

**THE HIGH COURT  
JUDICIAL REVIEW**

[2021] IEHC 699  
**RECORD NO. 2020/278JR**

**BETWEEN**

**HMW**

**APPLICANT**

**-AND-**

**MINISTER FOR JUSTICE**

**RESPONDENT**

**JUDGMENT of Ms. Justice Tara Burns delivered on 4 November 2021**

General

1. The Applicant is a naturalized Irish citizen who was born in Somalia. He arrived in the State on 25 July 2005 and thereupon applied for international protection. Whilst this application was rejected, the Respondent granted him humanitarian leave to remain in the State on 25 September 2010. He became a naturalized Irish citizen in September 2016.
2. The Applicant's wife and their six children, four of whom are adults, live together in Ethiopia, having fled Somalia. Their position within that jurisdiction is precarious and they purportedly live in impoverished conditions.
3. The Applicant made a proposal to the Respondent, on 8 February 2019, to bring his family to live within the State, pursuant to a scheme operated by the Respondent entitled the "Irish Refugee Protection Programme Humanitarian Admission Programme 2" (hereinafter referred to as the "IHAP scheme").
4. On 17th January 2020, the Respondent notified the Applicant that he had not been successful in respect of his proposal regarding his four adult children because of the lack of accommodation for them. However, he was also notified that he had been successful in respect of his wife and their two minor children.
5. Leave to apply by way of Judicial Review seeking an Order of *Certiorari* quashing the Respondent's decision with respect to his four adult children was granted by the High Court on 25 June 2020 on the grounds that the decision was irrational and unreasonable having regard to the express terms of the scheme; was taken in breach of the principle of *audi alteram partem*; and was disproportionate.

**IHAP Scheme**

6. The Respondent operates the IHAP scheme under the discretionary power of the Respondent to grant eligible persons permission to enter and remain in the State. The programme allows for certain eligible "proposers" to make an application proposing that an eligible beneficiary join them in the State.
7. The Applicant, as a naturalised citizen, is an eligible proposer within the meaning of the scheme. The Applicant's wife and children, including his adult children, qualify as eligible beneficiaries under the terms of the scheme.

8. The scheme sets out documentation which is mandatory to provide to the Respondent to make a proposal. With respect to documentation relating to accommodation, it states:-

- “If your home in Ireland is mortgaged, you must provide official documents (e.g. from your Bank or Financial Institution) as evidence that you have purchased your home
- If you have full ownership of your home in Ireland (i.e. you have paid in full for your property and do not have to make payments for your home to a bank or financial institution), official documents relating to that purchase should be provided as evidence
- If relevant to your proposal, a letter from your landlord/local authority confirming the total number of persons that may live in your home
- If relevant to your proposal, a copy of your tenancy agreement
- If you have arranged separate accommodation for the beneficiaries, a letter from the property owner confirming they will provide the property to the beneficiaries for a minimum of 12 months

If you are not able to supply any of these documents or supporting evidence with the form, please state why you are not able to do so on the proposal form. This checklist is not exhaustive. It is the responsibility of the proposer to ensure that they provide all of the supporting documentation required to support their proposal.

Please note that the proposal may not be accepted if insufficient or unsatisfactory documents or supporting evidence have been submitted.”

9. The proposal form also sets out the documents with respect to accommodation which a proposer is mandated to provide to the Respondent. In addition to setting out the requirement that a letter be provided written by the property owner confirming that the owner of the property will provide the property to the beneficiaries for a minimum of 12 months, the proposal form further adds that this letter “should describe the terms and conditions that will apply to the lease of the property to the beneficiaries.” The proposal form also indicates:-

“The information requested [regarding accommodation], is to enable verification of the accommodation details you’ve provided. If you do not provide these details, it may have implications for the decision on your proposal.”

10. The proposal form contains question 3.28 which states:-

“If you do not have enough space in your home, please explain how you are proposing to accommodate the beneficiaries you have listed”

11. Under the "Frequently Asked Questions" section of the published scheme, the following relevant questions are posed and answered:-

"Who is a Beneficiary?"

The beneficiary is the eligible family member that wants to come to Ireland to live with the proposer.

Where will the beneficiaries reside?"

Beneficiaries that come to Ireland under the IHAP are expected to reside with the proposer or be provided with accommodation by the proposer where appropriate. Nominations from proposers who are evidently in a clear position to accommodate their eligible family members in Ireland will be prioritised.

Can a proposer be unemployed or a student?"

Yes, there is no employment condition on being a proposer, however, nominations will be prioritised where the proposer is able to demonstrate that they can provide accommodation for their family member in Ireland."

12. The explanatory portion of the scheme states that "Priority will be given to "proposers" that can accommodate their proposed beneficiaries."

### **The Applicant's Proposals**

13. The Applicant made a proposal in respect of his entire family in the first round of the IHAP scheme. This proposal was deemed incomplete by the Respondent due to a failure to provide certain documentation, including a letter from his landlord confirming the total number of persons that may reside with the Applicant and giving permission for the Applicant to accommodate his family. The letter notifying the Applicant of the outcome of the proposal further indicated:-

"One of the conditions of a successful IHAP application is that you have sufficient accommodation in situ for the beneficiaries already. You do not satisfy this requirement at this time."

14. On 8 February 2019, a further proposal in respect of the Applicant's family was submitted to the Respondent under the second round of the IHAP scheme. This proposal dealt with each of the reasons for refusal in respect of the first IHAP decision. With respect to accommodation, the proposal form indicated that the Applicant did not currently have sufficient space to accommodate all of his family, however his landlord would endeavour to provide his family with accommodation should the Applicant be successful in his proposal. The letter from his landlord dated 29 June 2017, which had been submitted in the first round of the scheme, was re-submitted with this proposal indicating that should the Applicant be successful in his proposal, his Landlord would endeavour to provide them with accommodation.

15. A further letter from the Applicant's landlord, dated 1 February 2019, was submitted at a later stage which stated *inter alia*:-

"I would like to affirm that should he be granted the permission to bring his family and live in the country I will endeavour to provide them with accommodation and this will not be an issue that he should be worried about".

16. On 17th January 2020, two decisions issued to the Applicant from the Respondent. One decision informed the Applicant that his proposal in respect of his wife and their two minor children had been successful. The second decision indicated that he had not been successful in respect of his proposal regarding his four adult children because of the lack of accommodation for them. It stated:-

"In relation to your accommodation, you stated in your IHAP application that you do not have sufficient space to accommodate the beneficiaries. This Office contacted your landlord and was informed by him that he does not have sufficient space to accommodate the above beneficiaries. One of the conditions of a successful IHAP application is that you have sufficient accommodation in situ for the beneficiaries already. You have not satisfied this requirement at this time."

17. Freedom of Information requests reveal that a recommendation was made (which was affirmed in May 2019) that the Applicant's proposal be granted subject to an accommodation check, and that the Applicant's landlord was contacted prior to 15 January 2020 but was noted not to have sufficient accommodation. The Applicant was not made aware that such contact had occurred or given any opportunity to address the situation arising on foot of the contact between his landlord and the Respondent.

**Irrationality or unreasonableness**

18. The Applicant asserts that the decision of the Respondent is irrational or unreasonable as it required the Applicant to have accommodation in place for his beneficiaries when this was not a condition precedent for eligibility under the scheme. It was argued that in light of the fact that the explanatory section and the "Frequently Asked Questions" section of the scheme indicated that priority would be given to proposers who were in a position to accommodate their beneficiaries, the provision of accommodation was relevant to priority status rather than being a condition precedent for eligibility for the scheme.
19. The Court does not agree with this interpretation of the scheme. While the scheme clearly envisages the beneficiaries coming to live with the proposer, it is definitive about the requirement that the beneficiaries have an established place to live. There is a mandatory requirement to provide documentation which establishes a right of residence. In particular, with respect to beneficiaries who will not be accommodated in the proposer's residence, there is a mandatory requirement to produce evidence of a permission to reside at another location for a minimum of 12 months. An established location to reside is a condition precedent to avail of the scheme.

20. While the explanatory section and the "Frequently Asked Questions" section refers to affording priority to a proposer who is in a clear position to accommodate their eligible family members in Ireland, this cannot detract from a core requirement of the scheme which is that beneficiaries must have a place of residence available to them when they come to this Country. The explanatory section and the "Frequently Asked Questions" section can be interpreted as giving priority to proposers who currently are in a position to provide accommodation rather than to proposers who have secured accommodation for their beneficiaries in the future should they be successful in their proposal.
21. Accordingly, there was an obligation on the Applicant to establish a place of residence for his beneficiaries for a twelve month period after their arrival in this jurisdiction. On the evidence before the Court, the Applicant clearly did not meet this requirement. The decision of the Respondent is not irrational or unreasonable in light of the requirements of the scheme.

**Audi Alteram Partem**

22. The Applicant's submission in this regard is not that the Respondent was incorrect about the nature of her discussions with the Applicant's landlord and that accommodation would in fact be available to the Applicant's four adult children. Rather, the argument made is that the Applicant is unaware of what information his landlord gave the Respondent and therefore he is unable to engage with that information.
23. The difficulty with this argument is that there was a mandatory requirement placed on the Applicant to secure accommodation for his four adult children and to submit material establishing that they had a place to reside for a twelve month period after their arrival in Ireland. The Applicant did not secure such accommodation, therefore he was unable to provide such documentation.
24. The Applicant was aware of the accommodation requirements as they are published, and further he was advised that he had failed to meet them in his earlier application. In reality, nothing had changed from his perspective with respect to accommodation from his earlier application apart from an assertion from his landlord that he should not worry about this.
25. There is no requirement on the Respondent to engage in a discussion with the Applicant regarding his failure to comply with the requirements. The requirements are clear, they have not been met, and the Applicant was informed that they had not been met on an earlier occasion.
26. The decision of the Supreme Court in *Bode v. Minister for Justice, Equality and Law Reform* [2007] IESC 62 is relevant to this issue, where the Court stated at paragraph 164 of the judgment:-

"The Minister was merely required to consider the application within the ambit of the scheme. There is no general duty on an administrative body to give the opportunity to provide additional material after the closing date for application. The

fact that the Minister may have chosen to give a second chance does not make it an obligation. The Minister's obligation was to consider the application within the requirements of the scheme. Given the nature of the administrative scheme, the factual history presented by the second applicant, the documents provided, and the fact that the administrative decision does not relate to any constitutional or convention rights, but leaves the second applicant in the same position as he was prior to making the application, there was no breach of fair procedures, and consequently the issue of an order of *certiorari* does not arise."

27. Accordingly, there was no breach of the principle of *audi alteram partem* in this instance.

### **Proportionality**

28. The Applicant submits that the Respondent's decision was disproportionate having regard to its effect on his family unit.

29. In circumstances where there is an abject failure to comply with the conditions of the scheme, an argument that the Respondent failed to act proportionally does not arise. The Applicant simply did not meet the requirements of the scheme which the Respondent was entitled to set.

### **Recommendations on file**

30. The Applicant relies on the fact that a recommendation to grant the proposal, subject to an accommodation check, was made and affirmed by the Respondent. This does not aid the Applicant. The fact remains that the ability to have accommodation in place for the beneficiaries, once they arrived in Ireland, is a requirement of the scheme. This was not in place when the proposal was made by the Applicant, nor was the situation rectified on the submission of a further letter from his landlord. The Respondent could have deemed the Applicant's proposal incomplete in light of the non-compliance with the terms of the scheme. Instead, the Respondent proceeded to check out the position with respect to accommodation with the landlord. In light of this contact, it became clear that the Applicant was not in a position to house his four adult children. The original recommendation and affirmation were based on accommodation becoming available. As it was not, the decision was made to refuse the proposal. This was a decision which was open to the Respondent to make. It is neither irrational or unreasonable.

### **Conclusion**

31. The Applicant has failed to establish any of the grounds of challenge to the Respondent's decision. I therefore will refuse the relief sought and will make an order for the Respondent's costs as against the Applicant.