

THE HIGH COURT

2018 No. 1023 JR  
& 2019 No. 312 JR]

BETWEEN

RAYMOND HOLLAND

APPLICANT

– AND –

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr Justice Max Barrett delivered on 9th December, 2019.

**1. Facts**

1. Mr Holland is an EU national who has for a long time been resident in Ireland; his adult stepdaughter is a non-EU national who is presently resident in Ireland. Perhaps the best way to begin this judgment is with the following chronological summary of relevant events:

- 09.06.2016. Mr Holland's stepdaughter enters Ireland on a visit visa.
- 29.06.2016. Application made for residence card on basis of stepdaughter's alleged EU Treaty Rights ("EUTR").
- 26.07.2016. Respondent seeks further evidence in respect of application.
- 10.11.2016. Mr Holland's solicitor sends the requested information.
- 15.11.2016. Respondent acknowledges receipt of information.
- 01.03.2017. Mr Holland's solicitor sends letter noting desire for decision to be made.
- 27.03.2017. Mr Holland's solicitor writes to indicate that stepdaughter's temporary permission to reside is due to expire and asks that decision be made.
- 30.03.2017. Respondent refuses application for a residence card on basis that evidence of dependence not submitted.
- 10.04.2017. Application for review of refusal lodged.
- 27.04.2017. Respondent's solicitor sends letter seeking acknowledgement of review application.
- 02.05.2017. Respondent acknowledges receipt of application and indicates that stepdaughter will be given temporary permission to remain until 10.02.2018. Separate letter of same date also seeks further evidence of stepdaughter's financial and material dependence.
- 25.09.2017. Mr Holland's solicitor submits additional evidence of stepdaughter's dependence.

- 26.09.2017. Respondent acknowledges receipt of said additional evidence.
- 01.02.2018. Mr Holland's solicitor writes to indicate that Mr Holland has been made redundant. Letter also noted imminent expiry of stepdaughter's temporary permission and seeks review decision.
- 02.02.2018. Letter issues from respondent extending stepdaughter's temporary permission to stay to 10.06.2018.
- 30.05.2018. Minister advised that Mr Holland no longer seeking employment because of illness and basis of residence claim was changed.
- 05.06.2018. Respondent issues letter extending stepdaughter's temporary permission to 10.10.2018.
- 11.10.2018. Mr Holland's solicitor writes to indicate that stepdaughter's permission to stay had expired the previous day and seeking that review decision be made.
- 15.10.2018. Respondent issues letter extending stepdaughter's temporary permission to 10.03.2019.
- 06.12.2018. Mr Holland commences judicial review proceedings (2018 No. 1023 JR) seeking an order of *mandamus* requiring respondent to determine review application (now no longer being sought) and also a declaration that the respondent's failure to determine the review application within a reasonable time was in breach of the right to an effective remedy and/or good administration as provided by European Union law (this is still being sought).
- 29.03.2019. Respondent issues a decision refusing the review application, now also the subject of judicial review proceedings (2019 No. 312 JR).

**2. Proceedings 2018 No. 1023 JR**

2. Given that a decision issued on 29.03.2019, the court respectfully does not see that the Proceedings 2018 No. 1023 JR are not moot. The proposed order of *mandamus* is obviously entirely redundant. Additionally, it is unnecessary, and it would be inappropriate, for the court to grant the declaratory relief sought. No useful and/or legitimate purpose would be served by the granting of same. It has long been the position at law that a court should decline to award relief sought where this would offer no practical benefit on an applicant or where no legitimate purpose would be served thereby (see, e.g., *State (Doyle) v. Carr* [1970] IR 77 and *State (Toft) v. Corporation of Galway* [1981] ILRM 439).
3. Mr Holland has asserted that if he were to be granted the declaration sought and if he were to re-engage with the Minister in a future application, the existence of a previous declaration should ensure greater promptitude in that future application. There is no

evidence to support this assertion or to believe that Mr Holland in such future re-engagement would do anything other than take his place at the back of the queue in terms of having his application processed and work his way to the top like anybody else. Nothing in the pleadings or submissions discloses any reason why declaratory relief is appropriate or necessary in Proceedings 2018 No. 1023 JR. The within are like many other cases in the asylum and immigration list where proceedings become moot due to the issuance of a decision but where the applicant had sought some ancillary declaratory relief. The court must therefore decline to consider the issues raised.

**3. Proceedings 2019 No. 312 JR**

4. Ultimately the review application failed because no evidence of the stepdaughter's dependency in the third country state was provided. Mr Holland complains that no such evidence was sought. However, the respondent repeatedly sought evidence of "*dependency*", an "*independent concept of European Union law*" (see Opinion of AG Mengozzi in *Reyes (Case C-423/12)* [ECLI:EU:C:2013:719], para. 55). Such a concept must be given a uniform interpretation in all member states, that means Art.37 of Directive 2004/38/EC does not come into play, and it is clear from the decisions of the Court of Justice in, e.g., *Jia (Case C-1/05)* [ECLI:EU:C:2007:1] paras. 37 and 44, and in *Reyes (Case C-423/12)* [ECLI:EU:C:2014:16], para. 22, that the need for material support must exist in the State of origin or the State from which they came when they applied to join the Community national.
  5. Mr Holland, who at all times enjoyed the benefit of legal advice, is presumed to know that when evidence of dependency is sought it is evidence of the type identified in *Jia/Reyes* that is being sought. It is perhaps odd that Schedule 2 of the EC (Free Movement of Persons) Regulations 2015 does not reference, when it comes to qualified family members, evidence of material support in the State of origin or the State from which the third country national came when they applied to join the European Union national; regardless, "*dependency*" is an "*independent concept of European Union law*" and so must be given a uniform interpretation in all European Union member states.
  6. The court assumes in passing that in seeking further evidence of dependency the Minister was not concealing from Mr Holland that what was being sought was evidence of the type identified in *Jia/Reyes*; certainly there is no evidence to suggest that there was any such concealment, and in truth the court would be surprised if there was, but were there to be such concealment it is difficult to see that a breach of fair procedures would not then present.
- 4. Conclusion**
7. For the reasons stated, all the reliefs sought are respectfully refused. The court will hear the parties further as to costs.