

**THE HIGH COURT
JUDICIAL REVIEW**

[2021] IEHC 603
RECORD NO. 2020/116JR

BETWEEN

ADM

APPLICANT

-AND-

THE MINISTER FOR JUSTICE, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Ms. Justice Tara Burns delivered on 20 September 2021

General

1. The Applicant is a national of Zimbabwe who sought to enter the State on 17 May 2017 and applied for international protection the following day.
2. On 3 October 2018, the Applicant was interviewed pursuant to s. 35 of the International Protection Act 2015 (hereinafter called the "2015 Act"). On 14 March 2019, a SPIRASI medical report dated 6 March 2019 was forwarded on his behalf to the International Protection Office.
3. On 27 March 2019, an International Protection Officer (hereinafter referred to as an "IPO") made a recommendation that the Applicant be granted neither a refugee nor subsidiary protection declaration.
4. On 4 April 2019, the Respondent refused the Applicant permission to remain pursuant to s. 49(4) of the 2015 Act.
5. An Appeal of the negative international protection recommendations was made to the International Protection Appeals Tribunal (hereinafter referred to as "IPAT"). Submissions in respect of this appeal were sent to the IPAT on 12 July 2019, and an oral hearing took place before the IPAT. The IPAT affirmed the first instance recommendations on 13 August 2019.
6. On 22 August 2019, the Applicant requested the Respondent to review her s. 49(4) decision pursuant to s. 49(7) of the 2015 Act on the basis that the Applicant was engaged in a serious relationship, since August 2017, with a woman who had secured settled refugee status in the State. A letter from this woman detailing the relationship was forwarded. This was the first occasion that any reference had been made, on behalf of the Applicant, to him being engaged in such a relationship. This is despite submissions being made on his behalf, on 15 October 2018, by his solicitors to the International Protection Office, which included representations for the purpose of the original s. 49(4) decision and despite the various interactions, detailed above, which the Applicant had engaged in during the course of the consideration of his international protection claim.
7. Having considered the representations made on the Applicant's behalf, on 10 January 2020, the Respondent refused the Applicant permission to remain on the basis that "there

is insufficient evidence to show that the applicant is in a sustaining relationship with Ms. [N].”

8. On 24 February 2020, a Deportation Order was made against the Applicant.
9. Leave to apply by way of Judicial Review seeking an order of *Certiorari* of the s. 49(7) review decision and the Deportation Order was granted by the High Court on 17 February 2020 on the grounds that the Respondent made a material error of fact arising from which her findings were irrational or unreasonable; that the Respondent applied an inappropriately high standard of proof; and that the finding was disproportionate.

Section 49(7) Review Decision

10. The Respondent set out the following in her s. 49(7) review decision under the heading Article 8 (ECHR) – Private Life:-

“The applicant’s legal representatives submit that the applicant has been living in the State since May 2017 and has established a range of friendships in the State. The applicant is in full time employment and has obtained certification in systems engineering. The applicant speaks fluent English and is well placed to pursue a successful career in the IT sector if permitted to remain in Ireland. The applicant is in an established relationship with [NN], a Zimbabwean national who has been granted refugee status. Ms [N] has three children from a previous relationship and the applicant has a very good relationship with them. The applicant and Ms [N] intend to move in together. The applicant has been using his wages to support Ms [N] and her children. The children’s biological father lives abroad and does not play any meaningful role in their lives. It is further submitted that refusal of permission to remain would be an unjustified, unwarranted and disproportionate interference with his private and family rights and also of the rights of his partner and her children. Beyond statements from the legal representative and Ms. Ncube, there is insufficient evidence to show that the applicant is in a sustaining relationship with Ms. Ncube.”

Under the heading Article 8 (ECHR) - Family Life, the Respondent stated the following:-

“The applicant’s legal representatives submit that refusal of permission to remain would be an unjustified, unwarranted and disproportionate interference with the applicant’s private and family rights and also of the rights of his partner and her children. As outlined above, there is insufficient evidence to show that the applicant is in a sustaining relationship with Ms. [N].”

11. The letter from the Applicant’s solicitor dated 22 August 2019, for the purpose of the s. 49(7) review stated:-

“The applicant is in an established relationship with NN, a Zimbabwean national, who has been granted refugee status. Ms [N] has three children from a previous relationship, including two minors, with whom our client has a very good relationship. Ms [N] is still in direct provision accommodation in Ballyhaunis but is seeking to secure her own accommodation now that she has been declared a

refugee and it is her and the applicant's intention to move in together. Our client has through his wages been supporting Ms. [N] and her children. The children's biological father lives abroad and does not play any meaningful role in their lives

In all the circumstances it is submitted that refusal of permission to remain to the applicant would be an unjustified, unwarranted and disproportionate interference with his private and family life rights pursuant to Article 8 ECHR and Article 7 of the Charter of Fundamental Rights of the European Union and also of his partner Ms [N] and her children as well as their personal rights under Article 40.3 of the Constitution."

12. The Applicant's solicitor furnished the Respondent with a letter from the asserted partner of the Applicant dated 4 September 2019, which stated:-

"I [NN] confirm to be in a relationship with [AM] since Aug 17, I have known [A] since 2013 we met in Zimbabwe and lost contact over the years, then we met again in Dublin in 2017.

[A] and I are in a serious relationship and he is very good with my kids and I would really love him to continue being a father figure to them as he has created a very strong bond with us.

[A] and I are planning to get married and make a life in Ireland and it's very important to me and my kids if [A] can be allowed to stay here as I can't go back to Zimbabwe.

Your help will be greatly appreciated."

13. On 16 December 2019, the Applicant contacted the Respondent by email directly. He made representations to the Respondent regarding the review then under consideration. In the course of same, no reference was made by him to this serious relationship or that he intended to marry his asserted partner.
14. No further evidence in support of establishing that this serious relationship was in existence was provided by the Applicant.

The Respondent's decision based on the Evidence

15. The decision at issue in these proceedings lies entirely within the Respondent's discretion, which she must make having regard to the information and submissions made to her. The evidence before the Respondent of a sustaining relationship between the Applicant and Ms. N comprises solely of a letter from Ms. N. Submissions were made by the Applicant's solicitor regarding this relationship, but they do not constitute evidence of this relationship. Despite making a personal submission to the Respondent, the Applicant made no reference to this asserted relationship. Neither is any other evidence of financial support or interconnection between the parties provided.
16. This lack of supporting evidence must be considered in the context of the timeline of other submissions made on behalf of the Applicant with respect to his international

protection claim and initial permission to remain application, where no reference is made to this relationship at all, at a time when the relationship was allegedly in existence.

17. In light of the evidence before the Respondent and having regard to the revelation of what is asserted to be a long-standing serious relationship at this point in time, the decision by the Respondent was open to her to make. A factual error has not been established by the Applicant in this regard. The Respondent clearly considered the Applicant's solicitor's submissions and had regard to the information provided by Ms. N. However, having considered this material, the Respondent was of the opinion that there was insufficient evidence of a sustaining relationship. The decision is not irrational or unreasonable; an excessively high standard of proof has not been applied; nor is the decision disproportionate.
18. Furthermore, there was no requirement for the Respondent to raise any concerns which she had regarding the information received from Ms. N, with the Applicant. Section 49(9) of the 2015 Act permits an applicant to request a review of an earlier s. 49(4) upon the provision of further information to the Respondent. The burden in this regard lies upon an applicant who should place all such material before the Respondent. No requirement is placed on the Respondent to raise any concerns she has regarding such information with the Applicant.
19. It is a matter for the Respondent to consider and assess the information and submissions provided. In the instant case, having assessed the limited evidence submitted, the Respondent was of the view that it had not been established that a sustaining relationship had been established. The Applicant's argument fails to appreciate that the Respondent is entitled to consider and evaluate what has been submitted and make a decision thereon. There is no obligation on the Respondent to accept what it is submitted simply because it has been asserted.
20. Accordingly, an error has not been established in the Respondent's decision in the manner as alleged. The court will refuse to grant the relief sought and will make an order for the Respondent's costs as against the Applicant.