THE HIGH COURT

[2023] IEHC 32

[Record No. 2022/130 JR]

BETWEEN

S.S.A.

APPLICANT

AND

MINISTER FOR JUSTICE

RESPONDENT

JUDGMENT of Ms Justice Bolger delivered on the 17th day of January, 2023.

1. This is an application for an order for *certiorari* quashing the respondent's decision of 1 December 2021 to uphold a decision to revoke the applicant's residence card on the basis that he had entered into a marriage of convenience. For the reasons set out below I am refusing this application.

Background

2. The applicant is a national of Egypt who arrived in the State in 2008 and commenced to reside here without permission. In December 2011, he met a Lithuanian national who, he said, had been in the State since August of that year. In March 2012 they gave notice of their intention to marry and got married in June. The applicant applied for residence based on his marriage to an EU citizen in July and furnished a lease agreement, a bank statement in joint names, and employment details of his spouse, including two payslips for June 2012. On 23 July 2012, the Department requested further tax documentation and utility bills which the applicant furnished. Those documents asserted that the applicant's spouse had worked in the State from 11 June 2012 until 24 August 2012. On 10 January 2013 the Department gave the applicant an EU-1 form confirming firstly that they were satisfied of a family relationship between him and the EU citizen and of their residence, and secondly that they had checked that the EU citizen was employed at that time having commenced employment on 11 June 2012, received her P45 on 24 August 2012 and recommenced employment on 19 November 2012. On that basis, the Department approved the applicant for a Stamp 4 for a period of five years. By letter dated 4 July 2013, the Department sought further information from the applicant in relation to his spouse's employment in the State to evidence her "current activities" in the State. The applicant replied by letter from his solicitor dated 12 August 2013 in which he attached evidence of his spouse's employment in the form of three payslips from July 2013, an undated letter that was not on headed notepaper from his spouse's accountant confirming that she had been working part-time three days a week from 1 July 2013, a P60 for his spouse from 2012 and a utility bill in both their names dated 7 August 2013. The Department returned the documents to him by letter dated 20 September 2013 and asked for confirmation that his spouse remained employed with that same employer. The applicant's solicitor responded by letter dated 30 September 2013 stating that they were instructed that the EU citizen remained in that same employment.

3. Nothing further occurred until 21 December 2017 when the applicant's solicitors wrote to the Department applying for a further permission for the applicant to reside in the State

and advising that he could not renew his permission on the basis of his marriage as he and his wife were estranged. A letter dated 22 October 2018 set out the Minister's concerns arising from the applicant's immigration history, which can be summarised as follows:-

(1) The applicant's spouse obtained a PPS number on 20 February 2012 and, in the absence of any documentation evidencing her presence in the State prior to that date, the Minister was of the opinion that she first entered the State on or shortly before the date on which her PPS number was allocated.

(2) The Minister was concerned about the relationship given the short time between the applicant's spouse's entry into the State, the marriage, and the applicant's application for residence.

(3) The Minister was concerned about contradictory information in relation to the applicant's spouse's payslips, P60, and the start date on her contract of employment.

(4) Information available to the Minister showed that the applicant's spouse worked in the State for seventeen weeks in 2012 and for five weeks in 2013, and that she had ceased employment on 1 February 2013 and had not held employment since, which showed that the applicant's spouse is not exercising her rights in the State and that the applicant had engaged in a contrived activity.

(5) The Minister said that the applicant's spouse only engaged in employment to facilitate the applicant's application, leading to significant concerns that the relationship is a marriage of convenience.

(6) When the applicant was asked for evidence of the then activities and residence of him and the EU citizen in July 2013, he supplied two payslips dated 12 and 19 July 2013, a P45, a letter confirming employment, noted not to be on headed paper or dated, and a utility bill. In fact the applicant's spouse had ceased employment on 1 February 2013 and has not held employment since. The Minister said that the payslips and letter confirming employment provided are false and misleading as to material facts and that the applicant knowingly submitted false documentation to receive a right of residence he would otherwise not enjoy.

4. Based on the above information, the Minister was of the opinion that the documentation the applicant provided in support of his application to evidence the residence of him and his spouse in the State was false and misleading as to material facts which he knowingly submitted to obtain a right of residence which he would otherwise not enjoy. The Minister required the applicant to provide comprehensive representations stating why his permission to remain should not be revoked, to dismiss concerns that he had engaged in a contrived activity in order to obtain a residence card and to address his submission of false and misleading information. Any representation was to include a detailed immigration history of the EU citizen, including dates of travel to and from the State in

the period from January 2013 to present and should state the purpose of such travel, a detailed relationship history and any other information/documentary evidence the applicant may wish to provide as to why his application for permission to remain in the State should not be revoked.

5. By letter dated 22 October 2018, the applicant was advised of the Minister's intention to revoke the permission to remain and was allowed 21 days to make representations. A letter dated 21 November 2018 from the applicant's solicitors enclosing the applicant's responses to the issues raised has been exhibited. The deciding officer issued a decision on 10 December 2018 essentially along the same lines as the Minister's concerns as set out above. That letter said that no submissions or correspondence had been received. The applicant's solicitor applied for a review on 22 December 2018, furnished written legal submissions on the burden of proof, and argued that the Minister's concerns all related to matters known when the applicant was granted a residence card in 2013, and that the absence of his spouse from the State disadvantaged him as his spouse was a "potentially crucial witness". They criticised the lack of adequate investigation, asked for copies of the spouse's tax records available to the Minister, furnished the applicant's personal letter which the solicitor said set out the history of the relationship, responded to the factual issues raised and set out his spouse's travel record. The personal letter submitted was the same as the personal letter the applicant's solicitor said they had previously submitted but which the deciding officer's decision said had not been received. Attached to the letter was a history of his spouse's travel between October 2012 and July 2015 as well as undated text messages between the applicant and an unidentified person. The applicant's letter referred to enclosing other documents which were not included. By letter dated 7 January 2019, the applicant was advised that a review would be carried out under the provisions of Regulation 25 of the European Communities (Free Movement of Persons) Regulations 2015 and informed that the onus was on him to ensure that any documentation, information or relevant facts that he wished to have considered were contained in his application for a review.

The impugned decision

6. The review decision (which the applicant seeks to quash), issued on 1 December 2021, found the following:-

   (1) The applicant's spouse first entered the State on or shortly before 20 February 2012 when her PPS number was allocated.

   (2) The absence of verifiable evidence of the development of the relationship prior to the marriage and the short time between the applicant's spouse's entry to the State, the marriage, and the applicant's submission of the residence application raised concerns about the relationship.

   (3) Tax documentation available to the Minister confirmed that the applicant's spouse ceased employment on 1 February 2013 and has not held employment in the State since. The applicant's application for permission to remain in the State had been approved on 10 January 2013 and the Minister therefore considered it evident that

the applicant's spouse ceased employment less than one month after the applicant's application for permission to remain had been approved, which the Minister found to be indicative of a contrived activity. That, combined with the precarious nature of the applicant's immigration status in the State at the time, and the fact he had entered the State without obtaining the required visa in 2008, were indicative of a marriage of convenience.

(4) The applicant's response to the letter of 4 July 2013 requesting evidence of the identity, current activities, and current residence of he and his spouse was responded to by providing two payslips in the name of his spouse dated 12 July 2013 and 19 July 2013, an undated letter confirming employment, and a shared utility bill. The Minister noted that the applicant had stated via his solicitor that his spouse remained in the same employment. The Minister said it was apparent that his spouse was no longer in that employment and that the documents the applicant supplied were false and misleading as to a material fact.

(5) There was nothing in the information or documentation on his file to suggest the applicant and his spouse made any financial commitment to each other, had any joint assets or liabilities, had travelled or lived together for any length of time outside the State, or lived for any significant length of time in the State. Nor was there was there any useful information or documentation in relation to their relationship prior to or after the marriage.

(6) In response to the applicant's solicitor's submissions on the burden of proof, the Minister referred to the Commission's Handbook on Marriages of Convenience which indicated that if the national authorities had well-founded suspicions as to the genuineness of the marriage which was supported by evidence, they can invite the couple to produce further relevant documents or evidence.

(7) The Minister had invited the applicant to make representations as to why his residence card should not be revoked to which he did not respond, and therefore failed to provide any evidence to dispel the Minister's concerns that the marriage was one of convenience.

(8) Having considered all of the information and documentation submitted on the file, the Minister found that the applicant had failed to establish an error in law or fact in revoking the residence card.

(9) The Minister was satisfied that the applicant submitted and sought to rely on documentation and/or information that he knew to be false and misleading in order to obtain a derived right of free movement and residence under EU law, to which he would not otherwise be entitled, which is an abuse of rights in accordance with Regulation 27 of the Regulations.

(10) The Minister was satisfied that the applicant's marriage was one of convenience and was never genuine.

(11) The applicant had failed to adequately address concerns raised in correspondence of 22 October 2018 and 10 December 2018.

The applicant seeks to quash that decision.

Preliminary application of mootness

7. At the outset of the hearing, the Minister sought to rely on an application the applicant had made in May 2022 under the Long Term Undocumented Migrant Scheme, in which the applicant claimed he had never had legal residency in the State. In October 2022 the Minister granted the applicant temporary permission to remain in the State for two years and therefore argued that these proceedings had been rendered moot. The applicant disagrees and relies on the serious nature and implications of the Minister's finding of a marriage of convenience, which he says will hamper any attempts to regularise his status into the future.

8. The applicant did claim in his application for the scheme that he was never legitimately resident in the State but that position is consistent with the Minister's finding on his marriage being one of convenience and her consequent finding that the applicant's permission of 2013 was invalid. Until quashed by this Court, the Minister's decision stands. I do not consider the applicant's statement in relation to his illegal residence in the State to be inconsistent with the Minister's decision. It does not preclude him from continuing with his attempt to quash that decision via these proceedings. The fact that the applicant had continued to pursue these proceedings since he was granted a temporary permission to remain in October 2022 confirms his view of the seriousness of the finding that his marriage was one of convenience. Condemning a marriage as one of convenience based on a finding inter alia that the applicant submitted false and/or misleading documentation, may affect the applicant into the future including in relation to regularising his status in the State. The proceedings have not been rendered moot.

The applicant's submissions

9. The applicant submits that the following issues arise:-

(i) Was the impugned finding of a marriage of convenience, arrived at in respect of the applicants, arrived at in accordance with law?

(ii) Were fair procedures employed?

(iii) Were reasons provided?

(i) <u>The finding of a marriage of convenience</u>

10. A finding of a marriage of convenience is a very serious finding. It engages with EU law including rights to fair procedure and therefore in conducting a judicial review of such a finding this Court is required to provide an effective remedy.

11. The applicant relies on Irish and UK case law and on the European Commission Handbook on Marriages of Convenience of 2014 in submitting that the burden to prove a marriage of convenience rests on the Minister. He claims that his personal letter of 19 November 2018

was not considered by the decision maker adequately or at all. The letter was submitted under cover letter from the applicant's solicitor of 21 November 2018 but the Minister says it was not received. The applicant's solicitor swore an affidavit that their office's computer records disclose the letter having been sent by courier on that date. The letter was not before the deciding officer, but it was before the review process as it was resent on 22 December 2018. However, the attachment to the letter including a medical report, a copy of the applicant's bank statement, his spouse's P45 and P60, and a letter from his spouse's employer's accountant were not attached. The applicant criticises the Minister firstly for not making enquiries about the unattached documents which were referred to in the personal letter as attachments and secondly for ignoring the letter. The applicant also criticises the Minister's failure to give him copies of his spouse's tax documentation on which the Minister relies in her review decision.

(ii) Fair procedures

12. The applicant says all the matters relied on by the Minister to find his marriage was a marriage of convenience were known to the Minister in 2013 when the applicant was granted a residence card and that the Minister is estopped from now reaching a different conclusion at a time when his marriage had broken down and he cannot produce evidence to demonstrate his relationship. He also claims that legitimate expectations arise from the 2013 decision. He says the Minister's failure to identify objective and subjective evidence on which her finding of fraud was based breached his rights to fair procedures. He criticises the Minister for not investigating the July 2013 payslips by ringing his spouse's employer as had been done previously when the department assessed his application for a residence card in 2013.

13. The applicant makes a separate argument that finding a marriage to have been one of convenience invokes the administration of justice without any involvement by the court.

(iii) The obligation to provide reasons

14. The applicant cites Regulation 28(5) and contends that the Minister ought to have given an explanation for not accepting matters that were accepted by her in 2013. He argues that the review decision should have identified those parts of Regulation 28(5) that the Minister considered relevant in determining his marriage to have been one of convenience. He relies on the decision of Ferriter J. in *R.A. v. Minister for Justice* [2022] IEHC 378 where the Minister's finding of a marriage of convenience was condemned as circular because it was premised on a finding of a marriage of convenience and that any documentation referencing the marriage was fraudulent even though no documentation, apart from the proper characterisation of the marriage, was suggested to be fraudulent or falsified of itself and no false documentation had been submitted.

The respondent's submissions

15. The respondent identifies different legal issues as follows:-

a. Is the decision invalidated by the statement that the applicant "did not respond to [the fair procedures letter] and, therefore, failed to provide any evidence to dispel the concerns of the Minister that your marriage was one of convenience".

b. Is the Minister permitted to rely on facts and circumstances that existed when the applicant was granted EU Treaty Rights, when revoking that permission.

c. Was the Minister's conclusion rational and adequately reasoned?

(i) Consideration of the applicant's submissions of 21 November 2018

16. The personal letter was considered by the decision maker and the decision was not invalidated by the reference to the applicant's not having responded to the Minister's correspondence.

(ii) Reliance on facts and circumstances that existed when the applicant was granted EU Treaty Rights

17. When revoking the applicant's permission, the Minister is permitted to rely on facts and circumstances that existed when the applicant was granted his residence card in 2013. The review decision was not a review of 2012 and 2013 but was a decision based on, *inter alia*, the absence of evidence of a relationship between 2012 and when the parties separated in December 2017 or January 2018. The marriage that the Minister accepted in 2012 cannot be forever beyond the Minister's examination given that the Regulations expressly provide for a power to revoke and the legislative scheme envisages the possible revocation of a residence card, a power that is not conditional on evidence of an error in the original decision to grant that residence card.

18. Neither estoppel nor legitimate expectation can fetter the exercise of a statutory power. This is not disapplied by virtue of the engagement of EU rights given that Article 35 of the Citizen's Directive itself allows for the refusal, termination or withdrawal of rights conferred by Directive in the case of a marriage of convenience.

19. Insofar as the applicant claimed that he could not adduce evidence of his marriage because of his separation from his spouse, the Minister highlights the absence of any evidence of his attempts to contact his spouse and the absence of any useful information of his relationship with her since their marriage; Baker J. *in H. v. Minister for Justice and Equality* [2019] IECA 335.

(iii) Rationality and reasons

20. The Minister submits her decision was reasonable and that the decision sets out why it found that the applicant had submitted false and misleading information.

(iv) The administration of justice

21. The Minister submits this point has not been pleaded and is not properly before this Court. Without prejudice, the Minister says a finding of a marriage of convenience is ancillary to the executive powers exercised over the residence of non-nationals and is separate to statutory family law powers over a marriage.

Decision

(i) The applicant's personal letter

22. The applicant was invited to respond to the Minister's concerns that were set out in the Minister's letter of 22 October 2018 and wrote a personal letter dated 19 November 2018 which the applicant's solicitor says was sent by courier. The Minister's deponent has averred that he reviewed the Department's records and found no record of that letter or attachments thereto. In the absence of any documentation corroborating the delivery of the letter, such as the courier's receipt confirming someone accepting delivery, I accept the averment of the Department's deponent that the letter was not received. The Minister's decision of 1 December 2021 noted the absence of any response to the Minister's correspondence of 22 October 2018, which reflected the factual circumstances as they occurred. That finding was not challenged in the application for a review.

23. The decision maker confirmed that all information, documentation and submissions on his files were considered. In accordance with the decision of Hardiman J. in *G.K. v. Minister for Justice* [2002] 2 IR 418, that averment must be accepted unless there is a basis to believe otherwise. I do not accept the applicant's contention that the absence of any reference or narrative discussion of the contents of the letter provides such a basis. Certainly, a decision must be a reasonable and reasoned analysis of the relevant evidence (a point to which I return below) but that does not mean that the decision maker has to expressly address every point made, particularly where such points are made in a personal (and inevitably subjective) account of their version of events rather than by way of a presentation of objectively verified facts.

24. Therefore the fact that the review decision does not contain clear references to the contents of the applicant's personal letter does not render it invalid.

25. The personal letter, as sent in December, which I accept was considered by the decision maker, refers to attachments that were not in fact attached including (i) a letter from the applicant's GP apparently confirming fertility tests that he took on an unspecified date after the marriage; and (ii) his spouse's tax and employment documentation. The applicant claims that the Minister should have investigated the absence of those documents as the applicant was unaware that they had not been attached until he saw the respondent's Statement of Opposition. The Minister's letter of 7 January 2019 responding to the applicant's application for a review stated that the onus was on the applicant to ensure that any documentation, information or relevant facts he wished to have considered were contained in his application for a review. In any event, at least some of the unattached documentation relating to the spouse's employment and tax affairs was information already available to the Minister, as confirmed by the first instance decision maker.

26. The applicant's personal letter set out how his spouse arrived in the State in August 2011, he met her in the following December and they decided in early February 2012 to get married. The letter contained no further details about their premarital relationship or any information about how his spouse supported herself from when she arrived (on his account) in the State in August 2011 until she applied for a PPS number in February 2012, even though he says they were in relationship for much of that time and, presumably, he would have had some knowledge of her personal and financial affairs. On the applicant's own account, he and his spouse were together for a very short period of time before they decided to get married at a time when the applicant was residing in the State illegally. The applicant explains in his personal statement that they decided to marry because his religion and culture precluded him from having a girlfriend.

27. There is no evidence that the Minister ignored the personal letter or of any infirmity in her conclusion that the absence of verifiable evidence of the development of a relationship prior to marriage raised concerns about the relationship given the short time between his spouse's entry to the State, their marriage, and his submission of a residence application.

28. The personal letter makes very little commentary on the documentation the applicant furnished via his solicitor in July 2013 which confirmed that his spouse was working for the same employer as previously, and clearly confirmed that he stood over its veracity. By the time he applied for a review of the deciding officer's decision the applicant was aware, from information furnished by the Minister, that his spouse ceased work in the State in February 2013. He must have been aware of the inconsistency between that and the documentation he had furnished in July 2013 which he had stood over. Nevertheless he made no attempt to explain that inconsistency to the Minister other than what he said in his personal letter. His solicitor's legal submission focused on the burden of proof point (to which I return below) and emphasised the Minister's knowledge at the time the residence card was issued in January 2013. The documentation furnished in July 2013 was not part of that application but was furnished in response to a subsequent request for documentation from the department.

29. The submission noted that the Minister did not seek to interview the applicant or his spouse when the application for a residence card was made and that the applicant was now, six years later, without a crucially important witness in his case. However, the applicant gave no account of any attempts he made to contact his spouse or any explanation why such contact was not possible. Neither did he give any detail about what he knew of her work arrangements during the marriage or any details or opinion of their marital relationship prior to their separation in December 2017 or January 2018. Even if he was correct in saying that his spouse was no longer available to him to give her account of the marital relationship (for reasons not cited by him), he could still have given his account of their marriage. Other than a very brief account of their lives from when his spouse stopped working sometime after the marriage (which must have been after July 2013 given that he told the Minister at that time that she was working) until they separated in December 2017 or January 2018, the applicant gave no information whatsoever about the married life he claims to have shared with his spouse for some four

years. The applicant had furnished copies of shared bills from 2013 but no other documentation or information was ever provided in respect of the additional claimed four years of marriage.

30. It was therefore rational for the Minister to conclude, on the evidence and information available to her, that the applicant had furnished false and misleading documentation in July 2013 and for her to conclude that there was nothing to suggest that the parties made any financial commitment to each other, had any joint assets or liabilities, travelled or lived together for any length of time outside the State or lived together for any significant length of time in the State. It was also rational of the Minister to conclude that the applicant had failed to adequately address the concerns raised in the Minister's previous correspondence of October and December 2018.

(ii) The Minister's reliance on the spouse's tax information

31. The first instance decision relies on information available to the Minister in relation to the spouse's tax affairs which states that the applicant spouse had ceased employment on 1 February 2013 and had not held employment since that time. Nowhere in the applicant's correspondence applying for a review of that decision, including his personal letter which was resent in December, did the applicant ever seek to challenge those conclusions.

32. The applicant was critical of the Minister's failure to share that information with him and submitted he should have been afforded the opportunity to inspect the documentation to see if it contained any errors. I accept that such documentation could conceivably contain errors and it may be a breach of fair procedures to prevent a party to the decision an opportunity to review the documentation to assess its accuracy, but only where some reasonable basis has been established for the possibility of such errors existing therein.

33. The tax documentation related to the applicant's spouse since February 2013. Until at least December 2017, it was the applicant's case that he was living with her in a subsisting marital relationship. It is reasonable to expect that he would have been familiar with her work history during that time. Whilst he says in his personal letter that she stopped working at some point after the marriage, he does not say when that was. He says he is confused why the Minister will not accept a letter from his spouse's employer (which was not on headed note paper) confirming that she was employed three days per week from 1 July 2013. That indicates he is standing over the content of that letter. He does not share any information about her work situation over the four years since July 2013 that he says they were living together as husband and wife. A suggestion that there may be an error in his spouse's tax documentation is insufficient to ground an entitlement to examine documentation relating to a time he says he was living with his spouse and could therefore be assumed to have personal knowledge of her work activities, which he has chosen not to share with the Minister.

(iii) Fair procedures

34. The applicant relies on the principles of estoppel and legitimate expectation in asserting that the Minister could not reach a different conclusion in 2021 that had been arrived at in January 2013 when the applicant was given a residence card on the basis of his marriage to his EU spouse. The applicant has not identified whether, and if so how, he altered his position to his detriment upon receipt of his residence card in January 2013. If anything, he experienced the opposite to a detriment in that from January 2013 he had the benefit and comfort of a lawful right of residence in the State following on a period of some five years of unlawful, insecure residence. The absence of evidence of a detriment means that an essential element to this aspect of his case is missing. In any event, I am satisfied that the Minister was exercising a statutory power which cannot be fettered by estoppel or any legitimate expectation, an approach that is in accordance with the requirements of EU law given that Article 35 of the Citizen's Directive provides:

> "Member States may adopt the necessary measures to refuse, terminate or withdraw any rights conferred by this Directive in the case of abuse of rights or fraud, such as marriages of convenience. Any such measure shall be proportionate and subject to the procedural safeguards provided for in Articles 30 and 31.

35. The Irish Regulations, in accordance with Article 35, allow for the revocation of a residence card which is not dependent on a change in circumstances or evidence of an error in the original decision. Therefore, it cannot be said that a marriage that entitles a non-national to apply for residence, is one that can never be examined by the Minister again once it has been relied on to secure that right of residence. The Minister must comply with the Regulations in assessing whether a marriage is a marriage of convenience, including putting the person concerned on notice and considering their submissions. Subject to those requirements of fair procedures, the Regulations set out a wide range of factors which may be considered, if the Minister considered them relevant, most of which relate to how the parties have engaged with each other during the purported marriage and expressly includes, in Regulation 28(5)(b)(ii), the length of time they have been residing together as husband and wife.

36. The applicant did raise the issue of a right to an oral hearing but no such right was pleaded or indeed asserted in his application for a review and is, therefore, not something he can now seek to assert.

37. The applicant claimed that determining a marriage of convenience involved an administration of justice. That point is not pleaded and is, therefore, not properly before the court. If I am wrong on that, then I accept the Minister's counterarguments as set out at para. 20 above.

(iv) <u>The burden of proof</u>

38. The applicant's submission in his application for a review of the deciding officer's decision focuses significantly on the burden to prove that the marriage was one of convenience, which the applicant said was on the Minister. He relied on provisions of the Directive and the 2013 European Commission Handbook on Marriages of Convenience. The applicant

expanded on these arguments in these proceedings citing Irish, UK and CJEU authority which affirm that the burden of proof rests on the Member State authorities to prove that a marriage was one of convenience.

39. I accept that the burden of proof rests, in the first instance, on the Minister. This does not entitle the applicant to sit back and do nothing, akin to the right of silence of an accused person in a criminal trial. The applicant's submissions on the burden of proof were engaged with in the review decision which referred to the handbook's recognition of the Member States' authorities' right to seek further documentation or evidence from a couple where they have "well founded suspicions as to the genuineness of a particular marriage, which are supported by evidence (such as conflicting information provided by the spouses), they can invite the couple to produce further relevant document or evidence". That is what the Minister did here and, on the basis of the information, evidence and submissions furnished, she concluded and was entitled to conclude that the applicant submitted false and misleading information and that his marriage was a marriage of convenience. The Minister did not improperly impose a burden of proof on the applicant or fail to discharge the burden that rested on her.

40. The applicant contends that the Minister erred in determining that he had submitted false and misleading documentation to obtain a derived right of free movement and residence. He says that he obtained that right in January 2013 and, therefore, the Minister could not find that documentation he furnished in July 2013, which she found to have been false and misleading, could ground that conclusion. I do not agree. The Minister sought further information in July 2013 at which time the applicant had been granted a residence card. That residence card could have been revoked at any time in accordance with the Regulations. Therefore, the documents he furnished in July 2013 and information confirmed in correspondence from his solicitor viz-a-viz his spouse's then work activities, were part of his attempts to retain the rights of residence he had secured the previous January which were always dependent on the existence of a genuine and subsisting marriage with his EU spouse. The Minister was entitled to conclude, in the light of the applicant's spouse's tax information available to her, that the documents the applicant submitted in July 2013 were false and misleading. The applicant is not entitled to separate his conduct of July 2013 or since then from what had occurred in January 2013 so as to render the validity of his residence card forever immune from any further examination or assessment in spite of the Minister's clear statutory powers to revoke that permission in appropriate circumstances.

(v) <u>Reasoning and reasons</u>

41. The Minister's review decision is reasoned and it sets out the basis for its conclusion. The documentation and information on which the Minister relied is set out, as is the absence of adequate evidence or information from the applicant. The difficulties with the July 2013 documentation is explained. The decision clearly identifies:-

    (i) The basis for the conclusion that the EU spouse arrived in the State only a short period before the parties decided to get married.

(ii) The absence of verifiable evidence of the development of a pre-marital relationship and the concerns this caused about the genuineness of the marriage.

(iii) The spouse's tax information available to the Minister and the inconsistency between it and the documentation furnished by the applicant in July 2013.

(iv) An explanation for why the Minister decided that the spouse's employment record indicated that the marriage was a contrived activity.

(v) An explanation of all the factors that led the Minister to conclude the marriage was one of convenience.

(vi) The absence in the documentation and information furnished by the applicant of his relationship with his spouse over the purported four years of marriage including financial commitments to each other, joint assets or liabilities, or living together in the State for any significant length of time.

(vii) An assessment of the applicant's submissions on the burden of proof and why the Minister considered that burden had been properly discharged.

42. The applicant contends that he was entitled to a more detailed explanation of the Minister's regard to the matters set out in Regulation 28(5)(ii) and an explanation for why she considered each to be relevant or not. That is not a requirement of the fair procedures to which the applicant is entitled, and neither is it required by Regulation 28. It is for the Minister to determine which of the Regulation 28 factors are relevant and a decision is not invalid for not explaining why any of them may have been determined not to have been relevant. As long as the Minister had regard to the applicant's submissions, as she clearly did, and gave sufficient reasons for the decision to enable the person concerned to understand the basis for it, that is sufficient.

Conclusion

43. For the reasons set out above, I am refusing this application for certiorari.

Indicative view on costs

44. As the applicant has not succeeded in his application, my indicative view on costs is that costs should, in accordance with s.169 of the Legal Services Regulation Act, follow the cause and the respondent is entitled to her costs against the applicant.

45. I will list the matter for mention before me at 10:30am on 7 February to allow the parties to make such further submissions on costs as they wish to make and to hear whatever submissions the parties wish to make on the final orders to be made.

Counsel for the Applicant: Conor Power SC, Ian Whelan BL

Counsel for the Respondent: Colmcille Raymond Kitson BL