

THE HIGH COURT

[2019 No. 291 JR]

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

BETWEEN

A

APPLICANT

– AND –

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr. Justice Max Barrett delivered on 18th February 2020.

1. Mr. A, a national of Pakistan, arrived in Ireland in 2015 from the United Kingdom. He then applied for an EU residency card based on a claimed dependency upon an uncle who is a United Kingdom national and was then resident in Ireland. This application was refused, related judicial review proceedings were commenced on 4 April 2017, but the said proceedings were rendered moot when Mr. A's uncle left Ireland. On 21 June 2017, the Minister issued notification to Mr. A of his intention to make a deportation order under s.3 of the Immigration Act 1999 ("Act of 1999") and inviting representations on this proposal. No representations were received from Mr. A within the time stipulated.
2. Separately, Mr. A, who apparently has experience of farming in Pakistan, completed a FETAC Level 6 Certificate Course in Milking Process at Ballyhaise Agricultural College, County Cavan. His certificate issued on 14 January 2019 and he subsequently received what gives every appearance of being a *bona fide* offer of employment as a dairy farm assistant from a reputable entity operating within the dairy sector. Dairy assistants are currently in short supply in Ireland and a special work permit scheme for dairy farm assistants from outside the EEA has been put in place by the Executive to address this deficit. In this regard, the court has been furnished by counsel for Mr. A with a press release issued by the Department of Business, Enterprise and Innovation ("DBEI") concerning the permit scheme; the press release is too long to replicate in this judgment but, at the time of writing, is available online at <https://dbei.gov.ie/en/News-And-Events/Department-News/2018/May/14052018.html> (accessed 18 January 2020).
3. By email of 11 February 2019, the DBEI confirmed to Mr. A's solicitors that the quota of permits for dairy farm assistants from outside the EEA had not then been filled and that work permits for third country nationals with the right qualifications and job offers then remained available. Mr. A had the right qualification and a job offer. So, in early-March 2019 application for permission to remain by reference to the just-described facts was made on behalf of Mr. A to the Minister for Justice and Equality. The Minister treated this application as a s.3 submission and, as Mr. A's counsel submitted at hearing that this was proper, there is to be no dispute for the court to rule upon in this regard. Under s.3(6) of the Act of 1999, the Minister is required to have regard to various factors when determining whether to make a deportation order in relation to a person, including but not limited to "*the employment...prospects of the person*".

4. Unfortunately for Mr. A, he was advised by letter of 25 April 2019 that the Minister had decided to deport him. Equally unfortunately there is an acknowledged error in the accompanying reasoning when it comes to the consideration of Mr. A's employment prospects, the sole matter in respect of which he had (in effect) made submission; thus the letter states that "*no information or documentation has been submitted to show that [Mr A]...has any specialist skills which are in deficit in this State*". Mistakes happen, there are probably few decisions of any decision-making body in which some level of error does not appear, whether in the form of typographical errors or otherwise, and it is trite law that not every error in a decision by an administrative body will lead inexorably to an order of *certiorari* or some other form of relief sounding in administrative law. Additionally, the court of course accepts that: (i) to borrow from *G.T. v. Minister for Justice, Equality and Law Reform* [2007] IEHC 287, when it comes to judicial review "*the whole of the [impugned] decision must be read and considered*" (and here it has been so read and considered by the court); (ii) to borrow from *K.R.A. and B.M.A. (a minor) v. Minister for Justice and Equality* [2017] IECA 284, at para. 38, "[t]here are always some arguments why a person should be permitted to stay...the Minister has to balance those against the national interest in preserving the integrity of the immigration system" and a deportation order may lawfully issue notwithstanding the presence of such arguments; (iii) the 'mere' existence of a firm job offer, even when such offer relates to a sector in which there is a national deficit of workers, is not a bar to deportation (see, e.g., *K(S) v. Minister for Justice, Equality and Law Reform* [2011] IEHC 371), provided of course that the applicable facts presenting are properly understood and considered by the relevant decisionmaker without any material misunderstanding of same presenting; and (iv) to borrow from *Lin & Ors v. Minister for Justice and Equality (No.2)* [2017] IEHC 745, para. 5, "[e]rrors in relation to employment prospects might not necessarily be fatal in every case" but, as acknowledged in *Lin*, there will be cases in which such errors will be "*fatal*" to the administrative decision made.
5. Here, the court (I) cannot but conclude that (a) the acknowledged error presenting in these proceedings is a material error concerning the sole point in respect of which Mr. A had made what was treated as a submission in relation to the proposed deportation order, (b) the court could not, without re-deciding the decision concerning the deportation order (something which it is not allowed to do), decide how the determination of whether or not to deport Mr. A would have gone had it been decided by reference to the factual circumstances actually presenting and not by reference to an understanding of the applicable factual matrix that was incorrect to a material degree, and (II) notes that the most basic notion of fairness of procedures requires that any application must be decided by reference to the applicable factual matrix and not by reference to an understanding of same that is mistaken to a material degree.
6. Having regard to the foregoing, the court will grant the order of *certiorari* sought and remit the within matter to the Minister for fresh consideration.