

THE HIGH COURT

[2021] IEHC 356
[2017 No. 850 JR]

BETWEEN

JAYSHREESING SANEECHUR AND NIKOLAJS SAMKOVŠ

APPLICANTS

– AND –

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr Justice Max Barrett delivered on 5th May, 2021.

SUMMARY

The applicants have successfully challenged a decision by the Minister affirming the refusal of an EUTR application. Among the reasons for their success are the following: (1) An investigation resulting in a determination that an application is fraudulent must be rigorous; here it was disproportionately lacking in rigour and did not yield a safe finding. (2) The Minister, in the face of accepted payments by Irish commercial entities to Mr Samkovš from June 2016 unreasonably and/or irrationally preferred the evidence of the Latvian Embassy that Mr Samkovš was working in Latvia and did not carry out a sufficiently rigorous investigation in this regard. (3) The Minister, unreasonably and/or irrationally gives no reason why, inter alia, the accepted evidence of regular wage payments to Mr Samkovš from companies operating in the State was discounted. (4) The Minister's stance concerning Mr Samkovš' current employment status is wholly inconsistent: it is accepted that continuous wage payments have been made to Mr Samkovš by Irish commercial entities to an Irish bank account in the sole name of Mr Samkovš but it is found that he has been working full-time in Latvia during the period of those payments. (5) The Minister has acted in breach of Art.35 of the Citizens' Rights Directive and reg.27 of the European Communities (Free Movement of Persons) Regulations 2015. (6) The court does not see that it can conclude that the impugned decision was made on a sufficiently solid factual basis, and that the reasons given were justified on a rational basis that took into account the personal circumstances of the applicants. (The evidential basis to substantiate a finding of fraud just does not present). This summary forms part of the court's judgment.

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1. Theirs, they claim, was a simple tale of love in a cold climate. Then they filed an EU Treaty rights application.
 2. The facts of this case are best detailed by way of summary chronology. These, I note, are the facts as volunteered by the applicants. As will be seen, the Minister does not believe some of their version of events. The summary chronology is as follows:

30.03.2006	Ms Saneechur arrives in Ireland on a student visa.
Dec. 2011	Ms Saneechur's student visa expires but she stays on.
Aug. 2013	Mr Samkovš meets Ms Saneechur in a Dublin nightclub.

2014	Mr Samkovs and Ms Saneechur begin living together as a couple. Mr Samkovs did not have a PPS number at this time because he was working, as he describes it, " <i>cash-in-hand</i> ".
Dec. 2014	Mr Samkovs and Ms Saneechur agree to marry.
Dec.2014 to Apr. 2015	Mr Samkovs works in Latvia to make money for the wedding.
23.04.2015	Ms Saneechur and Mr Samkovs marry in Ireland.
01.06.2015	Mr Samkovs commences work with Al Imran Accommodation but leaves after about ten 10 days, apparently because of a disagreement over pay.
23.06.2015	Ms Saneechur and Mr Samkovs apply for an EUTR residence card.
23.06.2015 to 2.7.2015	Mr Samkovs works briefly for a pizza shop in Crumlin.
28.08.2015	Minister responds to EUTR application with some queries.
Sept. 2015	Mr Samkovs briefly returns to Latvia to care for his cancer-afflicted mother. While there he works on various building sites.
22.03.2016	EUTR application refused. Thereafter, the applicants seek a review of the refusal.
April 2016	Mr Samkovs returns to Dublin permanently.
10.05.2016	Minister writes to applicants' solicitors seeking further information concerning Mr Samkovs to which the applicants' solicitors reply.
12.05.2016	Mr Samkovs commences work at the Ballsbridge Hotel, Dublin. Exhibited in the pleadings is a letter of 18th May 2016 from the HR Manager at the Ballsbridge Hotel stating: <i>"This is to certify that Nikolajs Samkovs is employed by Tulane Business Management Ltd t/a Ballsbridge Hotel. He commenced employment on 12th May 2016 as an Accommodation Assistant. He is employed on a casual contract and his hours are dependent on business needs....Should you have any further queries please do not hesitate to contact me."</i>
14.05.2017	A letter issues from Tom Hanafin Construction Ltd, signed by Mr Tom Hanafin stating that " <i>I can confirm that Nikolajs Samkovs is currently employed by Tom Hanafin Construction Ltd</i> ".
04.02.2017	Applicants informed by Minister that their review is unsuccessful. This was challenged by judicial review, the decision was withdrawn, and re-consideration undertaken. Thereafter, fresh submissions are made.
18.08.2017	Minister sends a letter outlining certain concerns re. application.
08.09.2017	Respondents respond to Minister.
12.09.2017	Minister sets out further concerns. In particular the Minister expresses concern that the parties entered into a marriage of convenience and that Mr Samkovs was working in Latvia. The applicants reply.
12.10.2017	Minister refuses the applicants' application. This is the impugned decision.

3. The impugned decision is only a couple of pages long. So perhaps the best way to treat with the issues presenting is to quote relevant segments from it and then to make comment in plain text.

4. Decision: *"Your legal representatives states that when you made your application for a residence card in June 2015 your husband was working at Ali Imran Accommodation. However, they assert, he left this job after a period of about ten days because he was not happy with his employment for a number of reasons, including the fact that he was not paid the correct amounts. They maintain that he then worked for a time with 'Tops Pizza' but has been unable to provide documentation in respect of this employment. Your legal representatives state that the errors observed in the payslips you provided in respect of Ali Imran Accommodation cannot, by themselves, reasonably ground a finding that your application was fraudulent. It is noted that the deciding officer in your case found that the documentation you provided was false and intentionally misleading as to a material fact, and the Minister does not consider that you have adequately addressed this issue or established that the deciding officer's finding in this regard was erroneous."*

5. An error on a payslip could not, by itself, reasonably ground the serious finding that the applicant's application was fraudulent. That would be wholly unreasonable. The court considers that it can take judicial notice of the fact that, in life, payslip errors happen from time to time. A couple of months ago this Court was advised of a months-long error in its own payslips. These things happen. So one cannot point to an error in a payslip and say, 'A-ha, that means there's fraud in your EUTR application.' More would be required; and that 'more' does not present. There is mention in the documentation before the court that some effort was made to contact Mr Samkovs' employer without success. No further detail is provided, so it is not clear what contact attempts were made. As counsel for the applicants observe in their written submissions "[A]n investigation resulting in a determination that an application is fraudulent, potentially attracting criminal liability which then grounds not only a refusal to grant a specific application for a residence card but a disentitlement to apply for residency at all must be rigorous". As Peart J. observed in *Memishi v. Refugee Appeals Tribunal* [2003] IEHC 65, where a decisionmaker (there the RAT) makes an adverse credibility finding "the reasons for any such adverse finding on credibility must be substantial and not relating only to minor matters". Given the importance of the finding as to fraud here (it was determinative of the applicants' application) the court concludes that the Minister's investigation process was disproportionately lacking in rigour and did not yield a safe finding.

6. Decision: *"Your legal representatives assert that your husband travelled back and forth between Ireland and Latvia and on a number of occasions between December 2014 and April 2016. However, they state, he has been entirely resident in Ireland since April 2016. They maintain that he worked with Tulane Business Limited t/a 'the Ballsbridge Hotel' for a number of months before starting work with Tom Hanafin Construction. In this connection, a contract of employment and various payslips for the Ballsbridge Hotel covering the period 15th May 2016 to 27th November 2016 have been submitted. It is noted, however, that there is little evidence on file to establish that the Union citizen is engaged in genuine and effective employment are a letter from Tom Hanafin dated 14th May 2017 and an unsigned invoice addressed to Right Work Limited featuring little information and an undecipherable date (viz. 17.07.30.07). It is acknowledged however that you have submitted a copy of the EU citizen's bank account statements which*

indicates that he has been receiving regular payments since June 2016 from Tulane Business Ltd and from Tom Hanafin Construction."

[The Ballsbridge Hotel payslips commence in May 2016.]

7. Why would two Irish commercial trading entities between them continuously pay monies into a man's Irish bank account from May 2016 onwards? The overwhelmingly likely explanation is that he was, as claimed, working (and living) here in Ireland. But whatever the reason, in the face of the accepted facts concerning the payments from the two employers into a current bank account in Mr Samkovs' sole name, the Minister's investigation process in this regard was disproportionately lacking in rigour and did not yield a safe finding.
8. Decision: *"The above examination notwithstanding information received from the Latvian Embassy indicates that the [European] Union citizen has been working in Latvia continuously since 2015. He worked for 'Permalat Ltd' between June 2015 and July 2015 and for Rimi Latvia between January 2015 and August 2015. He has been employed by Exma Limited since August 2015. This information clearly contradicts that which was provided by you in respect of your husband's employment in the State."*
9. In truth it does not 'clearly contradict' it. It was stated by the applicants' solicitors that Mr Samkovs was living/working in Ireland, the relevant bank payment details for Ireland were exhibited and they stated his clients' best guess to be that a possible named somebody had been using the Latvian equivalent of Mr Samkovs' PPS number. So there is not a 'clear contradiction'. The court would reiterate at this point its observations in para.7.
10. Decision: *"If the [European] Union citizen was in full-time employment in Latvia, then he obviously could not be working full-time in Ireland. When asked to provide an explanation of this situation, you state that he believes [that] his social insurance number is being used in Latvia by 'a man named "Alekseys"'. No further explanation of this situation has been offered, and it is not considered that your statement is credible. It is noted that you provided spurious documentation in respect of your husband's employment at Ali Imran Accommodation; no documentation in respect of his employment at Tops Pizza; and insufficient partial documentation in respect of his work with Tom Hanafin Construction. Moreover, the Latvian Embassy has informed [us] that the EU citizen has been in permanent employment in that jurisdiction since 2015. Balanced against this is the fact that you have furnished various documents and bank details in support of your assertion that your spouse worked at the Ballsbridge Hotel and with Tom Hanafin Construction. Having considered all of the information, documentation and submissions on file, the Minister finds that the information received from the Latvian Embassy is more persuasive in this case. This is particularly so when considered against the background of the credibility issues outlined above and the partial, sometimes unconvincing information you provided in respect of some of the Union citizen's other employments in the State."*
11. There are a number of deficiencies in the above.

12. First, for the period from June 2016 onwards, it is accepted by the Minister that bank account statements indicate Mr Samkovs to have been receiving regular payments from the Ballsbridge Hotel and Tom Hanafin Construction. The court would reiterate at this point the observations it made at para.7.
13. Second, it is the Minister's previous findings of fraud that persuade him to disregard the evidence of Mr Samkovs' more recent employment history in Ireland and to prefer the evidence of the Latvian Embassy to the fact that for the period from June 2016 onwards, bank account statements indicate Mr Samkovs to have been receiving regular payments from the Ballsbridge Hotel and Tom Hanafin Construction. That was unreasonably and/or irrationally to prefer the evidence of the Latvian Embassy without carrying out a sufficiently rigorous investigation.
14. Third, the Minister, unreasonably and/or irrationally gives no reason why the uncontroverted evidence of regular (wage) payments to Mr Samkovs from companies operating in the State has been discounted. (The same might be said in respect of the letter/contract of employment that were submitted as part of the application materials).
15. Fourth, the Minister does not find that the documentation submitted in relation to employment in Ireland from 2016 onwards was fraudulent or that the making of application on the basis of this later employment was fraudulent. The end result is that the Minister's stance concerning Mr Samkovs' employment status is wholly inconsistent. As counsel for the applicants rightly note in their written submissions: "*On the one hand, the Respondent does not find that this aspect of the last application was fraudulent but on the other hand finds that the Respondent is not working in the State*".
16. Fifth, having regard to the first to fourth points just made, the court does not see that it can conclude, to borrow from the wording of Haughton J. in *Shishu and Miah v. MJE* [2021] IECA 1, para.94, that "*the Impugned Decision [here the review decision of 12th October 2017] was made on a sufficiently solid factual basis, and that the reasons given were justified on a rational basis that took into account the personal circumstances of the applicants*". Judicial review has its limitations as a process; however, even within the limited parameters of that process, when it comes to an application such as this, the reviewing court must be satisfied that a factual finding has a sufficiently solid evidential base. Here, for the reasons stated in the first to fourth points, the court finds that such a sufficiently solid evidential base does not present.
17. Decision: "*The Minister finds that you have failed to address [presumably, 'adequately'; there were replies] the issues raised in his letter of 22nd March 2016. Although you have provided further information in respect of your husband's activities within and without the State, you have failed to allay the Minister's concerns that you provided fraudulent documentation and information in your application of 17th June 2015. The fact remains that you submitted and sought to rely on documentation that you knew to be false and misleading in order to obtain a derived right of free movement and residence under EU law. This is an abuse of rights in accordance with Regulation 2. Because you have asserted a right based on documentation intentionally misleading as to a material fact*

about a central aspect of your application you cease to be entitled to any right of residence in accordance with Regulation 27 of the Regulations [of] 2015 and Article 35 of the Directive."

18. There are a number of deficiencies in the above.
19. First, as regards the line *"The fact remains that you submitted and sought to rely on documentation that you knew to be false and misleading in order to obtain a derived right of free movement and residence under EU law"*. The applicants, who denied any intention to act fraudulently, said, through their solicitors, that if there were errors in the payslips that was nothing to do with them. They were right to this extent: an employee is not his employer's keeper; if an employer errs in what it states in a payslip then, all else being equal, that is not something that an employee can necessarily be expected to explain away.
20. Second, the court, mindful again of Haughton J.'s observation in *Shishu and Miah v. Minister for Justice and Equality* [2021] IECA 1, para.94 (quoted above), notes that the evidential basis to substantiate something as serious as a finding of fraud just does not present.
21. Third, one arrives next at the Minister's remarkable conclusion that *"Because you have asserted a right based on documentation intentionally misleading as to a material fact about a central aspect of your application you cease to be entitled to any right of residence..."*. The court admits to some surprise that the Department of Justice would come to court and seek to stand over a conclusion that is so patently infirm in substance and thrust. When one looks to Article 35 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC ("Citizens' Rights Directive"), it provides, *inter alia*, that *"Member States may adopt the necessary measures to refuse, terminate or withdraw any right conferred by this Directive in the case of abuse of rights or fraud...Any such measure shall be proportionate..."*. Yet there is simply no proportionality assessment undertaken in the impugned decision. There is just a blanket cessation of any EU treaty rights presenting. That is so flawed an approach that on this ground alone, the impugned decision would have to fall (though, as can be seen, there are multiple grounds on which it falls).
22. Fourth, conversely, not only has the Minister failed to undertake a proportionality assessment, but the conclusion/decision arrived at in this regard – a blanket cessation of any EU treaty rights presenting – is utterly *dis*-proportionate.
23. Fifth, coming next to reg.27 of the implementing regulations – (the European Communities (Free Movement of Persons) Regulations 2015) – they provide as follows under the heading *"Cessation of entitlements"*: *"(1) The Minister may revoke, refuse to make or refuse to grant, as the case may be, any of the following where he or she*

decides, in accordance with this Regulation, that the right, entitlement or status, as the case may be, concerned is being claimed on the basis of fraud or abuse of rights..." [Emphasis added]. By the time of the Departmental review stage of this matter, the EU residence card was quite clearly based on Mr Samkovs' employment record with the Ballsbridge Hotel and Tom Hanafin Construction. In *Pervaiz v. Minister for Justice and Equality and Ors.* (Supreme Court, 2nd June, 2020), Baker J., at para.138, points to the nature of this review being almost de novo in nature ("*The review is a full review, not merely of procedural correctness, but also of the merits and the reviewer may confirm the decision on the same or different grounds, set aside the decision, or substitute his or her determination for the decision*"). In this context to look back to something that had happened in the application in 2015 and then to draw from that that there was now some abuse or fraud at play does not accord with reg.27.

24. The court respectfully does not see that the still-good authority of *Lamasz v. Minister for Justice and Ors.* [2011] IEHC 50 assists the applicants as they contended. That is because *Lamasz*, in key respects, was factually different from this case. There, Cooke J., at para.20, states that the case before him was "*an application which [apart from an inability to verify employment status] is otherwise accepted as validly made under the Regulations*". In the present case, by contrast, deficiencies in the documentation to the point of perceived fraud were viewed by the Minister as presenting. Nor does the court, with respect, see that matters are advanced from the applicants' point of view by *Chikhi v. Minister for Justice, Equality and Law Reform* [2011] IEHC 53, one of a string of *Lamasz*-related cases that Cooke J. appears to have decided in 2011, but one that succeeded ultimately on a question of delay in decision-making that has not been claimed to present here.
25. The court notes the ostensibly divergent reliance placed by the Court of Appeal on the *O'Keeffe* line of authorities in *Abbas v. Minister for Justice and Equality* [2021] IECA 16 and the stance taken by the Court of Appeal in *NM (DRC) v. Minister for Justice* [2016] IECA 217 where Hogan J., at para.44 of his (if the court might respectfully observe, to-be-preferred) judgment, in the context of an affirmation of the 'Ten Commandments' identified by Cooke J. in *I.R. v. Refugee Appeals Tribunal* [2015] 4 I.R. 144, refers to the need, post-*Diouf*, for the supervisory jurisdiction of the High Court to be ample enough "*to ensure that the reasons which led the competent authority to reject the application for asylum as unfounded... may be the subject of a **thorough review** by the national court.*" [Emphasis added]. Fortunately, in the face of the present ostensible divergence between *Abbas* and *NM*, there is also the helpful analysis by O'Donnell J. in *V.J. v. Minister for Justice and Equality and Ors* [2019] IESC 75, para.70, in language that chimes with that of Hogan J. in *NM*, which refers to the need for a "**searching review**" [Emphasis added] capable of ascertaining whether the decision reviewed was based on a sufficiently solid factual basis. That "*searching review*" has been undertaken here.
26. For the reasons stated above, the court will quash the impugned decision and remit this matter to the Minister for fresh consideration. As the applicants have succeeded in their application, they would seem, on the face of things, to be entitled to their costs. If either

side object to costs being awarded so, counsel might kindly let the registrar or the court's judicial assistant know within fourteen days of the date of this judgment and the court will schedule a costs hearing. Otherwise the court will order the costs as indicated after the expiry of that 14-day period.

27. In closing, the court admits to wondering whether invoking one's EUTR rights is so document-heavy and lengthy a process in other EU member states as it seems to have become in Ireland. Presumably, the European Commission keeps a watchful eye to ensure that all member states act consistently with that liberal spirit which informs the right of free movement, among the greatest of the European Union's many great achievements. One certainly hopes so.

APPENDIX

As against the letter from the Latvian Embassy, the reader might wonder what kind of evidence Mr Samkovs, a man allegedly living in Estonia since 2015, managed to provide to the Department that he had been in Ireland. Just taking the pleadings from p.64 onwards (so from the point in 2016 where Mr Samkovs, then just over a year into married life, took up employment with the Ballsbridge Hotel), the court spies:

- (1) a letter of 18th May 2016 from the HR Manager at the Ballsbridge Hotel stating:

"This is to certify that Nikolajs Samkovs is employed by Tulane Business Management Ltd t/a Ballsbridge Hotel. He commenced employment on 12th May 2016 as an Accommodation Assistant. He is employed on a casual contract and his hours are dependent on business needs....Should you have any further queries please do not hesitate to contact me."

- (2) a payslip of 15th May 2016 from Tulane Business Management Limited to Mr Samkovs showing his gross pay, net pay, and his Irish tax payments (PAYE, PRSI and USC). The payslip also shows him to have attended at training in Ireland.
- (3) a payslip of 22nd May 2016 from Tulane Business Management Limited to Mr Samkovs showing his gross pay, net pay, and his Irish tax payments (PAYE, PRSI and USC), recompensing him for work done at the hotel since his previous pay-slip issued.
- (4) a payslip of 29th May 2016 from Tulane Business Management Limited to Mr Samkovs showing his gross pay, net pay, and his Irish tax payments (PAYE, PRSI and USC), recompensing him for work done at the hotel since his previous pay-slip issued.
- (5) a 'Tax Credit and Universal Social Charge Certificate for the year 1st January 2016 to December 2016 and Following Years' that references his employment with, *inter alia*, Tulane Business Management Ltd. The certificate issued to Mr Samkovs at a Dublin address.

- (6) Residential Tenancies Board and Electric Ireland correspondence that issued to Mr Samkovs in 2016 at a Dublin address.
- (7) a letter of 28th June 2016 from Martin & Gately Solicitors indicating the instructions that have received from Mr Samkovs and Ms Saneechur. There is nothing in the correspondence to suggest that these instructions were relayed by Mr Samkovs from Latvia, though it is always possible that he could have flown in to give the instructions – and he would have to have given his instructions from Latvia or else flown in to give them, if the Department is right in its conclusion that Mr Samkovs “has been working in Latvia continuously since 2015” (Impugned Decision, p.2).
- (8) a payslip of 5th June 2016 from Tulane Business Management Limited to Mr Samkovs showing his gross pay, net pay, and his Irish tax payments (PAYE, PRSI and USC), recompensing him for work done at the hotel since his previous pay-slip issued. This payslip also notes that Mr Samkovs has attended training.
- (9) a payslip of 12th June 2016 from Tulane Business Management Limited to Mr Samkovs showing his gross pay, net pay, and his Irish tax payments (PAYE, PRSI and USC), recompensing him for work done at the hotel since his previous pay-slip issued.
- (10) a payslip of 19th June 2016 from Tulane Business Management Limited to Mr Samkovs showing his gross pay, net pay, and his Irish tax payments (PAYE, PRSI and USC), recompensing him for work done at the hotel since his previous pay-slip issued.
- (11) a payslip of 3rd July 2016 from Tulane Business Management Limited to Mr Samkovs showing his gross pay, net pay, and his Irish tax payments (PAYE, PRSI and USC), recompensing him for work done at the hotel since his previous pay-slip issued.
- (12) a payslip of 7th August 2016 from Tulane Business Management Limited to Mr Samkovs showing his gross pay, net pay, and his Irish tax payments (PAYE, PRSI and USC), recompensing him for work done at the hotel since his previous pay-slip issued. The payslip shows Mr Samkovs to have worked on a Bank Holiday, presumably the August Bank Holiday.
- (13) a payslip of 21st August 2016 from Tulane Business Management Limited to Mr Samkovs showing his gross pay, net pay, and his Irish tax payments (PAYE, PRSI and USC), recompensing him for work done at the hotel since his previous pay-slip issued.
- (14) a payslip of 25th September 2016 from Tulane Business Management Limited to Mr Samkovs showing his gross pay, net pay, and his Irish tax payments (PAYE, PRSI and USC), recompensing him for work done at the hotel since his previous pay-slip issued.

- (15) a payslip of 2nd October 2016 from Tulane Business Management Limited to Mr Samkovs showing his gross pay, net pay, and his Irish tax payments (PAYE, PRSI and USC), recompensing him for work done at the hotel since his previous pay-slip issued.
- (16) a payslip of 9th October 2016 from Tulane Business Management Limited to Mr Samkovs showing his gross pay, net pay, and his Irish tax payments (PAYE, PRSI and USC), recompensing him for work done at the hotel since his previous pay-slip issued.
- (17) a payslip of 16th October 2016 from Tulane Business Management Limited to Mr Samkovs showing his gross pay, net pay, and his Irish tax payments (PAYE, PRSI and USC), recompensing him for work done at the hotel since his previous pay-slip issued.
- (18) a payslip of 30th October 2016 from Tulane Business Management Limited to Mr Samkovs showing his gross pay, net pay, and his Irish tax payments (PAYE, PRSI and USC), recompensing him for work done at the hotel since his previous pay-slip issued.
- (19) a payslip of 6th November 2016 from Tulane Business Management Limited to Mr Samkovs showing his gross pay, net pay, and his Irish tax payments (PAYE, PRSI and USC), recompensing him for work done at the hotel since his previous pay-slip issued.
- (20) a payslip of 13th November 2016 from Tulane Business Management Limited to Mr Samkovs showing his gross pay, net pay, and his Irish tax payments (PAYE, PRSI and USC), recompensing him for work done at the hotel since his previous pay-slip issued.
- (21) a payslip of 20th November 2016 from Tulane Business Management Limited to Mr Samkovs showing his gross pay, net pay, and his Irish tax payments (PAYE, PRSI and USC), recompensing him for work done at the hotel since his previous pay-slip issued.
- (22) a payslip of 27th November 2016 from Tulane Business Management Limited to Mr Samkovs showing his gross pay, net pay, and his Irish tax payments (PAYE, PRSI and USC), recompensing him for work done at the hotel since his previous pay-slip issued.
- (23) further Electric Ireland correspondence that issued to Mr Samkovs in 2016 at a Dublin address.
- (24) a letter of 7th December 2016 from Martin & Gately Solicitors indicating the instructions that have received from Mr Samkovs and Ms Saneechur. There is nothing in the correspondence to suggest that these instructions were relayed by Mr Samkovs from Latvia, though it is always possible that he could have flown in to

give the instructions – and he would have to have given his instructions from Latvia or else flown in to give them, for the Department later concludes that Mr Samkovs “has been working in Latvia continuously since 2015” (Impugned Decision, p.2).

- (25) a letter of 14th May 2017 from Tom Hanafin Construction Ltd, signed by Mr Hanafin stating that “*I can confirm that Nikolajs Samkovs is currently employed by Tom Hanafin Construction Ltd*”.
- (26) an Irish current account bank statement, held in the sole name of Mr Samkovs, showing him at an Irish address and that shows two payments in from Tulane Business Management Limited as well as incidental payments made from the account at various stores around Dublin between 28th June 2016 and 19th July 2016.
- (27) an Irish current account bank statement, held in the sole name of Mr Samkovs, showing him at an Irish address and that shows four payments in from Tulane Business Management Limited as well as incidental payments made from the account at various stores around Dublin between 19th July 2016 and 16th August 2016.
- (28) an Irish current account bank statement, held in the sole name of Mr Samkovs, showing him at an Irish address and that shows four payments in from Tulane Business Management Limited as well as incidental payments made from the account at various stores around Dublin between 16th August 2016 and 13th September 2016.
- (29) an Irish current account bank statement, held in the sole name of Mr Samkovs, showing him at an Irish address and that shows three payments in from Tulane Business Management Limited as well as incidental payments made from the account at various stores around Dublin between 19th July 2016 and 16th August 2016.
- (30) an Irish current account bank statement, held in the sole name of Mr Samkovs, showing him at an Irish address and that shows four payments in from Tulane Business Management Limited as well as incidental payments made from the account at various stores around Dublin between 4th October 2016 and 1st November 2016.
- (31) an Irish current account bank statement, held in the sole name of Mr Samkovs, showing him at an Irish address and that shows five payments in from Tulane Business Management Limited as well as incidental payments made from the account at various stores around Dublin between 1st November 2016 and 6th December 2016.
- (32) an Irish current account bank statement, held in the sole name of Mr Samkovs, showing him at an Irish address and that shows four payments in from Tulane

Business Management Limited as well as incidental payments made from the account at various stores around Dublin between 6th December 2016 and 5th January 2017.

- (33) an Irish current account bank statement, held in the sole name of Mr Samkovs, showing him at an Irish address and that shows two payments in from Tulane Business Management Limited as well as incidental payments made from the account at various stores around Dublin between 5th January 2017 and 24th January 2017.
- (34) an Irish current account bank statement, held in the sole name of Mr Samkovs, showing him at an Irish address and that shows four payments in from Tulane Business Management Limited as well as incidental payments made from the account at various stores around Dublin between 24th January 2017 and 21st February 2017.
- (35) an Irish current account bank statement, held in the sole name of Mr Samkovs, showing him at an Irish address and that shows two payments in from Tulane Business Management Limited as well as incidental payments made from the account at various stores around Dublin between 21st February 2017 and 7th March 2017.
- (36) an Irish current account bank statement, held in the sole name of Mr Samkovs, showing him at an Irish address and that shows three payments in from Tulane Business Management Limited as well as incidental payments made from the account at various stores around Dublin between 7th March 2017 and 27th March 2017.
- (37) an Irish current account bank statement, held in the sole name of Mr Samkovs, showing him at an Irish address and that shows two payments in from Tulane Business Management Limited as well as incidental payments made from the account at various stores around Dublin between 27th March 2017 and 11th April 2017.
- (38) an Irish current account bank statement, held in the sole name of Mr Samkovs, showing him at an Irish address and that shows one payment from Tom Hanafin, one payment in from Tulane Business Management Limited as well as incidental payments made from the account at various stores around Dublin between 11th April 2017 and 24th April 2017.
- (39) an Irish current account bank statement, held in the sole name of Mr Samkovs, showing him at an Irish address and that shows three payments from Tom Hanafin as well as incidental payments made from the account at various stores around Dublin between 24th April 2017 and 26th May 2017.

- (40) an Irish current account bank statement, held in the sole name of Mr Samkovs, showing him at an Irish address and that shows one payment from Tom Hanafin as well as incidental payments made from the account at various stores around Dublin between 26th May 2017 and 13th June 2017.
- (41) an Irish current account bank statement, held in the sole name of Mr Samkovs, showing him at an Irish address and that shows one payment from Tom Hanafin as well as incidental payments made from the account at various stores around Dublin between 13th June 2017 and 27th June 2017.
- (42) further Electric Ireland correspondence that issued to Mr Samkovs in July 2017 at a Dublin address.
- (43) letters of 11th August 2017, 8th September 2017, 29th September 2017 from Martin & Gately Solicitors to the Department indicating the instructions that they have received from Mr Samkovs and Ms Saneechur. There is nothing in the correspondence to suggest that these instructions were relayed by Mr Samkovs from Latvia, though it is always possible that he could have flown in to give the instructions – and he would have to have given his instructions from Latvia or else flown in to give them, for the Department later concludes that Mr Samkovs “*has been working in Latvia continuously since 2015*” (Impugned Decision of 12.10.17, p.2).

TO THE APPLICANTS:

WHAT DOES THIS JUDGMENT MEAN FOR YOU?

Dear Applicants

I am always concerned that because applicants in EU Treaty rights cases are foreign nationals for whom English may not be their first language, they should, if possible, be placed by me in a position where they can read and understand a judgment that has a sometimes great impact on them. I therefore summarise my judgment below. This summary, though a part of my judgment, is not a substitute for the detailed text above. It seeks merely to help you understand some key elements of what I have said. The Minister requires no such assistance. So this section of my judgment is addressed to you, the applicants, though copied to all. Your lawyers will explain my judgment more fully to you.

You asked me to look at the Minister’s decision affirming the refusal of your EU Treaty rights application. I have done so and consider that the Minister’s decision is so flawed that it should go back for fresh consideration. Among the flaws presenting are the following:

- (1) *An investigation resulting in a determination that an application is fraudulent must be rigorous; here it was disproportionately lacking in rigour and did not yield a safe finding.*
- (2) *The Minister, in the face of accepted payments by Irish commercial entities to Mr Samkovs from June 2016 unreasonably and/or irrationally preferred the evidence of the*

Latvian Embassy that Mr Samkovs was working in Latvia and did not carry out a sufficiently rigorous investigation in this regard.

- (3) The Minister, unreasonably and/or irrationally gives no reason why, inter alia, the accepted evidence of regular wage payments to Mr Samkovs from companies operating in the State was discounted.*
- (4) The Minister's stance concerning Mr Samkovs' current employment status is wholly inconsistent: it is accepted that continuous wage payments have been made to Mr Samkovs by Irish commercial entities to an Irish bank account in the sole name of Mr Samkovs but it is found that he has been working full-time in Latvia during the period of those payments.*
- (5) The Minister has acted in breach of Art.35 of the Citizens' Rights Directive and reg.27 of the European Communities (Free Movement of Persons) Regulations 2015.*
- (6) The court does not see that it can conclude that the impugned decision was made on a sufficiently solid factual basis, and that the reasons given were justified on a rational basis that took into account the personal circumstances of the applicants. (The evidential basis to substantiate a finding of fraud just does not present).*

Yours faithfully

Max Barrett (Judge)