

THE HIGH COURT

[2019 No. 628 JR]

IN THE MATTER OF SECTION 5 OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT
2000, AS AMENDED

BETWEEN

SAHEED ADEOLA ISHOLA, ABISOLA NIMOTALAI ISHOLA AND BASIT ISHOLA (A MINOR
SUING THROUGH HIS FATHER AND NEXT FRIEND SAHEED ADEOLA ISHOLA)

APPLICANTS

– AND –

THE MINISTER FOR JUSTICE AND EQUALITY (NO. 2)

RESPONDENT

JUDGMENT of Mr. Justice Max Barrett delivered on 18th February 2020.

1. Pursuant to s.5 of the Illegal Immigrants (Trafficking) Act 2000, as amended, the applicants seek leave to appeal the decision of the court on 14 November last. It is not disputed that this application falls to be determined in line with the principles identified in *Glancre Teoranta v. An Bord Pleanála* [2006] IEHC 250, as supplemented by *S.A. v. The Minister for Justice and Equality (No. 2)* [2016] IEHC 646 and *Y.Y. v. The Minister for Justice and Equality (No.2)* [2017] IEHC 185. The court reiterates, *mutatis mutandis*, its observations in *Connolly v. An Bord Pleanála* [2016] IEHC 624, at para. 14; however, neither side has objected to this court deciding the within application.
2. Three points of law of exceptional public importance are contended to arise and are considered hereafter:
3. Proposed Point 1: Whether the finding in *Gorry v. The Minister for Justice and Equality* [2017] IECA 282 ("*Gorry*") amounts to a change in law from *Oguekwe v. The Minister for Justice and Equality* [2008] 3 IR 795 which referred to Art. 8 ECHR and Art. 41 rights (under the *Bunreacht*) being considered together by the Minister?
4. Court Response: The court has already found that the substantive decision would not have differed even if *Gorry* had been applied word for word by the Minister. In any event, the question presenting is an empty one when one has regard to the facts presenting: both Arts. 8 and 41 proceed on the assumption of a *prima facie* right of the family to remain together and both weigh this right against countervailing considerations, including any criminal predilections.
5. Additionally, the court notes that in opposing the within application the Minister pointed to authorities of the Supreme Court which establish the clear principle that married couples comprising, as here, one Irish national and one non-national, do not have an absolute right to reside here. As noted in the court's judgment, the Minister undertook a careful and detailed balancing exercise in this regard. Having regard to this legal and factual matrix there is no purpose/merit to referring this proposed point of law.
6. Proposed Point 2: Whether the approach required by *Gorry* in respect of constitutional rights under Art. 41 of the *Bunreacht* requires the respondent to justify any interference with the protection of the institution of the family such that it is insufficient to assert that

there is a risk of future criminal activity in the absence of any current evidential basis for such an assertion?

7. Court Response: This proposed point proceeds on a basis contrary to that found by the court, in its principal judgment, to present. The court accepted in its judgment that Mr. I's history of criminal behaviour in Ireland (and in England) justified the respondent's concern as regards Mr. I's future activity. What the applicants are therefore seeking to do in this regard is seeking, under the guise of a point of law of exceptional public importance, to re-visit the court's assessment of the facts.
8. Proposed Point 3: Whether the principle in *Sanade v. The Secretary of State for the Home Department* [2012] UKUT 00048 (IAC) in relation to insurmountable obstacles is now part of Irish law?
9. Court Response: This issue was not addressed in the court's judgment and thus does not arise from the text of the court's judgment.
10. For the reasons stated, the court respectfully declines to grant the certificate/leave sought.