THE HIGH COURT

JUDICIAL REVIEW

[2018 No. 430 J.R.]

BETWEEN

A.W.K. (PAKISTAN)

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY, IRELAND AND THE

ATTORNEY GENERAL

RESPONDENTS

(No. 2)

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 5th day of November, 2018

1. In *A.W.K. (Pakistan) v. Minister for Justice and Equality (No. 1)* [2018] IEHC 550 [2018] 9 JIC 2506 (Unreported, High Court, 25th September, 2018) I refused the applicant's application for judicial review. Mr. Eamonn Dornan B.L. now applies for leave to appeal and in that regard I have received helpful submissions from him and from Mr. David Conlan Smyth S.C. (with Ms. Sarah-Jane Hillery B.L.) for the respondents. I have considered the law in relation to leave to appeal as set out in *Glancré Teoranta v. An Bord Pleanála* [2006] IEHC 250 (Unreported, MacMenamin J., 13th November, 2006), *Arklow Holidays v. An Bord Pleanála* [2008] IEHC 2, *per* Clarke J. (as he then was), *S.A. v. Minister for Justice and Equality (No. 2)* [2016] IEHC 646 [2016] 11 JIC 1404 (Unreported, High Court, 14th November, 2016) (para. 2), *Y.Y. v. Minister for Justice and Equality (No. 2)* [2017] IEHC 185 [2017] 3 JIC 2405 (Unreported, High Court, 24th March, 2017) (para. 72) and *I.R. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 510 [2015] 4 I.R. 14.

Questions 1 to 3

2. The first three proposed questions of exceptional public importance relate to whether I was correct in holding that s. 5 of the Illegal Immigrants (Trafficking) Act 2000 applies to these proceedings. It is questionable whether an issue as to whether leave to appeal is required could properly itself be a matter for leave to appeal for the simple reason that if such leave to appeal is granted, the point then immediately becomes moot. I did give such leave to appeal on one previous occasion in *K.R.A. v. Minister for Justice and Equality* [2016] IEHC 289 [2016] 5 JIC 1214 (Unreported, High Court, 12th May, 2016) but perhaps the outcome of that case shows that it may not have been necessarily the most appropriate course to have adopted because the Court of Appeal effectively commented that its decision on that point, while upholding my view that s. 5 did apply, was not absolutely definitive, for the reason I have referred to. Because leave to appeal had been granted the point was therefore not one of contention between the parties in the appeal: *K.R.A. v. Minister for Justice and Equality* [2017] IECA 284 (Unreported, Court of Appeal, 27th October, 2017) *per* Ryan P. at para. 53.

3. Mr. Dornan raised a separate argument that s. 5(6)(b) of the 2000 Act was relevant insofar as it provides that, by way of exception to the requirement for leave to appeal, that "*This subsection shall not apply to a determination of the High Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution*". Mr. Dornan's submission under this heading is totally misconceived, and completely confuses the distinction between interpretation of a provision and its validity. The question of whether s. 5 of the 2000 Act applies to the decision at issue here is one of interpretation, not of validity. No reliefs are sought in the statement of grounds regarding the validity of any law and nor was any argument addressed to the court on that issue. Questions of the validity of a law and thus of s. 5(6)(b) simply have nothing to do with the present case.

Question 4

4. The fourth proposed question of exceptional public importance is "*was the court correct in finding that an* 'exceptionality' *test continues to apply to the consideration of private and family rights now placed on a statutory footing under s. 49(3) of the [International Protection] Act [2015]"*. This question is unfortunately a distortion of the judgment. It presupposes that I found that there was an exceptionality test and that I was incorrect in doing so. Mr. Dornan submits the decision can "fairly be read as meaning that the Minister can only grant permission to remain in exceptional circumstances". That is simply not the case. Nor did I say anything to that effect. The Minister can grant permission to remain in any circumstance he wants. Mr. Dornan suggests that the Minister will read the judgment as meaning that s. 49(3) or any other kind of leave to remain can only operate in exceptional circumstances. But all I did at paras. 13 and 14 of the No. 1 judgment was to draw attention to and implement the well-established principle that the deportation of unsettled migrants breaches art. 8 only in exceptional circumstances. Mr. Dornan's language of a "test" in this context is unhelpful. I certainly did not say that there was a test, as distortingly implied by question 4 here. In any event this point has already been the subject of Supreme Court clarification in *P.O. v. Minister for Justice and Equality* [2015] IESC 64 [2015] 3 I.R. 164 and there is no benefit to further endless re-agitation of the point at appellate level.

Question 5

5. The fifth proposed question is whether I was correct in holding that s. 49(7) and (9) precludes multiple review applications. Mr. Dornan now accepts that there is only one review application contemplated by the legislation, so the point envisaged by the question therefore no longer arises. He goes on to complain however that the process under the 2015 Act involves a delay in considering his art. 8 rights during the period after a first review application has been rejected. Any such point does not arise on these pleadings (and more generally a new point that an applicant thinks of after the substantive hearing is not a suitable ground for leave to appeal), but in any event an applicant is not entitled to endless bites of the cherry or more particularly to the specific entitlement contended for, which amounts to a real-time hotline to the Department to get ongoing responses to his evolving private life situation. Any private life rights of the applicant will be considered under the 1999 and 2015 Acts, either in the initial examination, the review process, or any revocation application. It is not for an applicant to dictate when precisely such examinations take place, still less to demand that they be carried out immediately and on demand.

Order

6. The upshot is that:

(i). for the reasons stated in the No. 1 judgment, leave to appeal is required here because s. 5 of the 2000 Act applies,

and

(ii). for the reasons stated above, I do not consider that such leave should be granted in the present case.

7. The application for leave to appeal is dismissed.