, residence and departure of foreign nationals. It observed that while on occasion the exercise of those powers might seem to overlap, there was no basis for suggesting that the existence or exercise of the former in any way constrained the exercise of the latter, and reference was made to quoted extracts from the judgments of the High Court in *S v Minister for Justice* [2022] IEHC 578 (Bolger J.) and *Akhtar v Minister for Justice and Equality* [2019] IEHC 411 (Keane J.).

19. The decision letter further stated that a non-national who has been granted a work permit is required to have a visa where the holder of the work permit comes within a class of non-national in respect of whom visas are required by orders made under section 17 of the Immigration Act 2004. It stated that for a Pakistani national, an entry

visa for employment purposes was required and, in deciding a visa application, the Minister for Justice was required to consider all the information available to her in light of the purpose for which visa orders were made, including documentation submitted for the purpose of a work permit where that documentation was relevant to the assessment of a visa application.

20. The letter stated that when, in the exercise of a broad executive power to control immigration, the Minister for Justice required a foreign national, in possession of a work permit to establish that she or he does have the appropriate level of experience for that employment (in order to obtain a visa), which is separate to the 2006 Act, any applicant who was refused on that basis would have been deemed to have failed to disclose the appropriate evidence of their skills, qualifications and experience when they submitted their application, both at first instance and on appeal. It is further pointed out that the onus rested on the applicant to satisfy the Visa Appeals Officer that the visa should be granted for the purpose sought.

21. The letter dated 4th September 2023 concluded that, as only one appeal per application was permitted, it was open to the applicant to make a fresh application and, if he sought to do so, it was recommended that he address the refusal reasons as outlined in this application decision letter and re-check the relevant website (at <https://www.irishimmigration.ie/coming-to-work-in-ireland/>) for information and guidance on submitting an employment visa application.

EMPLOYMENT PERMIT

22. On 24th June 2022, Ms. Louise Madill, of the Employment Permit Section of the Department of Enterprise, Trade and Employment, had issued the applicant with an employment permit, which was communicated by electronic means because of the (then) COVID-19 public health emergency.

23. The employment permit type was a general employment permit and the nature of employment was as a chef de partie. The period of employment was from 24th June 2022 to 23rd June 2024.²

24. The letter of 24th June 2022 from Ms. Madill also added as follows:

“Please note that this permit relates to employment only and is not a residence permit or a permission to enter Ireland. Persons who are nationals of countries that are visa required for travel to Ireland must make a visa application through www.inis.gov.ie. In the visa application you will be required to submit evidence of your professional qualifications, if required, as well as evidence of previous work experience, if required.

Visa required and Non-Visa required persons must have at all times:-

² It was indicated at the hearing that no issue of mootness arose from the fact that period of employment prescribed in the Employment Permit in this case had expired at the time of the hearing of this application for judicial review.

- (a) current appropriate permission from the immigration authorities which allows you to enter, reside and undertake employment in the State, and
- (b) an up to date passport.”

DISCUSSION AND DECISION

25. The approach to be followed in assessing this application for judicial review was outlined in the judgment of the Court of Appeal (Faherty, Haughton and Butler JJ.) in the decision of Faherty J. in *AA & Ors v The Minister for Justice* [2024] IECA 57.
26. The Court of Appeal in *AA* referred to a number of authorities dealing with challenges to visa applications and similar cases including *T.A.R. v Minister for Justice, Equality and Defence* [2014] IEHC 385, *Khan v Minister for Justice Equality and Law Reform* [2017] IEHC 800, *Ashraf v Minister for Justice & Equality* [2018] IEHC 760, *Singh v The Minister for Business, Enterprise and Innovation* [2018] IEHC 810, *AP v Minister for Justice and Equality* [2019] IESC 47, *Akhtar v Minister for Justice* [2019] IEHC 411, *Mukovska v The Minister for Justice and the Minister for Foreign Affairs* [2021] IECA 340, *Basit Ali v Minister for Justice* [2021] IEHC 494, and *S v Minister for Justice* [2022] IEHC 578. In addition to outlining the requirement to apply fair procedures, Faherty J. also referred to the seminal authorities dealing with the standard to be applied in challenges to a ministerial refusal of visa applications in *O’Keeffe v An Bord Pleanála* [1993] 1 IR 39 and *The State (Keegan) v Stardust Compensation Tribunal* [1986] IR 642.

27. Accordingly, in applying *AA & Ors v The Minister for Justice* [2024] IECA 57, I address *inter alia* the following matters in this judgment:

- given that many of the authorities are *fact specific*, and in some cases emphasise the *brevity* and *opaqueness* of a first instance decision, the particular details of the first instance decision in this case dated 17th August 2022 are set out, in order to assess whether or not this decision adequately explained the insufficiency of the documentation furnished;
- in order to consider whether the Minister’s assessment – that (i) insufficient evidence had been submitted to demonstrate that the applicant had relevant qualifications/employment experience to undertake proposed employment in the State and (ii) her determination that no training/qualification certificates had been submitted with his application (iii) the details of ‘Finances’ submitted were insufficient– was arrived at in a *fair* manner, it is necessary to review, *i.e.*, ‘*parse*’ what occurred following the receipt of the first instance decision, for example, in the appeal decision dated 4th September 2023;
- when considering these matters my function is to address the process whereby the Minister reached the decision (which is sought to be impugned in this application for judicial review) and not to decide whether, for example, the applicant’s work experience was capable of demonstrating the necessary qualifications and experience to work as a chef de partie;

28. In contrast to the first instance decision and appeal decision in this application for judicial review, Faherty J. in *AA v The Minister for Justice* [2024] IECA 57 emphasised that the decision in that case was very much fact specific and where the first instance decision was in the briefest of terms.
29. The details in the first instance decision dated 17th August 2022 and the appeal decision dated 4th September 2023 (set out earlier in this judgment) can be compared with that which was in issue in *AA & Ors v The Minister for Justice* [2024] IECA 57 and which was summarised in the judgment of Faherty J. at paragraphs 14 and 15 of her judgment as follows:

“14. By decision dated 15 February 2021 (hereinafter “the refusal decision”), the respondent affirmed the refusal of the appellant’s visa application. The bases for the refusal were set out in three shortform reasons, as follows:

“ID:- Insufficient documentation submitted in support of the application:-

*please see link to ‘Documents Required as displayed on our website-
www.inis.gov.ie*

INCO:- Inconsistencies e.g. contradictions in the information supplied

OC:- Observe the conditions of the visa: the visa sought is for a specific purpose and duration:- the application has not satisfied the visa officer that such conditions would be observed.

15. The letter continued:

“A Critical Skills Employment Permit was issued to you for the role of ‘Software Application Developer’ at E-Businesssoft Technologies. A detailed job description for the role of ‘Software Application Developer’ in E-BUSINESSSOFT TECHNOLOGIES LTD. was submitted in your application. A letter from your employer submitted on appeal lists the job as ‘Software Engineer’. You have not provided any evidence that you have sufficient work history or qualifications to be able to do the specific job for which this work permit issued. There appears to be some confusion as to what exactly your role will be in E-Businesssoft Technologies but you have not shown any evidence of having worked or gained qualifications in any aspect of software engineering or development”.

30. Further, at paragraph (80) of the judgment of the court, Faherty J. *inter alia* observed that:

“I consider that in the particular circumstances of this case, and in order to determine whether the respondent’s assessment of the appellant’s qualifications and work experience was fairly arrived at, it is necessary to parse what actually occurred following the receipt by the appellant of the first instance decision. As we have seen that decision was brief in the extreme, containing as it did only two shortform reasons, “ID” and “OC”. The refusal of the visa on the basis of the perceived insufficiency of his documentation (“ID”) led the appellant, as evidenced by the contents of his appeal letter, to try

and ascertain what documents were missing. To this end he consulted the respondent's website and concluded (rightly or wrongly) that proof of accommodation in the State and travel insurance only were missing. Hence, his appeal letter contained assurances that these matters had been attended to".

31. At paragraph (83) of the judgment of the court, Faherty J. *inter alia* observed as follows:

"Thereafter, in the undoubted knowledge that the appellant had focused only on his accommodation and travel arrangements (which he believed might be the source of the respondent's concern), the respondent did not, however, make any attempt to disabuse the appellant of his belief that the difficulties with his documentation lay in the realm of accommodation and travel arrangements. Whilst the appellant did not in his appeal letter specifically ask for other required documentation to be identified by the respondent, in my view, his apparently erroneous focus on matters of travel and accommodation (to which, as I have said, he was unwittingly led by the very opaque nature of the first instance decision reasons) constituted in effect a clarion call to the respondent to put the appellant on the right road, which the respondent did not do. To my mind, in the particular circumstances of this case it behoved the respondent to do so".

32. At paragraph (99) of the judgment of the Court of Appeal in *AA v The Minister for Justice*, Faherty J. *inter alia* sets out her conclusion in the following terms:

“My conclusion that the appellant has not made out the ground of appeal pertaining to the respondent’s treatment of the Critical Skills Employment Permit is, of course, not sufficient to uphold the refusal decision. This is because of the frailties which attach to that decision, to which I have already alluded, namely the inadequacy and effective unreasonableness of the “OC” reason, and regarding the “ID” reason, in the very particular circumstances of this case the failure of the respondent, prior to issuing the refusal decision, to highlight (when effectively invited by the appellant to do so) the deficiencies in the appellant’s qualifications and work experience in relation to the post being offered to him, be that software engineer or software developer, thus thereby depriving the appellant of any real or effective opportunity to address those perceived inadequacies”.

33. Whilst reliance is placed on the affidavits sworn by the applicant’s potential employers, which *inter alia* describe the difficulties in hiring chefs, and in particular the position of chef de partie, and, in Mr. Rasheed’s case, stated that he had interviewed the applicant and had contacted the references which the applicant had furnished from persons in Pakistan, these affidavits post-date the decision which is sought to be impugned in this application for judicial review, *i.e.*, the decision of the Minister for Justice dated 4th September 2023 refusing the applicant’s application for a long stay “D” employment visa. In *S v Minister for Justice* [2022] IEHC 578 at

paragraph 25 of the judgment, the High Court (Bolger J.) had observed, on the facts of that case, that the contents of the affidavit of the prospective employer were of limited relevance because at least some of the matters were not before the appeal but did add that the averments quoted – which expressed the prospective employer’s satisfaction with the skill level and knowledge of the applicant in that case and the very specific role he was being hired for – were consistent with the prospective employer’s work permit application which was part of the documentation submitted for the visa application.

34. In processing visa applications, the statutory regime obliges the Minister (and departmental officials) to engage with the central question surrounding the sufficiency of evidence which accompanies an application.

35. The central complaint raised on behalf of the applicant in this case is that it was unlawful for the Minister to take issue with certain documents on appeal in circumstances where the applicant contends that no issue had been taken with those documents at first instance. The inquiry in this judicial review application relates, therefore, to the first instance decision *i.e.*, the refusal dated 17th August 2022 and the decision on appeal *i.e.* the decision dated 4th September 2023 when the applicant was informed that his visa application had not been successful and was refused.

36. By way of clarification on behalf of the applicant, it was submitted at the outset of the hearing, that as the appeal decision dated 4th September 2023 dealt with the other issues raised in the applicant’s appeal and set out in the letter of appeal dated 13th October 2022 from his solicitor, Thomas Coughlan & Co., Solicitors, the focus of this

judicial review challenge centred on the following matters which were determined at ‘first instance’ in the refusal dated 17th August 2022, namely that “[i]nsufficient evidence submitted to demonstrate that you have the relevant qualifications/employment experience to undertake your proposed employment in the State. No training/qualification certificates have been submitted with your application” and that the “Finances shown have been deemed insufficient” (the full quoted extract is set out earlier in this judgment).

37. As mentioned, the central focus of Mr. O’Dwyer SC’s submission, on behalf of the applicant, was that it was unfair and unlawful for the Minister to take issue with certain documents on appeal in circumstances where it is argued that no issue had been taken with those documents in the first instance decision. In this regard, reference was made to the decision of the High Court (Meenan J.) in *Singh v The Minister for Business, Enterprise and Innovation & Anor* [2018] IEHC 810.

38. In *Singh* the applicant was an Indian national who, after his previous marriage to a Latvian national (who was an EU citizen) ended in divorce, wished to remain in Ireland and applied for the retention of his residence card due to his status as the former spouse of an EU citizen. The applicant sought to have the refusal of this decision reviewed and during this time he applied for an employment permit which was refused. The judgment of the High Court (Meenan J.) focused in particular on the application of section 13(4) of the Employment Permits Act 2006 (“the 2006 Act”) which *inter alia* provided that “*the person so appointed, having afforded the person who submitted the decision for review an opportunity to make representations in writing in relation to the matter, may (a) confirm the decision (and, if the person does*

so, shall notify in writing the second-mentioned person of the reasons for the confirmation), or (b) cancel the decision and grant to the foreign national concerned the employment permit the subject of the application to which the review relates.”

39. The High Court held that the requirement in section 13(4) of the Employment Permits Act 2006 that the person seeking to review the decision be given “*an opportunity to make representations in writing in relation to the matter*” was an application of a basic rule of fair procedures, namely that a person be afforded an opportunity to be heard. The 2006 Act provided that once these representations had been considered, there were only two options available, either (a) to confirm the decision or (b) cancel the decision and grant the employment permit. Meenan J. held that the decision (refusal) had been confirmed for *different reasons* from those which were given when the decision was first made and that there was “*an obvious problem with this in that the applicant was given an opportunity to make representations in respect of the first decision but there was no such opportunity afforded to him in respect of the reasons given for the reviewed decision. Fair procedures would dictate that if different reasons were going to be given to confirm the first decision on review then the applicant must be afforded an opportunity to be heard*”, *i.e.*, if the decision-maker was intending to confirm the first decision but for different reasons then the applicant should have been afforded an opportunity to make representations on these different reasons before the review decision was taken.

40. I do not consider, for the following reasons, that the position in this case is analogous to the facts in *Singh* or that there was a lack of fair procedures between the first instance decision and the appeal decision as contended for, on behalf of the applicant.

41. In informing the applicant, for example, that his application was rejected *inter alia* because insufficient documentation had been submitted in support of his application, the first instance decision set out the following reasons:

“The application was rejected due to the following reasons:

ID:-Insufficient documentation submitted in support of the application:-please see link to “Documents Required” as displayed on our website-www.irishimmigration.ie

The strength of the overall application has been diminished due to the failure to provide sufficient supporting documentation in the following areas:

- *Insufficient evidence submitted to demonstrate that you have the relevant qualifications/employment experience to undertake your proposed employment in the State. No training/qualification certificates have been submitted with your application...*

F:- Finances shown have been deemed insufficient.

- *You have not submitted a bank statement to cover the six-month period prior to application. Your submitted statement runs from 4th July to 20th July.*
- *Although you have submitted letters from employers and wage slips, there is no evidence of you being paid for your stated employment in the form of lodgements to your bank account.*

- *The letter from your proposed employer states that accommodation will be arranged for you on your arrival at Apartment 17, Crosby Yard, Oscar Road, Dublin 3, D03 RY6 65, but no evidence of how this would be financed has been submitted. No proof of ownership has been provided. No bank statements from proposed employer have been submitted.*
- *It is also not stated who will pay for this accommodation or how much it will cost”.*

42. Further, and in addition to the aforementioned rationale, the first instance decision expressly directed the applicant to the “*Documents Required*” section of the departmental website (www.irishimmigration.ie).

43. When the “*Documents Required*” section of the departmental website (www.irishimmigration.ie) is reviewed, this states as follows:

“all letters submitted from a business, company or other organisation must be on official headed paper so they can be verified, and show the organisation’s

- *Full Name*
- *Full postal address*
- *Telephone number (fixed line – not mobile/cell phone)*
- *Website address*

- *Email address (Yahoo and Hotmail email addresses are not accepted)*
- *A contact person's name and title/position*
- *Written signature of an authorised representative (electronic signature is not accepted)".*

44. These requirements were thus clearly expressed and communicated to the applicant.

45. The first instance decision dated 17th August 2022 in this case, in my view, met the requirements set out in the judgment of the Court of Appeal (Faherty J.) in *AA & Ors v The Minister for Justice* [2024] IECA 57 and advised the applicant that the strength of his overall application had been diminished due to the failure to provide sufficient supporting documentation in that insufficient evidence had been submitted to demonstrate that the applicant had the relevant qualifications/employment experience to undertake his proposed employment in the State and no training/qualification certificates had been submitted with the applicant's application. Further, the decision stated that the finances which had been furnished had been deemed to be insufficient in a number of respects including the failure to submit a bank statement to cover the six-month period prior to the application, *i.e.*, the submitted statement ran from 4th July to 20th July; although the applicant had submitted letters from employers and wage slips, there was no evidence of him being paid for his stated employment in the form of lodgements to his bank account; the decision also raised issues in relation to the lack of evidence in relation to the financing of accommodation.

46. I do not consider that, by doing so, the first instance decision can be interpreted as ‘approving’ the references or other documentation (which the applicant had submitted) and which were also set out in more detail in the appeal decision dated 4th September 2023, as contended for on behalf of the applicant. The requirement of fair procedures must be seen in the context of an application, where the applicant was informed of the reason for refusal in a manner which went beyond the *shortform reasons* (which were referred to in the earlier authorities) and where he was aware that all letters submitted from a business, company or other organisation must be on official headed paper so they can be verified, and show the organisation’s full name, full postal address, fixed line telephone number and not a mobile/cell phone, website address, email address but where ‘Yahoo’ and ‘Hotmail’ email addresses were not accepted, a contact person’s name and title/position and where a written signature of an authorised representative was required and an electronic signature would not be accepted and where the applicant was in a position to check whether the references met the published requirements.

47. Applying the approach of Faherty J., and in distinguishing the facts in this case from that in *AA, T.A.R* , *Mukovska v Minister for Justice* [2021] IECA 340 and *S v Minister for Justice* [2022] IEHC 578 there was not, in this case, a sole reliance on the “shortform reason” signified by the term “*ID:-Insufficient documentation submitted in support of the application:-please see link to “Documents Required” as displayed on our website-www.irishimmigration.ie*” and nor was there the equivalent “brevity of reasoning” in the first instance decision dated 17th August 2022.

48. Mr. Leonard BL (for the Minister) submits that the statement on the departmental website at the time of the decision of the High Court (Bolger J.) in *S v Minister for Justice* [2022] IEHC 578 did not exclude mobile phone numbers in the express terms which the departmental website now does and in this regard, he referred to the following extract of the wording then used in that website at paragraph 26 of the High Court judgment in *S v Minister for Justice* [2022] IEHC 578: “[a]ll letters submitted should be on official company headed paper and give full contact details so that they can be verified. These must include a full postal address, name of contact, position in company/college, telephone number (landline), website, and email address (email addresses such as Yahoo or Hotmail are not accepted)”.
49. A similar matter issue is in fact addressed at paragraph 74 of her judgment in *AA & Ors v The Minister for Justice* [2024] IECA 57 where, by reference to the observations of the High Court in *T.A.R.*, Faherty J. refers to the argument that the Minister could have telephoned or emailed the appellant in that case and asked him to clarify the inconsistency that had been identified.
50. This is answered beginning at paragraph 76 of her judgment where Faherty J. expressed her agreement that the Minister was entitled to comment on the inconsistency in the job description contained in the two pieces of correspondence (which the appellant adduced from the putative employer in that case) without reverting to the appellant since the inconsistency would have been apparent to the appellant himself from a reading of the relevant correspondence, and therefore, “*it did not fall to the respondent to alert the appellant to the inconsistency in advance of the refusal decision*” and specifically in *AA* insofar as the appellant in that case took issue

with the Minister's treatment in the refusal decision of his qualifications and experience for the job being offered to him.

51. Faherty J. – referring to her previous judgment in the High Court in *Khan v Minister for Justice, Equality and Law Reform* [2017] IEHC 800 and McDermott J. in *T.A.R v Minister for Justice, Equality & Defence* [2014] IEHC 385 – agreed, in principle, with the Minister that there was no obligation on the part of a decision-maker to advise an applicant in advance of the decision of the views reached in the determinative process, at paragraph 79 of her judgment as follows:

“As a matter of principle, I agree with the submission that there is no obligation per se on the respondent to give advance warning to an applicant about perceived deficiencies or contradictions in the documents submitted with a visa application. I said as much in Khan v Minister for Justice, Equality and Law Reform [2017] IEHC 800 at para. 83, and went on to state, at para. 85:

“...As stated in A.M.Y. v. Minister for Justice [2008] IEHC 306, 'there is no onus on the Minister to make inquiries seeking to bolster an applicant's claim; it is for the applicant to present the relevant facts'”.

I also agree that the words of McDermott J. in T.A.R., upon which the appellant relies, do not suggest that there is an absolute obligation on the respondent to forewarn a visa applicant of perceived frailties in the application.”

52. Thus, in assessing this central issue of fairness, the particular factual circumstances in *AA v The Minister for Justice* involved an erroneous focus on matters of travel and accommodation which was exacerbated by the “*very opaque nature*” of the first instance decision which contributed to the appellant’s misapprehension in that case. None of these factors apply in this case, *i.e.*, the facts in this case do not involve a similar “*singular failure to disabuse the appellant of his erroneous belief that the difficulties lay in the information he had supplied in his visa application concerning his travel and accommodation arrangements and to advise him that it was his professional qualifications and experience that were of concern*” (per Faherty J. at paragraph 86 of her judgment in *AA & Ors v The Minister for Justice* [2024] IECA 57).
53. This issue also arises in a general way having regard to the fact that the authority to grant a visa derives from the executive power of the State.
54. A non-national, in the circumstances of the applicant in this case, who has been granted a work permit, is required to have a visa where the holder of the work permit comes within a class of non-national in respect of whom visas are required by orders made under section 17 of the Immigration Act 2004. The process is governed by *inter alia* S.I. 473/2014 Immigration Act 2004 (Visa) Order 2004.
55. As mentioned at the beginning of this judgment, where an employment permit has been issued, and where the non-national is required to hold a visa to enter and remain in the State, they must apply for what is known as a Long Stay ‘D’ Employment Visa.

56. In the exercise of her executive decision-making function, the Minister was entitled to assess, and if necessary, take issue with the documentation which was furnished, and later it was not necessary for her to engage in a form of detailed pre-decision dialogue when determining the appeal from the first instance decision.

57. In *M.A. Refugee Appeals Tribunal & Ors* [2015] IEHC 528, for example, where the High Court refused a challenge to a decision of the Refugee Appeals Tribunal which affirmed the decision of the Refugee Applications Commissioner declining refugee status to the applicant, MacEochaidh J., at paragraphs (20) to (22) of his judgment, held that not every adverse reason must be ‘put to’ an applicant:

“(20) The essential case made by the applicant is that the Tribunal Member should not have made new credibility findings against the applicant on a papers only appeal without reverting to him and putting these issues to him. I reject this argument. Where the Tribunal intends to make negative credibility findings based on the statements made by the applicant during the asylum process, whether on a papers only appeal or on an oral appeal, there is no obligation to revert to the applicant to give him or her an opportunity of explaining a perceived inconsistency, a contradiction, an implausible suggestion or any other circumstance arising from what the applicant has personally said, during the application process, which causes the Tribunal Member to conclude that credibility should be rejected. The Tribunal is no more required to do this than would a judge be required on hearing implausible testimony or on noticing an

inconsistency in evidence to warn a witness that a negative credibility finding is imminent. The fact that the negative credibility finding is made on a papers only appeal is irrelevant. Counsel for the applicant has referred to certain Canadian authorities said to be authority for the proposition that:- “the intention to make a negative credibility assessment on the basis of any perceived evidentiary inconsistency must be disclosed in a timely way, and the applicant given a fair opportunity to respond to same”. [see page 158 and footnote 427 of Hathaway & Foster, “The Law of Refugee Status” (2nd edition)].

I am not of the view that this is the law in Ireland. In any event, I note that negative credibility findings were made in the s. 13 report, yet none of these were specifically addressed in the notice of appeal and the accompanying written submission to the R.A.T..

(21) The complaint in this case maybe based on a misconception of the requirement that certain matters must be “put to” a witness. A witness should be given an opportunity of commenting on evidence to be given by another witness which contradicts his or her own evidence. Breach of this rule of fair procedures may result in the other evidence being excluded.

(22) No reliance could be placed on material unknown to an applicant to defeat a claim for asylum. Thus, country of origin information which contradicts an applicant’s narrative must be disclosed and an opportunity afforded to address it. Contrarily, it must be assumed that an applicant is aware of what he or she has said during the asylum process. It is noted that an applicant has full

opportunity in an appeal, even a “papers only” appeal to address any inconsistency, contradiction, implausibility or any other problem arising from what has been said during the asylum application process”.

58. As referred to earlier, the High Court (Faherty J.) rejected a similar argument in *K.N. & Ors v The Minister for Justice and Equality* [2017] IEHC 403 at paragraphs 61 and 62 of the judgment, as follows:

“(61) As part of their challenge, the applicants allege a breach of fair procedures. I do not accept this argument. In the first instance, in making the visa application, the first named applicant was on notice, by virtue of the declaration made by him, that it was incumbent on him to ensure that the documentation furnished was complete and true to the best of his knowledge. Furthermore, in light of the copious correspondence which passed between the applicants’ various legal representatives and the respondent between 26th August, 2014 and 17th September, 2014, there can be no question but that the first named applicant had an opportunity to address the basis upon which the decision of 8th July, 2014 had been refused. Moreover, he was on notice that the basis for the refusal centred on the webmail address which was listed on the first named applicant’s accountant’s letterhead. To my mind, this was sufficient to put the first named applicant on enquiry, when resubmitting the later “in date” letterhead of AnR Accountants, that contact numbers and addresses

for the said firm, as contained on the letterhead, were matters of interest to the respondent.

(62) Accordingly, I am not persuaded by the applicant's argument that following the submission of the new letterhead, it was the respondent's obligation to put the applicants on notice of any further concerns the respondent may have, or afford the first named applicant an oral hearing prior to any decision on the visa application. This is so in circumstances where the requisite process was advised to the applicants from the outset by virtue of the declarations which the applicants had to sign in the course of completing the visa application, and, as I have said, in circumstances where the first named applicant was on heightened inquiry, as a result of the refusal of 8th July, 2014, of the likely focus which AnR Accountants' new letterhead would receive from those within the Visa Office charged with perusing the documentation submitted in aid of the visa application".

59. Whilst the appeal decision accepted that the applicant had provided a number of employment letters to evidence his stated employment in Pakistan, it pointed out that there were a number of examples of non-compliance with the stipulations (as set out above in the "Documents Required" section of the departmental website) including, for example:

- (i) A letter from ‘*New Zebaish Banquet and Restaurant*’ which stated that the applicant worked at the company from March 2018 to May 2020 contained a mobile phone contact only and did not contain a landline telephone number or an email address or a website address for verification purposes and that this was “*not sufficient in respect of official letters as per the website www.irishimmigration.ie*”.
- (ii) An employment letter from ‘*Zanzibar Restaurant*’ stating that the applicant was employed there from June 2020-2021 as a “*Supervisor*” and “*this does not appear to be a cooking role*” and that there were “*no contact details on this employment letter for verification purposes.*”
- (iii) A letter from ‘*Bandhan Restaurant and Wedding Hall*’ dated 2nd July 2022 contained only a mobile number for Kaleem Khan M.D. and there was no landline telephone number, no email address or website address and noted that whereas two other branches of the company did have their landline numbers listed the branch the applicant was employed at did not.

60. Further, the appeal decision letter dated 4th September 2023 stated that the applicant had not provided any payslips for his employment from 2018-2021, nor any evidence of his salaries being lodged to any bank account and had not provided an FBR³ document showing his income and taxes paid, *etc.*, for his entire employment history.

³ The Federal Board of Revenue in Pakistan.

61. Reference was made to three training certificates in fire safety, food safety and hygiene and first aid which were not submitted as part of the first instance application and whilst it was acknowledged that they would be undoubtedly helpful in the catering industry, the decision stated that they could not be “*reasonably considered to amount to documentary evidence that the applicant*” was “*qualified to undertake a qualified chef de partie role in a professional kitchen in the State.*”
62. The appeal decision letter dated 4th September 2023 stated at “*F*” that the applicant’s “*Finances shown have been deemed insufficient*”. The letter considered the explanation set out in the letter of appeal from his solicitor dated 13th October 2022 that the applicant was always paid in cash and accordingly, both at first instance and on appeal, he had not submitted a bank statement to cover the 6 month period prior to his application and had only opened a bank account in July 2022. The letter noted, however, that the applicant had been paid to his bank account in September and October 2022 to evidence his salary to the Visa office.
63. The letter further noted that much of the details on the payslips from the applicant’s employment in the Bandhan Restaurant and Wedding Hall was handwritten as the printed parts of the payslips were not generic and it was the Visa Appeals Officer’s considered opinion that it was highly unusual to have a pay slip half printed and half handwritten with the employees details and not one or the other especially taking into consideration that the printed parts were not generic but included personal information in respect of the employee.

64. The appeal decision letter dated 4th September 2023 further noted that whereas the applicant had provided a Pakistani ‘Federal Board of Revenue’ (“FBR”) “Taxpayer Registration Certificate” which stated that the applicant’s registration date was 4th September 2022, the applicant, however, had provided statements to say he was employed since March 2018 and it was unclear as to why the applicant would only register an FBR account as a taxpayer in September 2022 approximately four years after undertaking employment in Pakistan. The appeal decision letter also noted that the FBR document which had been provided was a ‘*front cover or first page*’ only and did not include the applicant’s financial affairs by year to cover his income and taxes paid which would be normal to expect for such documents issued by the FBR in Pakistan.

65. As set out above, the appeal decision letter dated 4th September 2023 considered in detail the matters raised by the applicant’s appeal. Mr. O’Dwyer SC, for example, had emphasised that the applicant operated largely through cash. In addition to the matters already outlined, the Minister, in the letter of 4th September 2023, further addressed the issue of receiving payment in cash as follows:

“While it is accepted that persons in employment in Pakistan may be paid in cash, on balance when taking into consideration the aforementioned on the whole the Visa Appeals Officer is not satisfied that the applicant has shown a clear picture of his financial position in Pakistan including his income from employment; employment which is valid to this visa application in respect of the applicant’s ability to undertake the employment in this State. Further, a detailed

6-month durational bank statement is a minimum documentary requirement in support of all visa applications. In the absence of a bank statement, an assessment of the applicant's financial position could not be undertaken. The applicant has not sufficiently demonstrated/evidenced a consistent financial income; subsequently the applicant has failed to sufficiently demonstrate his income as a chef in Pakistan, this directly connects to evidencing his experience/suitability to undertake the proposed employment as a chef in this State”.

66. During the hearing of this application Mr. O’Dwyer SC, for the applicant, also emphasised two further matters: first, that a prospective employer had expended a not inconsiderable sum of money in applying for an employment permit for the applicant; second, there was an incongruity that the same references processed in an employment permit application were deemed to be sufficient by one government department yet in the context of a visa application, these references were then deemed insufficient by a different government department.

67. Whilst such circumstances in any case may be frustrating for an applicant, they do not render a decision to refuse a visa application unlawful. Further, the argument made on behalf of the applicant approximates to asking a court to express its view on a policy matter or the merits underpinning the application of a policy. This is impermissible in a judicial review application. In *L & Ors v The Minister for Justice and Equality & Ors* [2019] IESC 75, O’Donnell J. (as he then was) at page 79 of the judgment of the Supreme Court, *inter alia* observed (when dealing with a question relating to the

adequacy of the judicial review procedure as a remedy) that it was “*a necessary feature of any system of judicial review that the court is not empowered to rehear issues and substitute its own findings of fact for those of the deciding body*”.

68. The fact that a prospective employer expended monies in seeking an employment permit for a visa applicant, or is favourably disposed to an applicant in a labour market where there may be shortages, could not be dispositive of an application for a visa where the *persona designata* is the Minister and where guidance is expressly published as to the type of details which have to be included in a reference submitted with a visa application. It is not a matter for a court, no matter how sympathetic to the position facing the prospective employer in any particular field of employment, to substitute its views for that of the prescribed decision-maker in a visa application.

69. The third issue addressed in the judgment of Faherty J. in *AA & Ors v The Minister for Justice* [2024] IECA 57 (beginning at paragraph 87 of the judgment) concerned the treatment of the ‘Critical Skills Employment permit’ which was at issue in that case.

70. The appeal decision in this case (from the Visa Appeals, Visa Division, Immigration Service Delivery) dated 4th September 2023 *expressly* refers to the fact that the applicant had been granted *an employment permit* from the (then styled) Department of Business, Enterprise and Innovation and which had clearly stated that the permit related to employment only and was not a residence permit or a permission to enter Ireland. The appeal decision makes reference to the letter granting the employment permit stating that persons who are nationals of countries that are visa required for

travel to Ireland “*must make a visa application*” and that “*in the visa application you will be required to submit evidence of your professional qualifications, if required, as well as evidence of previous work experience, if required.*”

71. As stated earlier, the appeal letter and decision dated 4th September 2023 also referred to the decisions of the High Court in *S v Minister for Justice* [2022] IEHC 578 and *Akhtar v Minister for Justice and Equality* [2019] IEHC 411, in stating that the granting of an employment permit did not dictate the considerations and decision which would be made in a visa application process:

“The functions and powers for the Minister for Business, Enterprise and Innovation, to regulate the labour market under the Employment Permits Act 2006, as amended, are quite distinct from the executive power of the Minister for Justice to control entry, residence and departure of foreign nationals. While on occasion, the exercise of these powers might seem to overlap, there is no basis for a suggestion that the existence or exercise of the former, in any way ousts or constraints the exercise of the latter. This has been set out in relevant case law in this State. As stated in S v Minister for Justice [2022] IEHC 578....“(37) I do not consider the work permit constitutes the type of prima facie evidence that is contended for by the applicant. However, neither do I accept that it can ignored...”.

72. After referring to paragraph 24 of the judgment of Keane J. in *Akhtar v Minister for Justice and Equality* [2019] IEHC 411 and his reference therein to the extract from

the judgment of Clark J. in *RMR & Anor v Minister for Justice & Ors* [2009] IEHC 279 (Unreported, High Court, (Clark J.), 11th June 2009), the appeal letter and decision dated 4th September 2023 stated *inter alia* as follows:

“As a Pakistani National, an entry visa for employment purposes is required. In deciding a visa application, the Minister is required to consider all the information available to her in light of the purposes for which visa orders are made, including documentation submitted for the purposes of a work permit where that documentation is relevant to an assessment of a visa application.

It follows, that when, in the exercise of her broad executive power to control immigration, the Minister requires a foreign national, with a work permit, to establish, in order to obtain a visa, s/he does have the appropriate level of experience for that employment, which is separate to the 2006 Act[,] [a]ny applicant that is refused on that basis would have been deemed to have failed to disclose appropriate evidence of their skills, qualifications and experience when they submitted their application both at first instance and on appeal.

Please note, the onus rests on the applicant to satisfy the Visa Appeals Officer that a visa should be granted for the purpose sought.

Only one appeal per application is permitted [,] however [,] it is open to you to make a fresh application. If you decide to submit a fresh application, it is recommended that you address the refusal reasons as outlined in this application and decision letter and re-check the relevant website <https://www.irishimmigration.ie/coming-to-work-in> -

ireland/ for information and guidance on submitting an employment visa application”.

73. This was also made clear in the Employment Permit issued in this case dated 24th June 2022 which referred to the type of employment as a chef de partie and the period of employment from 24th June 2022 to 23rd June 2024. As indicated in the appeal decision dated 4th September 2023, the applicant’s Employment Permit dated 24th June 2022 in this case stated *inter alia* that:

“Please note that this permit relates to employment only and it is not a residence permit or a permission to enter Ireland. Persons who are nationals of countries that are visa required for travel to Ireland must make a visa application through www.inis.gov.ie In the visa application you will be required to submit evidence of your professional qualifications, if required, as well as evidence of previous work experience, if required.

Visa required and Non-Visa required persons must have at all times:

(a) current appropriate permission from the immigration authorities which allows you to enter, reside and undertake employment in the State, and

(b) an up to date passport”.

74. It was nevertheless submitted on the applicant’s behalf that there was a significant unfairness in that the first instance decision did not take issue with the quality of the references, including, for example, the requirement to have a landline rather than a

mobile number or that he did not have the relevant experience. As mentioned earlier in this judgment, in *AA & Ors v The Minister for Justice* [2024] IECA 57 the Court of Appeal in the judgment of Faherty J. (commencing at paragraph 79) agreed, as a matter of principle, that there was no obligation *per se* on the Minister to give advance warning to an applicant about perceived deficiencies or contradictions in the documents submitted with a visa application and referred to her previous judgment in the High Court in *Khan v Minister for Justice, Equality and Law Reform* [2017] IEHC 800 and that of McDermott J. in *T.A.R v Minister for Justice, Equality & Defence* [2014] IEHC 385.

75. Significantly – as set out at the beginning of this judgment – Faherty J. held in *AA & Ors v The Minister for Justice* [2024] IECA 57 that in the particular circumstances of that case, and in order to determine whether the respondent’s assessment of the appellant’s qualifications and work experience was *fairly* arrived at, it was necessary to review (“parse”) what actually occurred following the receipt by the appellant of the first instance decision.

76. At paragraphs 83 to 85 of the judgment of the Court of Appeal, Faherty J. stated that the appellant in *that* case had no idea from the first instance decision, because of its brevity and opaqueness, what the exact problem or problems with his documentation or the conditions of the visa were, and that, in addition, there had been no attempt to clarify with the appellant in *that* case that the difficulties with his documentation were in relation to accommodation and travel arrangements rather than advising him that it was his professional qualifications and experience that were of concern which, in contrast, *was* done in the applicant’s case here.

77. The appeal decision of 4th September 2023 in this case, for example, considered the applicant's employment permit and, in doing so, satisfied the applicable legal requirements outlined in paragraphs 96 and 97 of the judgment of Faherty J. in *AA v The Minister for Justice* [2024] IECA 57, as follows:

“(96) Thus, in S v. Minister for Justice, adopting the approach of Keane J. in Akhtar, Bolger J. did not consider the work permit “constitutes the type of prima facie evidence that is contended for by the applicant” (para. 37). However, neither did she accept that it could be ignored. She was satisfied that the permit had been taken into account since the decision-maker had asserted that the decision was arrived at having taken all documentation and information into account. As Bolger J. put it, “[t]hat assertion is to be accepted as having occurred unless it is reasonable to believe otherwise, in line with the dicta of Hardiman J. in GK v Minister for Justice [2002] 2 I.R. 418”. (para. 37)

(97) The same applies here, in my view. As I have said, the Employment Skills Permit was taken into account by the respondent. Insofar as the appellant contends that no proper account was taken of the fact that he obtained such a permit, I cannot agree that the permit requires to be viewed in the way for which counsel contends. Once it was taken account of, that is sufficient, to my mind. At the risk of repetition, the fact of a Critical Skills Employment Permit having been granted does not usurp or delimit the exercise of the

respondent's discretion. That was made clear to the appellant in the correspondence dated 4 September 2020 from the Minister for Business, Enterprise and Innovation enclosing the Critical Skills Employment Permit".

CONCLUSION

78. In *AA & Ors v The Minister for Justice* [2024] IECA 57 at paragraph 43 of the judgment of the Court of Appeal, Faherty J. observed that challenges such as that at issue in this case, did not involve “rights” but involved, rather, the exercise by the Minister of the sovereign power of the State to permit a non-national to enter the State.
79. In addition to outlining the requirement of fair procedures, at paragraph 45 of the court’s judgment, Faherty J. referred to the applicable standard of review when challenging a visa application decision as being the test set out in *O’Keeffe v An Bord Pleanála* [1993] 1 IR 39 and *The State (Keegan) v Stardust Compensation Tribunal* [1986] IR 642 as discussed by the High Court (Tara Burns J. in *Basit Ali v Minister for Justice* [2021] IEHC 494) and in referring to the very wide discretion of the Minister for Justice in exercising the power to grant a visa stated that the “*corollary of that is that the scope for challenging a decision to refuse a visa in the exercise of the State’s executive power is thus narrower than applies to a challenge to a statutory or other administrative power in which the decision-maker is bound by the particular vires deriving from the relevant statutory scheme.*” In so doing, Faherty J. added that

this pre-supposes that a decision-maker will have provided a reason or reasons for the decision that, in the first place, are easily discernible and comprehensible.

80. Further at paragraphs 71 and 72 of the judgment of the court in *AA*, Faherty J. points out that the court's assessment of the rationality or reasonableness of a decision cannot be divorced from the consideration of the fairness or otherwise of the process leading to the decision and it is, therefore, important to assess whether, in all the circumstances of the case, it can be said that the Minister's assessment of the strength of the applicant's overall application had been diminished due to the failure to provide sufficient supporting documentation in that insufficient evidence had been submitted to demonstrate that the applicant had the relevant qualifications/employment experience to undertake his proposed employment in the State and no training/qualification certificates had been submitted with the applicant's application (which formed the gravamen of second issue – fair procedures – addressed by Faherty J. beginning at paragraph 73 of the judgment in *AA v the Minister for Justice*).

81. In this case, the applicant complained that it was unlawful for the Minister to take issue with certain documents on appeal, in circumstances where the applicant contended that no issue was taken with those documents at first instance.

82. Whilst no fundamental right of the applicant is claimed to be affected by the appeal decision dated 4th September 2023, Mr. O'Dwyer SC frames his substantive argument around fair procedures as between the first instance decision and the appeal decision. For the reasons which I have set out above, when the detail of these decisions are examined, I do not consider that there was any unfairness as to how the Minister dealt

with the appeal from the first instance decision in this case. The first instance decision dated 17th August 2022 advised the applicant that the strength of his overall application had been diminished due to the failure to provide sufficient supporting documentation, in that insufficient evidence had been submitted to demonstrate that the applicant had the relevant qualifications/employment experience to undertake his proposed employment in the State and no training/qualification certificates had been submitted with the applicant's application. Further, the decision stated that the finances which were furnished had been deemed to be insufficient.

83. In addition, generally, aside from issues of procedural fairness and illegality (which do not, in my view, arise on the facts of this case), notwithstanding the invitation on behalf of the applicant to do otherwise, I do not think that it is a matter for a court in an application for judicial review to evaluate that evidence or documentation on the merits and as to the question of employment, in order to come to a different decision, *i.e.*, to determine, for example, that the three references submitted (and referred to earlier) were sufficient to meet the requirements of employment as a chef de partie or to express any view as to whether, as a matter of public policy, chefs de partie are needed in the workforce.

84. In addition to reviewing the decisions sought to be impugned through the prism of fairness, when examined from the perspective of the application of unreasonableness/irrationality, the reasoning in the first instance refusal dated 17th August 2022 and the decision on appeal, *i.e.*, the decision dated 4th September 2023, led to conclusions which could be said follow from the premises and were reasonable:

see *State (Keegan & Lysaght) v Stardust Victims Compensation Tribunal* [1986] I.R. 642.; *O'Keeffe v An Bord Pleanála* [1993] 1 I.R. 39.

PROPOSED ORDER

85. In the circumstances, I shall make an order refusing the applicant's application for reliefs by way of judicial review.

86. I shall list the matter for mention on Wednesday 26th February 2025 at 10:30 to deal with final orders, including the question of costs.

CONLETH BRADLEY

19th February 2025