

**THE HIGH COURT  
JUDICIAL REVIEW**

[2021] IEHC 100  
**Record No. 2019/638 JR**

**BETWEEN**

**KAS**

**APPLICANT**

**-AND-**

**THE MINISTER FOR JUSTICE**

**RESPONDENT**

**JUDGMENT of Ms Justice Tara Burns delivered on the 9th day of February, 2021**

**General**

1. The Applicant is a national of Pakistan who entered the State in March, 2005 on a student permission which expired in October 2005. He has remained unlawfully in the State since then, except for a period when he left the State on a false Portuguese passport and claimed international protection in Hungary, having already claimed such protection in this jurisdiction. He has worked illegally in the State during that period and has also, unsuccessfully, attempted to enter into two marriages. He suffers from depression, TB and urethra stricturing disease.
2. Having been detected by the authorities, the Applicant applied for international protection on 10 September 2012. This application was ultimately unsuccessful and it was determined that he was not entitled to a refugee or a subsidiary protection declaration. On 25 January 2018, the Respondent declined to give him permission to remain in the State pursuant to s. 49(4)(b) of the International Protection Act 2015 ("the Act of 2015").
3. On 30 January 2019, the Applicant sought a review, pursuant to s. 49(7) of the 2015 Act, of the refusal of permission to remain on a number of grounds, including medical conditions which the Applicant suffers from. In reality, no new grounds were advanced in the s. 49(7) review but rather the application relied on a continuation and asserted deterioration of already existing matters which had previously been advanced on his behalf. A medical report from Dr. Sorcha O'Meara, which refers to a date of clinic of 27 May 2019, was included with this application for review.
4. The Respondent determined on 7 July to affirm her earlier decision to refuse the Respondent permission to remain which was notified to the Applicant on 12 July 2019. In the correspondence notifying the Applicant of this decision, it was stated, *inter alia*:-

"The decision was reviewed because you submitted further information under section 49(9). Having considered this information, the Minister has decided that there has been no material change in your personal circumstances.... Consequently I must inform you that the Minister has decided, pursuant to section 49(4)(b) of the 2015 Act, to refuse you permissions to remain in the State. A statement of reasons for this decision is enclosed."
5. Apparently, the statement of reasons for this decision was not enclosed with this letter.

6. The Applicant sought a further review of the s. 49(4) refusal on 18 July 2019 on the basis of his continuing medical condition. Another medical report was submitted with this request which again was from Dr. O'Meara and also had a date of clinic as 27 May 2019. This report repeated much of the medical information which had been included in the previous report. The only additional prognosis information was to the effect that there was "of course a potential that the Applicant will require further surgeries and procedures down the line. There is also a possibility that he will need to perform self-intermittent catheterization or dilation in the future".
7. This further review application was refused out of hand by the Respondent on 29 July 2019 on the basis that a review pursuant to s. 49(7) had already been conducted.
8. On 2 August 2019, a Deportation Order was issued against the Applicant.
9. Leave to apply by way of Judicial Review seeking an Order of Certiorari of the s. 49(7) review decision; the decision of the Respondent refusing to reconsider her s. 49(7) refusal; and the Deportation Order, was granted by the High Court on 11 November 2019.
10. The Grounds of challenge to these decisions are that:-
  - a) the Respondent failed to consider Article 40.3 of the Constitution; Articles 2, 3 and 8 of the European Convention on Human Rights; and Articles 1, 2, 3, 4, 7, 19 and 35 of the Charter of Fundamental Rights of the European Union in its s. 49(7) review; and/or
  - b) the conclusions reached by the Respondent in its s. 49(7) review were unreasonable and/or irrational and/or in breach of fair procedures;

**Sections 49 and 51 of the 2015 Act**

11. Section 49 of the 2015 Act provides *inter alia*:-

- "(1) Where a recommendation referred to in section 39(3)(c) [namely a recommendation that the applicant should be given neither a refugee declaration nor a subsidiary protection declaration] is made in respect of an application, the Minister shall consider, in accordance with this section, whether to give the applicant concerned a permission under this section to remain in the State (in this section referred to as a 'permission').
- (2) For the purposes of his or her consideration under this section, the Minister shall have regard to –
  - (a) the information (if any) submitted by the applicant under subsection (6), and
  - (b) any relevant information presented by the applicant in his or her application for international protection, including any statement made by him or her at his or her preliminary interview and personal interview.

- (3) In deciding whether to give an applicant a permission, the Minister shall have regard to the applicant's family and personal circumstances and his or her right to respect for his or her private and family life, having due regard to –
  - (a) the nature of the applicant's connection with the State, if any,
  - (b) humanitarian considerations,
  - (c) the character and conduct of the applicant both within and (where relevant and ascertainable) outside the State (including any criminal convictions),
  - (d) considerations of national security and public order, and
  - (e) any other considerations of the common good.
- (4) The Minister, having considered the matters referred to in subsections (2) and (3), shall decide to –
  - (a) give the applicant a permission, or
  - (b) refuse to give the applicant a permission.
- (5) The Minister shall notify, in writing, the applicant concerned and his or her legal representative (if known) of the Minister's decision under subsection (4), which notification shall be accompanied by a statement of the reasons for the decision.
- (6) An applicant –
  - (a) may, at any stage prior to the preparation of the report under section 39(1) in relation to his or her application, submit information that would, in the event that subsection (1) applies to the applicant, be relevant to the Minister's decision under this section, and
  - (b) shall, where he or she becomes aware, during the period between the making of his or her application and the preparation of such report, of a change of circumstances that would be relevant to the Minister's decision under this section inform the Minister, forthwith, of that change.
- (7) Where the Tribunal affirms a recommendation referred to in section 39(3)(c) made in respect of an application, the Minister shall, upon receiving information from an applicant in accordance with subsection (9), review a decision made by him or her under subsection (4)(b) in respect of the applicant concerned.
- (8) Subsections (2) to (5) shall apply to a review under subsection (7), subject to the modification that the reference in subsection (2)(a) to information submitted by the applicant under subsection (6) shall be deemed to include information submitted under subsection (9) and any other necessary modifications.
- (9) An applicant, for the purposes of a review under subsection (7), and within such period following receipt by him or her under section 46(6) of the decision of the Tribunal as may be prescribed under subsection (10) –

- (a) may submit information that would have been relevant to the making of a decision under paragraph (b) of subsection (4) had it been in the possession of the Minister when making such decision, and
- (b) shall, where he or she becomes aware of a change of circumstances that would have been relevant to the making of a decision under subsection (4)(b) had it been in the possession of the Minister when making such decision, inform the Minister, forthwith, of that change.”

12. Section 51 of the 2015 Act provides, *inter alia*:-

“Subject to section 50, the Minister shall make an order under this section (“deportation order”) in relation to a person where the Minister-

- (a) Has refused under section 47 both to give a refugee declaration and to give a subsidiary protection to the person, and
- (b) Is satisfied that section 48(5) does not apply in respect of the person, and
- (c) Has refused under section 49(4) to give the person a permission under the section.”

**The Court’s Role when reviewing a s. 49 decision and a Deportation Order**

13. *ISOF v Minister for Justice* [2010] IEHC 386, considered the Court’s role when reviewing a deportation decision. Such reasoning applies with equal force to a s. 49(7) decision. Cooke J stated at para. 12 of the judgment:-

“[T]he High Court has, since the handing down of the judgments in *Meadows*, pointed out in a number of judgments that in order to substantiate a challenge to a decision of this nature as irrational or unreasonable because of its disproportionality, it is not sufficient merely to disagree with the evaluation made or the balance struck in the File Note. (See for example *S.O. & O.O. v MJELR* (Unreported, Cooke J. 1 October 2010.) It is not enough, in the view of the Court, to simply assert that the Minister ought to have given greater weight to some factors or less to others. The onus of establishing the unlawfulness of the decision lies with the applicant. The duty to balance proportionately the opposing rights and interests of the family on the one hand and the interests the State seeks to safeguard on the other, lies with the Minister. It is the Minister who must assess and decide by reference to all of the matters he is required to consider under the statutes and in light of all of the information and representations put before him, whether the latter interests should prevail or not. Contrary to the implication of the argument made by counsel for the applicants, the High Court is not entitled or obliged to re-examine the case with a view to deciding whether, in its own view, the correct balance has been struck. To do so would be to substitute its own appraisal of the facts, representations and circumstances for that of the Minister. As the Supreme Court made fully clear in the *Meadows* case, the test to be applied in assessing whether an administrative decision of this nature is irrational or unreasonable (including unreasonable by virtue of disproportionality,) remains that established in the *Keegan* and *O’Keefe* cases. Accordingly, the function of the Court is to consider the manner in which the evaluation has been made by the Minister as

apparent from the order, the covering letter and the contents of the File Note, and ask itself in paraphrase of the terms formulated by Henchy J.: "Does the conclusion to deport the applicant flow from the premise upon which it is based; or does it, by reason of some flaw or failure in the way in which the balancing exercise was apparently approached, result in a conclusion which "plainly and unambiguously flies in the face of fundamental reason and common sense?"

14. In *Oguekwe v. Minister for Justice* [2008] 3 IR 795 it was acknowledged that there was a constitutional obligation to uphold a non-citizen applicant's human rights which are recognised expressly or by implication by the Constitution. Denham J. also set out the wider considerations which the Respondent must have regard to when making a deportation decision, which apply equally to a s. 49 decision. She stated at p 823:-

"The State has the right to control the entry, presence, and exit of foreign nationals, subject to the Constitution and international agreements. Thus the State may consider issues of national security, public policy, the integrity of the Immigration Scheme, its consistency and fairness to persons and to the State. Fundamentally, also, the Minister should consider the common good, embracing both statutory and Constitutional principles, and the principles of the Convention in the European context."

15. With respect to Article 8 ECHR, cases such as *Agbonlahor v. Minister for Justice, Equality and Law Reform* [2007] 4 IR 309 and *CI v. Minister for Justice, Equality and Law Reform* [2015] 3 IR 385 establish that in relation to a proposal to deport an applicant who never had permission to reside in the State, other than being permitted to remain pending the determination of his asylum application, wholly exceptional circumstances establishing a significant or grave impact on the private life of an applicant are required to be established to engage Article 8 ECHR.
16. With respect to the Charter of Fundamental Rights of the European Union, Article 51 of the Charter makes it clear that it has no applicability to domestic matters. Obviously, s. 49 decisions and deportation orders are entirely domestic matters. Accordingly, considerations regarding alleged breaches of the Charter do not arise for my consideration in this matter.

#### **The Section 49(7) Decision**

17. Having noted that the Applicant was being assessed as a failed asylum seeker, the Respondent considered the Applicant's review application pursuant to s. 49(7) of the 2015 Act as follows:-

Under s. 49(3)(a) – Nature of the applicant's connection with the State, she stated:-

"Representations from [the Applicant's] Solicitors dated 30/01/2019 stated that the Applicant has resided within the State for over 13 years and during that time he has considered Ireland as his home and he has developed

friendships in Irish society. They also state that he has a number of friends and acquaintances in Cork and Kerry.

As noted in the Applicant's previous Section 49 report dated 26/01/2018, the Applicant entered the State in 17/03/2005 on a student visa and was permitted to remain under Stamp 2 conditions until 05/10/2005. The Applicant did not renew his student permission and accordingly was illegal in the state since 06/10/2005. The Applicant applied for international protection in the State on the 10/09/2012. This application was refused and the applicant was the subject of a Deportation Order which was signed on the 20/02/2014. This Deportation Order was subsequently revoked. It is noted that the applicant only applied for asylum after coming to the adverse attention of the authorities in 2012.

Further information noted in the applicant's previous Section 49 Report, the applicant left Ireland on 19/01/2016 and travelled on a false Portuguese passport and tried to apply for asylum but stated that he wanted to go illegally to Italy from there. He was returned to Dublin by supervised transfer on the 18/04/16."

Under s. 49(3)(b) – Humanitarian Considerations, she stated:-

"Representations from [the Applicant's] Solicitors dated 30/01/2019 state that the applicant continues to suffer from TB and severe depression. They also state that the applicant's general disposition has deteriorated. Letter from Dr. Sorcha O'Meara Mater Hospital dated 27/05/2019 states that the applicant has required multiple procedures including an urethroplasty in 2015 as well as a flexible cystoscopy and dilation in 2016. They state that the applicant's condition greatly impacts his quality of life as he suffers with frequency, poor urinary flow and is at high risk for recurrent UTIs. The letter states that they are booking the applicant for a further surgery which is a rigid cytoscopy with a potential for a urethrectomy under general anaesthetic. They state there is also the potential for further future surgeries. The letter also states that there is a possibility to perform self-intermittent catheterisation or dilation in the future."

Having considered *DE v. The Minister for Justice & Equality* [2018] IESC 16, the Respondent stated:-

"In considering the medical report submitted by the applicant, it is not accepted that the applicant has demonstrated with evidence to establish that there are substantial grounds for believing that, in substance, there is a real risk that they would be exposed to a serious, rapid and irreversible decline in their state of health resulting in intense suffering or a significant reduction in life expectancy in the event that he is removed from the State.

Having considered all the information and representations on file, the applicant's medical condition does not reach the threshold of a violation of Article 3 and therefore no further consideration of Article 3 is required.

Article 8 includes the impact on both the mental and physical health of the applicant. There could be an Article 8 issue even if there is no Article 3 issue. The applicant submitted representations in relation to their medical matters in the State, however, they have not submitted any evidence on how the impact of returning to Pakistan would affect their mental or physical health. Article 8 has not been engaged and there is no interference with respect to his private life on the basis of his medical grounds.

The humanitarian aspect of the applicant's medical issues is noted and considered fully in his decision reached under section 49(3) below."

The Respondent then proceeded to consider s. 49(3)(c) – Character and conduct of the applicant both within and outside the State as follows:-

"The character and conduct of the applicant both within and outside the State has been considered in this case. It is noted that the applicant resided in the State illegally for nearly 7 years before claiming International Protection. During this time of having illegal status in the State, the applicant was working in several places in Cork between 2006 and 2009. However, by law he was not permitted to work in the State after his student permission expired on 05/10/2005. The applicant has submitted various tax documents in relation to his time working during this period.

The applicant claimed international protection after coming to the attention of the authorities in 2012. It is also noted that the applicant left Ireland on 10/01/2016 and travelled to Hungary on a false Portuguese passport and tried to apply for asylum but stated that he wanted to go illegally to Italy from there. He arrived in Dublin by supervised transfer on the 18/04/16. Further information from the applicant's previous Section 49 Report dated 28/01/2018 state that the applicant has twice tried to marry since arriving in the State. Whilst illegally in the State the applicant attempted to marry Ms JG (a Latvian National). They planned to marry in Cork Registry Office on the 04/05/2010 however the Gardai, having been put on notice by the registrar made an objection to the marriage and it did not proceed.

On 22/07/2012 the GNIB notified the Minister that the applicant was intending to marry a Ms RO'S. The family of Ms O'S objected to the marriage on the basis of Ms O'S's diminished mental capacity. The registrar in the Nenagh office was made aware of this.

The applicant has also submitted several references attesting to his good character as set out in Section 2 (above). These submissions have been considered in the context of this review."

The Respondent then considered S 49(3)(d) – Considerations of National Security and Public Order as follows:-

Consideration of national security do not have a bearing on this case however, given the information detailed regarding the applicant's character and conduct, issues of public order do arise."

Section 49(3)(e) – the Common Good was considered by the Respondent as follows:-

“The applicant’s solicitor had submitted that, given the applicant’s background in science, he has the potential to contribute in a positive and productive fashion to the Irish economy and Irish society in general. The common good is also being considered in light of the applicant’s conduct within the State.

The Respondent then proceeded to consider Article 8 (ECHR) – Private Life as follows:-

“The previous consideration under Article 8 private life, contained in the s. 49(3) decision found that the applicant’s private life rights had not been engaged and that a refusal of permission to remain did not constitute a breach of Article 8(1).

The applicant made the following submissions:

- Representation by the applicant’s solicitors dated 30/01/2019
- Various letters of reference

Representation from [the Applicant’s] solicitor dated 30/01/2019 state that the applicant has resided within the State for over 13 years and during that time he has considered Ireland as his home and he has developed friendships in Irish society. They also state that he has a number of friends and acquaintances in Cork and Kerry. It is noted that for the vast majority of the applicant’s time in the State, his status was either illegal or precarious as a protection applicant.

No further information was submitted regarding the applicant’s private life in the State.

Having considered and weighed all the facts and circumstances in this case, it is not accepted that such potential interference will have consequence of such gravity as potentially to engage the operation of Article 8(1).

Having considered and weighed all the facts and circumstances in this case, a decision to refuse the applicant permission to remain does not constitute a breach of the right to respect for private life under Article 8(1) of the ECHR”.

The Respondent’s findings pursuant to s. 49(3) were stated to be:-

“While noting and carefully considering the submission received regarding the applicant’s private and family life and the degree of interference that may occur should the applicant be refused permission to remain, it is found that a decision to refuse permission to remain does not constitute a breach of the applicant’s rights. All of the applicant’s family and personal circumstance, including those related to the applicant’s right to respect for family and private life, have been considered in this review, and it is not considered that the applicant should be granted permission to remain in the State.”



### **Failure to consider the Applicant's connections within the State**

18. Counsel for the Applicant asserts that the Respondent failed to properly consider the connections and friendships which the Applicant has made within the State over a period of 15 years.
19. A perusal of the s. 49(7) decision makes it quite clear that the Respondent did consider these matters. However, counterbalancing these connections, which clearly were taken account of, is the fact that the Applicant has resided in this State on an illegal basis for seven of those years. Further, he left the State, on a false passport, in an attempt to seek international protection elsewhere, despite what are asserted to be his connections and friendships within the State.
20. It is a matter for the Respondent to consider and weigh these countervailing factors. The Respondent's decision in this regard is not unreasonable or irrational, nor did it fail to have regard to relevant matters, nor is it in breach of the Constitution or the various articles of the ECHR and the CFREU.

### **The Applicant's medical condition**

21. As already stated, the Applicant suffers from TB, depression and urethra stricturing disease. He is under the continuing care of a Consultant Urologist in this jurisdiction. A letter regarding a clinic date of 27 May 2019 from Dr Sorcha O'Meara detailing the Applicant's condition was considered by the Respondent for the purpose of the s. 49(7) review. Rather bizarrely, it appeared from the exhibits before me, as already set out, that a less detailed report from Dr O'Meara had been sent to the Respondent for the initial s. 49(7) review request, and a more detailed report from Dr O'Meara sent to the Respondent when the second s. 49(7) review request was made. However, that clearly cannot be the case as the contents of the more detailed medical report from Dr O'Meara are contained within the Respondent's review decision. This was not explained or referred to by either party at the hearing before me.
22. The Applicant asserts that returning the Respondent to Pakistan, in light of his serious medical condition and having regard to the fact that he is receiving treatment for this condition within the State, is in breach of his rights under the Constitution, the ECHR, the CFREU and is unreasonable and irrational.
23. In *DE v. Minister for Justice and Equality* [2018] IESC 16, the Chief Justice emphasised at paragraph 8.10 of the judgment:-

"the sequence of events... which... requires to be followed in order that the question of whether deportation might give rise to a breach of article 3 rights can properly be assessed. The first obligation is on the relevant applicant to adduce evidence capable of demonstrating that there are substantial grounds for believing that, in substance, there was a real risk that they would be "exposed to a serious, rapid and irreversible decline in their state of health resulting in intense suffering or a significant reduction in life expectancy." It is only when that evidence (sufficient to establish a real risk) is presented that the obligation shifts to the authorities to

dispel any doubts thereby raised. It is also clear that the appropriate benchmark is not the level of care existing in the returning State.”

24. In *Odulana v. Minister for Justice* (Unreported, High Court, Clarke J., 25th June 2009), where it was asserted that it would be in breach of Article 3 and 8 ECHR to return the applicants who suffered from sickle cell anaemia disease, Clarke J, as he then was, stated:-

“[T]he State retains the right to deport failed asylum seekers even if those asylum seekers have serious medical conditions.... [U]nless a case is exceptional..., the Minister is entitled to sign deportation orders relating to failed asylum seekers even if they are receiving medical treatment here which either is not available at all or is less available than the country of origin.”

25. As already referred to earlier, wholly exceptional circumstances establishing a significant or grave impact on the private life of an applicant who never had permission to reside in the State, other than being permitted to remain pending the determination of his asylum application, are required to be established to engage Article 8 ECHR in seeking to challenge a deportation order: *Agbonlahor v. Minister for Justice, Equality and Law Reform* [2007] 4 IR 309 and *CI v. Minister for Justice, Equality and Law Reform* [2015] 3 IR 385.
26. Having regard to the medical evidence which was actually considered by the Respondent, the difficulty for the Applicant with respect to this evidence is twofold: firstly, his likely future condition is not established as a matter of probability except for the high risk of urinary tract infections which it is anticipated he will suffer. In relation to any other future symptoms, Dr O’Meara refers only to a potential that the Applicant will require further surgeries and procedures and a possibility that he will need to perform self-intermittent catheterization or dilation in the future. Secondly, and most importantly, he has failed to produce any evidence to the Respondent as to what treatment, or lack thereof, he could avail of in Pakistan in relation to his medical conditions. This is a fundamental difficulty for him with respect to this challenge. While, the Applicant is clearly suffering from a significant medical condition in respect of which he has received treatment in this jurisdiction and remains under review, no evidence has been placed before the Respondent which raises any engagement of Article 3 or Article 8 of the ECHR.
27. In *MEO v. Minister for Justice* [2012] IEHC 394, where the deportation of the applicant who was suffering from HIV was found not to be in contravention of Articles 3 or 8 of the ECHR, Cooke J said at paragraph 36 of his judgment:-

“As the Court has pointed out above, the central issue in this case is the humanitarian one under the Acts of 1999 and 2004, and that is why it falls to the respondent and not to the courts to decide whether in the particular circumstances of this case the applicant’s request for continuing access to ARV treatment within the State should be accepted. The only function of the Court is to determine whether the decision made in that regard in this case has been lawfully made.”

28. The Respondent clearly had regard to the Applicant's medical condition when considering humanitarian considerations arising in the case but determined having regard to all of the issues pertinent to the case which are clearly set out in the decision, that permission to remain should be refused and deportation ordered. This decision is not unreasonable or irrational and was open to the Respondent to make.
29. In his written submissions, the Applicant complains that the Respondent failed to have regard to his symptoms of depression and his diagnosis of TB. In doing so, he refers to medical reports in relation to these conditions which were forwarded to the Respondent for the purpose of the s. 49(4) determination. That of course, is precisely why these matters were not considered by the Respondent: they had already been considered by her in the course of the original permission to remain determination. A review pursuant to s. 49(7) is supposed to concern itself with new material or factors which have arisen since the initial refusal of permission to remain. There was absolutely no obligation on the Respondent to consider these medical matters for the purpose of this review as they had already previously been considered by her.
30. A further complaint is made by the Applicant, that the Respondent was not in a position to properly assess the medical evidence in the review application, and by implication in the original application, as she does not have the requisite medical expertise. The Court is of the view that this is an argument which is absolutely without merit and wild in the extreme. It is surprised that such a non-sensical argument is mounted by legal advisors. Obviously, the Respondent has no medical expertise but that does not mean that she cannot determine issues relating to medical conditions in relation to decisions which are within her remit to determine. This ground of challenge is dismissed out of hand.

#### **Considerations of prejudicial matters**

31. The Applicant complains that the Respondent relied on prejudicial matters to an excessive extent against him, namely his illegal status within the State from 2005 to 2012; working within the State when he had no permission so to do; leaving the State on a false passport to claim international protection in another State when he had already claimed it in this State; and attempting to enter into two marriages.
32. With respect to the Applicant's illegal status within the State, this is a matter which the Respondent is absolutely entitled to have regard to. The Applicant remained within the State without legal permission for a seven year period. Equally the Respondent is entitled to have regard to the fact that the Applicant worked within the State without permission: that may have had the result that he was not a financial burden on the State but nonetheless he was engaged in activity which he had no permission to engage in, in a territory where he had no permission to be. Further, the Applicant left this jurisdiction on a false passport and travelled to Hungary with the intention of making an international protection claim, having already made an international protection claim within this jurisdiction, whereupon the provisions of the Dublin III Regulation had to be invoked to return him to this State.

33. With respect to the two marriages he attempted to enter, the Applicant asserts that it was not established that these were intended to be marriages of conveniences and that the Applicant has a basic human right to marry. In relation to this issue, while the s. 49(4) decision refers to the proposed marriages as proposed "marriages of convenience", the Respondent in the s. 49(7) review does not characterise the proposed marriages as proposed marriages of convenience.
34. The Respondent is entitled to have regard to the character and conduct of the Applicant within the State. Accordingly, the Respondent was entitled to have regard to the events surrounding these two proposed marriages, which raised concerns which were acted upon by the gardai in respect of the first proposed marriage and by the female's relatives in respect of the second proposed marriage. Further, there is the issue of the Applicant's s. 35 of the 2015 Act interview wherein he could not recollect the surname of the first woman he proposed to marry. The Respondent was entitled to have regard to this series of events and to take a negative view in relation to same.
35. As the Respondent was entitled to take account of these matters, it was then a matter for the Respondent to consider and weigh these factors in her overall decision. There is nothing irrational or unreasonable in the manner in which this exercise was conducted, nor is there anything unlawful in the Respondent's characterisation of the Applicant's presence in this jurisdiction as raising public order issues.

**The refusal to conduct a second s. 49(7) review**

36. As set out earlier, the Respondent determined on 7 July to affirm her earlier decision to refuse the Respondent permission to remain which was notified to the Applicant on 12 July 2019. The Applicant was informed that the reason for this decision was that there had not been a material change in his personal circumstances. Apparently, the actual written decision was not included in that correspondence.
37. The Applicant sought a further review of the s. 49(4) refusal on 18 July 2019 on the basis of his continuing medical condition. Another medical report was submitted with this request which again was from Dr O'Meara and also had a date of clinic as 27 May 2019. This report repeated much of the medical information which had been included in the previous report. The only additional prognosis information was to the effect that there was "of course a potential that the Applicant will require further surgeries and procedures down the line. There is also a possibility that he will need to perform self-intermittent catheterization or dilation in the future".
38. This further review application was refused out of hand by the Respondent on 29 July 2019 on the basis that a review pursuant to s. 49(7) had already been conducted.
39. The Applicant argues that the review process had not concluded as the formal reasons for the first review refusal had not been received by him. Accordingly, it is submitted, that the review process was ongoing and the Respondent breached fair procedures by not considering this further medical report.

40. The Respondent argues, in reply, that s. 49(7) of the 2015 Act only permits of a single review as found by the Supreme Court in *AWK (Pakistan) v. Minister for Justice and Equality* [2020] IESC 20.
41. The Review pursuant to s. 49(7) had concluded before the request for a second review and the time limit provided for initiating a review had passed. The Applicant had been notified of the refusal of the review and of the reason for the refusal in the letter of notification. Apparently, the actual decision was not included in the notification letter. This does not invalidate the process or result in the review not being concluded. The Applicant could have contacted the Respondent, to seek the actual decision, which in fact his solicitor did.
42. In any event, the additional medical report which the Applicant wished the Respondent to consider, which related to the same clinic date as the medical report submitted in the first review request was considered by the Respondent as the terms of that medical report are included in the review decision. This is not the narrative which was presented to the Court by the Applicant and was not referred to by either side at the hearing. However, a perusal of the decision and the second medical report make it clear that this medical report was before the Respondent at the time of the first review and accordingly there was nothing further for the Respondent to review in any event. In these circumstances, this ground is completely without merit.

**Delay in issuing the Deportation Order**

43. The Applicant complains that the delay in issuing a Deportation Order between 2012 and 2019 renders the deportation of the Applicant disproportionate. This argument omits reference to the fact that the Applicant left the State on a false passport and was required to be returned to this jurisdiction under the Dublin III Regulation, thereby contributing, albeit for a short period, to the delay in the process.
44. The Applicant was illegally within the State from October 2005 until the time of his detection by the authorities in 2012. Thereafter he applied for international protection and contributed to the delay in the process by illegally leaving this jurisdiction. The process of applying for international protection and it being refused took the time period it took. The Applicant had no permission to be within the State in the first instance and the processing of his failed claim for international protection does not confer a benefit on him because of the length of time the careful assessment of that claim took such as to render his deportation disproportionate
45. The Applicant has failed to establish any of the complaints which he has made with respect to the s. 49(7) review decision(s) and the Deportation Order. I will therefore refuse the Applicant the relief sought and make an order for the Respondent's costs as against the Applicant.