THE HIGH COURT

JUDICIAL REVIEW

[2018 No. 258 J.R.]

BETWEEN

E.E.O. (NIGERIA)

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 25th day of June, 2018

1. The applicant came to Ireland in 2006 on a tourist visa, with the conditions of which he complied, and then returned in 2009 on a student visa. He then had a relationship with a person on stamp 4 status who subsequently had a child on 5th December, 2012. He was granted a stamp 4 permission in September, 2013. In 2015 when the relationship was breaking down he was informed that he was not the father of this child. In May, 2016 his previous solicitors made an application for a stamp 4 permission to remain. That permission expired on 6th September, 2016.

2. On 31st August, 2016 the applicant, through an immigration consultant, made a further duplicative application for a stamp 4 permission. In September, 2017 he was granted a limited stamp 4 permission for a three month period which was continued for one month and then for a further month. The most recent permission expired on 22nd February, 2018.

3. On 26th March, 2018 he attended the GNIB to renew the permission and was handed a draft s. 3 proposal to deport which was unsigned. That incorrectly stated that the s. 4 application for permission to remain had been refused. The solicitors wrote to the State on 30th March, 2018 requesting that the "*proposal*" be revoked. The present judicial review was applied for on 9th April, 2018. Given that it related to a proposed decision rather than an actual decision, I directed that the leave application should be made on notice and subsequently that the matter proceed by way of a telescoped hearing.

4. On 1st May, 2018 the State wrote replying to the letter of 30th March, 2018, indicating that the unsigned draft was issued in error and should be disregarded. On 9th May, 2018, INIS gave permission to the applicant on foot of the leave to remain application to remain in the State for twelve months on a stamp 4 basis. Thus before the matter could be heard it has become moot and the only issue now is that of costs.

5. I have received helpful submissions from Mr. Colm O'Dwyer S.C. (with Mr. Gavin Keogh B.L.) for the applicant and from Mr. Peter Leonard B.L. for the respondent.

6. The matter became moot because the applicant was given a stamp 4 permission on foot of the applications he made in 2016. That was not related to the proceedings, and therefore the court should lean in favour of there being no order: see the cases discussed in *M.K.I.A. (Palestine) v. International Protection Appeals Tribunal* [2018] IEHC 134 [2018] 2 JIC 2708 (Unreported, High Court, 27th February, 2018) in particular at para. 6(v) that "*If the proceedings are moot due to a factor which is within the control of one party but that has no causal nexus with the proceedings or which relates, as it is put in* Cunningham [v. President of the Circuit Court [2012] IESC 39 [2012] 3 I.R. 222], *to an underlying change in circumstances, then again there seems to be no event in the* Godsil [v. Ireland [2015] IESC 103 [2015] 4 I.R. 535] *sense, so the court should lean in favour of no order* (*see* per *MacMenamin J.* in Matta [v. Minister for Justice and Equality [2016] IESC 45 (Unreported, Supreme Court, 26th July, 2016)] *at para. 20*)." That point is also made by MacMenamin J. in *A.S. v. Minister for Justice and Equality* [2018] IESCDET 30 at para. 10.

7. It is true that the s. 3 draft letter says that a s. 4 application was refused but that was simply a mistake.

8. While that disposes of the matter there are some other points worth making at this juncture.

9. First of all, there was no proposal letter, merely a draft which was not signed. Thus, the proceedings were entirely misconceived, albeit that the applicant was not entirely at fault in that regard.

10. More fundamentally, it seems to me the application to challenge the "*proposal*" was premature and indeed also was not the appropriate remedy. The matter could have been cleared up in correspondence. The fundamental point is that while s. 5 of the Illegal Immigrants (Trafficking) Act 2000 does in principle allow a proposal to be challenged, that does not abolish the law of prematurity or of alternative remedies. Just because there are *some* conceivable circumstances where one could review a proposal does not mean that review of a proposal is *always* acceptable. On the contrary, judicial review of a mere proposal is only appropriate in the most exceptional circumstances. Had the applicant simply made submissions against his deportation pointing out the difficulties in the correspondence, the draft proposal would have been decommissioned and no judicial review would have been necessary. In the circumstances it seems to me it was entirely unnecessary and inappropriate to seek judicial review and that what was engaged in was a waste of the court's time and an improvident demand on limited judicial resources.

Order

11. I therefore make no order as to costs.