

THE HIGH COURT

[2022] IEHC 339

[Record No. 2021/679 JR]

BETWEEN

MONIKA WALIA AND MARIUS AVIVAREI

APPELLENT

AND

MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr. Justice Barr delivered 2nd day of June, 2022.

- 1.** The first applicant in these proceedings is an Indian national. She is 37 years old, having been born on 25th September, 1984. She moved to the UK in 2011.
- 2.** The first applicant met the second applicant, a Romanian national and EU Citizen, in the UK. She claimed to have begun a relationship with him in 2016. They provided evidence of their joint residence together in the UK.
- 3.** The first and second applicants entered the State together in or around 1st February, 2019. The second applicant works in the State in accordance with his EU Treaty Rights.
- 4.** In June 2019, the first applicant applied to be treated as a family member of the second applicant, being an EU citizen, on the basis of her relationship with him, pursuant to Regulation 5(2) of the European Communities (Free Movement of Persons) Regulations 2015 (S.I. 548/2015) (hereafter, "the 2015 Regulations"). The first applicant sought a residence card on the basis of this relationship. In essence, the first applicant maintained that she had been in a durable relationship with the second applicant since 2016.
- 5.** That application was rejected by the respondent by letter dated 8th October, 2019. The first applicant sought a review of that decision. She completed EU Review Form EU4 on 23rd October, 2019.
- 6.** By letter dated 26th April, 2021, the respondent refused the first applicant's application to be treated as a family member of the second applicant in accordance with the 2015 Regulations.
- 7.** It is this decision that the applicants seek to have set aside by an order of *certiorari*. Essentially, the applicants maintain that the decision was unlawful because (a) the Minister focused too much on their lack of joint financial commitments and (b) as the decision turned on credibility, the respondent ought to have interviewed the applicants prior to the decision being taken.

Background.

- 8.** As previously stated, the first applicant is an Indian National, who now resides in the State. The first applicant was previously married to Mr. Mangat Ram, which marriage was registered on 20th January, 2011. They subsequently divorced in 2013.

- 9.** She had moved to the UK on 4th May, 2011. At that time, she had what is known as a 'Tier 4' Student Visa in the UK, which was valid until 2013.
- 10.** The applicants met in or around April 2016, in the UK. The applicants have lived together since September 2016. An agreement for rent was exhibited, naming the first and second applicants as tenants of the property, spanning the period 1st October, 2016 to 31st March, 2017.
- 11.** The second applicant is a Romanian national and EU citizen. He is 41 years, having been born on 23rd May, 1981. He too was previously married and was divorced from his wife on 23rd August, 2017. He has one daughter from that marriage. He continues to pay maintenance to his wife for the care of their child. He worked for a construction company in the UK, which has since ceased trading.
- 12.** The first applicant applied for a residence card on the basis that she was a de facto partner of the second applicant by form EUA1 and cover letter to the respondent on 5th June, 2019.
- 13.** The respondent wrote to the applicant on 10th June, 2019, pointing out that her passport had expired in 2014 and enquired as to whether she had applied for a visa to enter the State before having entered it in February 2019. That letter also sought further information from the first applicant in relation to her relationship with the second applicant. It also invited her to submit further documentation in relation to her relationship with the second applicant. That letter requested that the applicant furnish the respondent with:
- "Evidence that you are a family member of the EU citizen
For partnership:
Evidence of cohabitation for the last two years (e.g. tenancy agreements, utility bills)
Evidence of a durable relationship (e.g. evidence of jointly-owned assets, evidence of a shared bank accounts or insurance, evidence of travel, birth certificates of any children of the partnership)".*
- 14.** No further information or documentation was provided by the applicants in response to that letter.
- 15.** By letter dated 8th October, 2019, the respondent refused the first applicant's application for a residence card pursuant to the 2015 Regulations.
- 16.** On 23rd October, 2019, the first applicant sought a review of that decision and submitted her Form EU4. By letter dated 1st November, 2019, the Minister invited the applicants to submit all information that they wished to have considered on the review of the initial decision. By letter dated 4th December, 2019, the applicants submitted further documentation in the form of bank statements in respect of the account held in their joint names for the period 26th April, 2019 to 23rd July, 2019.
- 17.** On 26th April, 2021, the Minister issued her decision on the review, which refused the first applicant's application for a residence card under the 2015 Regulations.

18. On 29th July, 2021, the applicants obtained leave to challenge that decision by way of judicial review.

Submissions of the Parties.

19. While a number of grounds of challenge to the decision of 26th April, 2021 were put forward in the statement of grounds and in the written legal submissions submitted on behalf of the applicants, at the hearing, the challenge to the impugned decision was refined down to two core grounds: (i) that the decision which had been made on behalf of the Minister had applied the incorrect test, because it had focused, if not exclusively, then to an impermissibly large extent, on the absence of joint financial commitments between the applicants; (ii) that as the decision effectively involved a determination on the credibility of the applicants, in that the decision-maker did not believe that they were in a durable relationship akin to marriage, this required that they be given some form of oral hearing, probably in the nature of an interview and, as that had not happened, the decision was unsound in law.

20. In relation to the first ground of challenge, Mr. Shortall SC on behalf of the applicants, submitted that the Minister had placed a heavy degree of reliance on the absence of evidence that the first and second applicants had joint financial commitments, either in the form of joint financial liabilities, or jointly owned assets. It was submitted that it was both unrealistic and unfair to expect people who were in the situation of the applicants to have evidence of extensive financial commitments between them.

21. In this regard, it was pointed out that the first applicant did not have any extant permission to be in the State and therefore was not in a position to work legally within the State. The second applicant had left his position of employment in the construction industry in the UK and had taken up employment in a pizza restaurant in Limerick when he came into the State in 2019. While the exact amount of his wages from the pizza restaurant was not stated, a payslip from the restaurant had been one of the documents that was submitted with the application. This was dated 17th May, 2019. It showed that the second applicant had a gross weekly wage of €235.10, with net pay of €169.27. Out of that, it had been stated in the form EU1A that the second applicant paid €40 per month for the maintenance of his daughter.

22. It was submitted that in these circumstances, there was no reality to expecting couples, such as the applicants, to be in a position to produce evidence of joint financial liabilities or assets. The reality was that they were not in a position to take out any extensive loans or mortgage, nor could they afford to have any substantial jointly owned assets. It was submitted that in the Minister's letter of 10th June, 2019, the Minister had stipulated that such documentation should be produced. It was submitted that when the applicants were not in a position to produce same, a negative decision had resulted.

23. It was submitted that this approach ran contrary to the principles that had been set down by the Supreme Court in *Pervaiz v. Minister for Justice and Equality* [2020] IESC 27, as applied by this court in *Singh & Anor. v. Minister for Justice and Equality* [2022] IEHC 284. Counsel submitted that the views that had been expressed by the court in the Singh case at para. 91,

in relation to the lack of reality and unfairness of expecting people with very limited financial means to be in a position to provide evidence of joint financial commitments, applied with equal force in the present case.

- 24.** The second ground of challenge put forward on behalf of the applicants, related to the lack of an oral hearing, in the form of an interview, in the context of the review decision that had been taken by the Minister. It was submitted that where the decision made by the Minister effectively turned on the credibility of the applicants, there was a minimum requirement that at least an interview with them should take place.
- 25.** The essence of this submission was summarised in the following way in the written submissions furnished on behalf of the applicants at para. 36:
- "In the present case, the Minister has made a finding that there is insufficient evidence of a de facto relationship. That, in part goes to the credibility of the applicants. While an opportunity to respond to the Minister's findings has been given, it has not been a meaningful opportunity to respond, absent an oral hearing and/or independent, merits-based appeal, which allows the applicants a genuine opportunity to defend adverse credibility claims. The Minister's failure to conduct an oral hearing and/or independent, merits-based appeal prior to making such a determination is unreasonable and unlawful."*
- 26.** Counsel submitted that it was well established that where there were serious consequences to an adverse finding in a decision and where such a finding or decision turned on the credibility of the applicants, a right to some form of oral hearing, in the form of an interview, arose as a minimum requirement. In support of that proposition, counsel referred to the decisions in *N(SU) (South Africa) v. Refugee Applications Commissioner & Ors* [2012] IEHC 338; *UP v. Minister for Justice & Ors* [2014] IEHC 567; *MM v. Minister for Justice and Equality & Ors* [2018] IESC 10 and *ZK v. Minister for Justice and Equality & Ors* [2022] IEHC 278.
- 27.** Counsel submitted that the consequences of a negative decision for the first applicant, which would mean that she would not obtain a residence card to remain in the State, was sufficient to trigger the right to an interview. Furthermore, it was submitted that the fact that there had been no request for such an interview by the applicants, did not deprive them of a right to an interview, which was an essential ingredient in a fair hearing in cases where credibility was at issue: see *ZK* decision at para. 76.
- 28.** In response, Mr. Caffrey BL on behalf of the Minister, denied that the impugned decision had focused to an impermissible degree on the absence of evidence of financial commitments between the applicants. He pointed out that the applicants had been invited in the forms which they submitted, both in relation to the request for the initial decision and on the review thereof, and in subsequent correspondence, to provide whatever information they deemed appropriate to establish that they were in a durable relationship akin to marriage. It was submitted that because the applicants had concentrated largely, though not exclusively, on their financial commitments, as the documentation that was submitted largely related to the joint bank account held by them, that did not mean that the Minister had concentrated unduly on that aspect.

- 29.** It was pointed out that in the impugned decision, the decision-maker had referred to the entirety of the documentation that have been submitted by the applicants. They had submitted documentation in relation to their cohabitation in the UK and Ireland. The decision-maker had accepted that the applicants had lived together since in or about 2016 in both countries.
- 30.** It was submitted that while certain photographs and social media posts were submitted with the initial application, the applicants had not put any context on the material that had been submitted. It was pointed out that although the applicants had been legally represented from the outset, the first applicant had never set out in correspondence, or in a statement, or otherwise, any narrative of the commencement and development of her relationship with the second applicant. Nor had she submitted any statements or information from members of her family, or from friends, that they regarded her and the second applicant as being in a durable relationship. While certain social media posts had been provided, it was submitted that these were not evidence of a durable relationship between the applicants, rather than being merely a recital of places that they had visited.
- 31.** It was submitted that when one read the decision as a whole, it was clear that the decision-maker had correctly applied the principles set down in the Pervaiz case and had done so in a reasonable and fair manner.
- 32.** Insofar as the decision had referred to an absence of evidence of financial commitments between the applicants, that had been largely due to the fact that the main documentation submitted by the applicants, concerned various bank statements, albeit they were limited in nature. Counsel submitted that, while the applicants may be of limited financial means, there was no evidence of any jointly owned assets, even of a modest nature, such as a jointly owned pet.
- 33.** In relation to the second ground of challenge, being the absence of an interview as part of the review process conducted by the Minister, it was submitted that the present case was not similar to the circumstances in the ZK case. In the present case there was no credibility finding against the applicants. There was no assertion that they had engaged fraudulently in putting forward the application on behalf of the first applicant. It was submitted that the decision merely constituted a finding by the Minister that insufficient evidence had been put before her that the first applicant was in a durable relationship akin to marriage with the second applicant.
- 34.** It was submitted that, where all relevant information and documentation was peculiarly within the possession of the applicants, the Minister was entitled to rely on whatever information and documentation the applicants chose to give her. It was submitted that in these circumstances, there was no obligation on the Minister to conduct any form of oral hearing, either in the form of an interview, or otherwise, as no issue of credibility arose.

The Law.

35. The issues in this case involve the interpretation and application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states (known as “the Citizens Directive”), which was transposed into Irish law by the 2015 Regulations.

36. Article 3 of the Citizens Directive is the relevant provision for the purposes of this application. The relevant provisions of that Article provide as follows:

“1. This Directive shall apply to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members as defined in point 2 of Article 2 who accompany or join them.

2. Without prejudice to any right to free movement and residence the persons concerned may have in their own right, the host Member State shall, in accordance with its national legislation, facilitate entry and residence for the following persons:

...

(b) the partner with whom the Union citizen has a durable relationship, duly attested.

The host Member State shall undertake an extensive examination of the personal circumstances and shall justify any denial of entry or residence to these people.”

37. The scheme of the Citizens Directive provides for different approaches to two categories of family members. Family members who come within the definition in Article 2(2) are afforded the right of entry and residence in the Union citizen’s host member state, provided certain conditions are met. A family member in that category is a spouse, civil partner, direct descendant under the age of 21, or dependent, and those of the spouse or partner, and any dependent or direct relatives in the ascending line of the Union citizen and of the spouse or partner.

38. The present case concerns the category of family members provided for in Article 3(2), who are more remote from the Union citizen and whose application for entry and residence in the host member state is to be “facilitated”, but who cannot be said to have an automatic right of entry or to remain. The Irish implementing regulations use the term “permitted family member” for this category of more remote family members to whom Article 3(2) of the Citizens Directive applies, and the term “qualified family member” for those family members who have a right to enter and remain.

39. Regulation 5 of the 2015 Regulations deals with “permitted family members”. It provides that Regulation 5 applies to a person who, irrespective of his or her nationality, is a member of the family (other than a qualifying family member) of a Union citizen to whom para. (2) applies and who, in the country from which the person has come, ... “(b) is the partner with whom a Union citizen has a durable relationship, duly attested”.

- 40.** Regulation 5(2) provides that where a person applies to remain in the State as being a “permitted family member” of a Union citizen, he or she shall produce to the Minister: (a) where the applicant is not a national of a Member State, a valid passport; (b) evidence that he or she is a member of the family of the Union citizen, and (c)(iii) documentary evidence of the existence of a durable relationship with the Union citizen.
- 41.** Regulation 5(5) provides that the Minister, in deciding under para. (3) whether an applicant should be treated as a permitted family member for the purpose of the Regulations, shall have regard to, *inter alia*: where the applicant is a member of the household of the Union citizen concerned, the duration of the period during which he or she has been living within the household of the Union citizen; where the applicant is in a durable relationship with the Union citizen concerned, the nature and duration of the relationship; and whether the relationship was brought about with the objective of obtaining permission to remain in the State or a Member State.
- 42.** The parties were agreed that the principles which should be applied by the Minister when considering an application under the 2015 Regulations have been authoritatively set out by the Supreme Court in the *Pervaiz* case. It is not necessary to repeat all of the principles that were set out by Baker J. in delivering the judgment of the Supreme Court in that case. Instead, the court will summarise some of the core principles that were enunciated in that case, which are of particular relevance to the issues that arise in this case.
- 43.** In relation to the approach which should be adopted by the Minister when considering such applications, the Supreme Court, having referred to the decision of the CJEU in *Secretary of State for the Home Department v. Rahman* (Case C-83/11) noted that that court had come to the conclusion that member states must “make it possible” for applicants to “obtain a decision on their application”, and that that application must involve an “extensive examination of their personal circumstances”, and that a refusal was to be justified by reasons. The court noted that the obligation to “facilitate” an application by a person to be a permitted family member, does not mean that the requirements for such, have to be easily met. The Supreme Court noted that the Minister must assess the documentary evidence furnished by the applicant and examine all the individual and personal circumstances of the particular case, without applying a blanket or general approach. The court further noted that the phrase used in the Citizens Directive that the durable relationship be “duly attested”, did not sit easily in domestic legal parlance. Baker J. read that expression as requiring that the applicant provide evidence, in whatever form was relevant and suitable in light of his or her circumstances, and that the Minister was to engage with that evidence, not by the application of a general policy, but by reference to the individual facts and indicia of the relationship put forward by the applicant and established by evidence.
- 44.** The Supreme Court noted that the evidence produced by an applicant need not always be documentary in form. Baker J. stated as follows at para. 114:

"That is not to say that the evidence must always be in documentary form, but can be a narrative explaining the context of the relationship, how it arose, how long it was endured, where the couple have lived, what elements of their life have been and are still interconnected, and any personal factors which they may wish to show to establish their commitment to one another. In that regard, it should be remembered that while many of the indicia of commitment are self-evident, some may be personal to the couple. They may, for example, celebrate the day they met, have particular places which have a special importance to them, and commitment is shown not only by formal public events such as an engagement to marry but by many other indicia, all of which are likely to be recognisable by members of the community in which the couple live and by society generally."

- 45.** The court went on to note that what was required from an applicant, was something more than mere assertion. To say that the relationship must be "duly attested" required that it be "evidenced" and it may, in a suitable case, be evidenced by oral evidence or narrative. What was required was evidence by which the relationship was proved or substantiated, and a proper reading of the Directive meant that the criteria, whatever they are and however they are stated, must not impose too high a standard and make it impossible for a person to meet that standard.
- 46.** In relation to the meaning of the word "partner", the court noted that the ordinary literal meaning of that word was capable of being readily understood without any technical knowledge, especially when one had regard to the context of its use in Reg. 5 (2) of the 2015 Regulations. The court held that a partner was intended to denote a person with whom one was in a family type relationship, a relationship short of marriage, but at some level akin to a marriage relationship.
- 47.** In relation to the issue of the durability of the relationship, the court noted that the partner must be someone with whom the Union citizen has a durable relationship. "Durable" did not mean "permanent", a test that required permanence in that sense would be an impossibly burdensome hurdle and would not be in accordance with any modern understanding of intimate relationships. Baker J. stated that what was meant by the term durable relationship, was that the relationship be one which has continued for some time and to which the parties are committed, with an intent that the commitment continues; one, therefore, which carries the indicia of commitment such that, at the present time, each of the parties to the relationship would express a view and a hope that the relationship would continue for the foreseeable future. Later in the judgment, Baker J. stated as follows at para. 76:

"Durability connotes a relationship which carries indicia of permanence and commitment such that the couple live a life where each of them is connected to the other by a number of identifiable threads, such as their social life and social network, their financial interconnectedness or interdependence, their living arrangements, and the extent to which they are recognised and acknowledged by their family circle and their friends as a couple."

- 48.** In looking at the indicia of a durable relationship that was akin to marriage, the Supreme Court looked at the issue as to whether cohabitation was necessary. It came to the conclusion that cohabitation was a useful yardstick by which the durability of a relationship could be assessed. It was a means by which it was possible to test whether persons were genuinely in a committed partnership.
- 49.** The court also considered whether it was necessary that there should be a sexual element to the relationship. It held that the existence of a present sexual or intimate relationship did not appear to be mandated, but normally, the couple will either be in a sexual relationship, or intend such a relationship in the future. The court went on to note that very often where a couple is in a durable relationship, there will be evidence that there is an interconnectedness between them in relation to their financial affairs. However, that is not a mandatory requirement. Baker J. stated as follows at para. 91:

"I agree with the trial judge that there will be many cases of persons in a durable relationship with a Union citizen who do not have a joint bank account or who do not own or rent property jointly. The factors in the lives of the couple that connote durability may well be factors of such commercial type, but there may also be wholly or mainly personal factors, such as their social network, their living arrangements, how they care for children if they have children, how each of them has integrated into the broader social and family network of the other. It is almost inconceivable in the modern world that a couple would not have many examples which can be established by documentary proof, whether from social media, correspondence, utility bills, photographs, text or email messages, financial transactions, etc., which might establish the closeness of their interconnectedness and the nexus within which the relationship operates."

- 50.** Thus, the overall position is that when considering an application that a person be deemed a "permitted family member" on the basis that they are in a durable relationship with the EU citizen, the Minister can have regard to a very wide range of matters that may indicate one way, or the other, whether the couple is in fact in a durable relationship. It has been reiterated a number of times, that each individual case must be looked at on its own facts. It is also clear that the Minister must engage in a meaningful way with the evidence that has been presented on behalf of the applicant and the EU citizen. There are statements to a similar effect in *Subhan v. Minister for Justice* [2020] IESC 78 and in *Shishu and Miah v. Minister for Justice and Equality* [2021] IECA 1, which deal with the not dissimilar issue of whether the applicant is part of the household of the EU citizen.
- 51.** The principles set down in the Pervaiz case were summarised by this court in the recent decision of *Singh v. Minister for Justice and Equality*, in the manner set out above.
- 52.** As noted above, the recent decision of Phelan J. in *ZK v. Minister for Justice and Equality* which was delivered on 16th May, 2022, is also of relevance in relation to the necessity for an interview. In that case, the applicant was a Georgian national, who had come to Ireland. He started a relationship with a Lithuanian national, on a dating app. She subsequently came to Ireland. They began a relationship and got married soon after. However, the marriage did not last. They decided to separate and go their separate ways. When the applicant applied for a continuation of his residence permit, that was refused, on the basis that he had entered into a

marriage of convenience. It was in those circumstances, where there was a stark credibility finding against the applicant and his wife in relation to the nature of their marriage, that the learned judge held that a right to be interviewed came into existence. She stated as follows at paragraph 73:

"In my view the import of the First Named Respondent's decision for the Applicant is such that he is entitled to a wide panoply of procedural protections because he has been accused of serious misconduct. The need for such protection arises given the life-changing nature of the First Named Respondent's findings which will in all likelihood lead to the removal of the Applicant from the State (see S v. Minister for Justice [2020] IESC 48 at para. 111) notwithstanding his marriage to an EU citizen who is living and working in the State and both his derived right and her rights, albeit not unconditional, as a matter of EU and Irish law to reside in the State with her spouse."

- 53.** Phelan J. came to the conclusion that fair procedures required an opportunity for the applicant and his EU national spouse to be assessed as to the plausibility of their account as to the genuineness of their marriage through the process of a face-to-face meeting or hearing. She held that such a right arose, notwithstanding that the applicant in that case had not requested an interview prior to the review decision being taken.

Conclusions.

- 54.** The court has carefully considered the written and oral submissions made on behalf of the applicants and the respondent. The court is not satisfied that the applicants have established either of the grounds of challenge to the impugned decision.
- 55.** In relation to the first ground of challenge, the court is satisfied that when the decision of 26th April, 2021, is read as a whole, it cannot be said that the decision maker focused exclusively, or to an impermissible degree, on the absence of financial commitments between the applicants.
- 56.** Having summarised the background to the submission of the application on behalf of the first applicant, the core of the decision that was reached by the Minister was expressed in the following way in the decision dated 26th April, 2021:

"It is considered, however, that there is little evidence on file that might establish that you are in a durable romantic relationship with the EU citizen. You have submitted a number of photographs featuring yourself and the Union citizen and various social media posts by you and the Union citizen. It appears, moreover, that you opened a joint bank account in Ireland in or around April 2019, having previously maintained separate bank accounts. However, it is not considered that these documents, in themselves, attest to a durable romantic relationship akin to marriage.

Indeed, there is little information or documentation on file in respect of your relationship with the Union citizen in this case. That is, there is nothing to suggest that you and the Union citizen have made any financial commitments to each other, have any joint assets or liabilities, or are the parents of any children together. Although it appears that you have shared addresses over the years and it is evident that you have recently opened a joint bank account, the Minister is not satisfied that these facts are, in themselves, indicative of a durable relationship akin to marriage.

Durability connotes a relationship which carries indicia of permanence and commitment such that the couple live a life where each of them is connected to the other by a number of identifiable threads, such as their social life and social network, their financial

interconnectedness or interdependence, their living arrangements, and the extent to which they are recognised and acknowledged by their family circle and their friends as a couple. The language of the 2015 Regulations can readily be understood in its plain terms as connoting a committed personal interconnectedness which is recognised and recognisable between the couple and by the members of their circle or broader acquaintances, whether social or business, and which is anticipated as being likely to continue for the foreseeable future. The Minister is not satisfied that you have submitted sufficient documentation to demonstrate such indicia of permanence and commitment or to establish that you are in a durable relationship with the EU citizen of the type outlined above.

It is generally considered that applicants who seek a residence card based on their durable partnership with a Union citizen should be in a position to establish that they and the Union citizen have been involved in a relationship akin to marriage. They should establish that the relationship is such that they are considered to be de-facto members of the EU citizen's family. In this case, the Minister finds that you have failed to demonstrate that your relationship with the Union citizen is one that is akin to marriage and, therefore, you cannot be considered to be the de facto partner of the Union citizen in respect of the Regulations."

- 57.** The court is satisfied from reading the decision as a whole and in particular, from reading the portion quoted above, that the decision maker properly applied the principles set down in the *Pervaiz* case. The court is satisfied that the decision maker did not focus either exclusively, or to an impermissible degree, on the absence of financial commitments between the parties.
- 58.** There is considerable force in the argument put forward by Mr. Caffrey BL, that it was the applicants who decided to place a substantial focus on financial matters. The bulk of the documents which they submitted, related to various bank accounts that had been held either jointly or independently by them. In particular, the applicants had provided various statements from the Nationwide Building Society to establish residence at a particular address in the UK. They had also provided evidence of a joint bank account which had been opened in April 2019, shortly after their arrival in the State. When they had been given the opportunity to provide further information and documentation, the applicants had furnished some further bank statements for the period April to July 2019.
- 59.** One has to remember that when the Minister is called upon to consider whether the applicant is in a durable relationship akin to marriage with the EU citizen, who is exercising his or her right to travel within the EU and to be within the State, all of the relevant information and documentation is within the power or procurement of the applicants themselves. These applications can be contrasted with asylum applications, or applications for international protection, where the applicant is alleging that he or she is being persecuted, or faces some danger, as a result of their ethnicity, or religious beliefs, or for some of other reason in their country of origin, where that assertion can be tested by independent evidence in the form of country of origin information produced by various international bodies. There is no such evidence available to the decision maker in applications where people are exercising their EU treaty rights and the application by the non-EU citizen is based on being in a durable relationship with the EU citizen. In these cases, all the evidence and documentation is uniquely within the power or procurement of the applicants.

- 60.** In the present case, it has to be remembered that the first applicant was at all times represented by legal advisers. The decision in the *Pervaiz* case was handed down in June 2020. Thus, the applicant and her advisers, would have been well aware of the types of material that can be produced to establish that one is in a durable relationship with an EU citizen.
- 61.** The first applicant would have been aware that she was entitled to submit a statement, or narrative, of how her relationship commenced with the EU citizen and how it developed down to the time that her application was made. However, she chose not to put in any such narrative. She would also have been aware that evidence from family members, work colleagues and/or friends, that they regarded the applicant and the EU citizen as being in a durable relationship, was evidence that could be put before the decision maker. Again, the first applicant did not produce any such evidence.
- 62.** Insofar as the first applicant produced some social media posts and a quantity of photographs, showing her and the second applicant at various locations, the point made by Mr. Caffrey BL that these photographs were somewhat lacking in context, which could have been provided by means of an accompanying narrative, is a point that is well made.
- 63.** The decision maker can only work with the material that is produced to her by the applicant. The court is satisfied that in the present case, the decision maker did engage with the material that had been produced by the applicants. The Minister reached a decision thereon that was reasonable in all the circumstances. The court is satisfied that the decision maker did not focus exclusively, or to an impermissible degree, on the financial evidence that had been furnished by the applicants. Nor did she lay too much emphasis on the absence of evidence of any financial commitments between them, either in the form of joint liabilities, or jointly owned assets. Accordingly, the court refuses to set aside the decision on this ground of challenge.
- 64.** Turning to the second ground of challenge, which is to the effect that as the finding involved a credibility finding against the applicants, the applicants had a right to be interviewed prior to the decision maker reaching a final decision in the matter. The court does not regard this ground of challenge as being well-founded. This case is not similar to the circumstances that arose in the *ZK* case. In that case, there was a stark finding in which the credibility of the applicants was challenged. In the *ZK* case, a finding had been made in the impugned decision that the marriage which had been entered into by the applicants in that case, had been a marriage of convenience and not a genuine marriage as maintained by them. Accordingly, it was a clear credibility finding against the applicants in that case.
- 65.** In the present case, there has been no assertion that the applicants have engaged in any fraudulent behaviour. The decision maker has accepted the veracity of all the documents that were put before her. The essence of the decision in this case is that the first applicant has failed to produce sufficient documentary evidence to persuade the decision maker that she is in a durable relationship akin to marriage with the second applicant. That finding does not involve a finding on the credibility of either of the applicants.

- 66.** In advance of the review decision, the first applicant was given ample opportunity to put in any documentation that would support her contention that she was in a durable relationship with the second applicant. The questions that were asked in various categories of the forms EU 1A and EU 4, were designed to give her an opportunity to give the fullest amount of information possible.
- 67.** The first applicant chose to leave a number of these categories blank, or to provide only very scant information. At section 5.33 of the original form EU 1A, it requested that the applicant set out details of the emotional and physical support that she received from the EU citizen. Rather than complete this section and provide narrative details of their lives together, she simply stated "*Social media and pictures enclosed*". Similarly, at section 5.35, the first applicant was requested to give details of any compelling or compassionate circumstances which would make it difficult for her to live in her home country without the EU citizen. In response, the first applicant stated "*Both EU citizen and applicant have been continuously residing together in the UK and Ireland and it would be difficult for them to live apart especially after such a long period together and attachment*".
- 68.** After the initial decision, the first applicant was given an opportunity to provide any further information that she wished to have considered as part of her review application. By letter dated 4th December, 2019, she furnished bank statements for the period 26th April, 2019 to 23rd July, 2019 and a valid Indian passport. At paragraph 6.2 of the EU4 form there was a section which provided for any additional statements which the requester wished to have considered. Under that heading the first applicant stated: "*We reserve the right to provide further documentation including a current Indian passport*". In essence, very little new material was submitted with the application for review.
- 69.** In the course of argument, counsel for the applicant stated that the present case was similar to the circumstances that existed in the *Singh* case. The court does not regard that submission as well-founded. In the *Singh* case, the applicant provided documentation which showed that he had provided extensive medical assistance to the EU citizen over a number of years. That had been supported by a letter from a HSE nurse. In addition, there had been evidence that the applicants in that case were regarded by work colleagues and by members of their family as being in a committed relationship. There was also evidence of cohabitation between them for a substantial period. There was evidence of some level of financial commitments together. There were also a number of photographs and also text messages showing them engaged in the usual family events and having the usual communications, that would pass between people who are in a relationship akin to marriage. There was very little similar evidence in the present case.
- 70.** As already noted, the court is not satisfied that this case is on all fours with the *ZK* case. That case involved a stark credibility finding which was adverse to the applicants. It had very severe consequences for the applicants in that case. In the present case, there are no credibility findings against the applicants; rather, there is a finding that the first applicant had

failed to produce sufficient documentary evidence to establish that she was in a durable relationship akin to marriage, with the second applicant. In the course of argument at the bar, counsel for the respondent stated that it was open to the first applicant to remake her application, should she wish to do so.

- 71.** For the reasons stated herein, the court is not satisfied that the applicants have made out any grounds on which to set aside the decision of the respondent. Accordingly, the court refuses all the reliefs sought by the applicants in their statement of grounds and in the notice of motion.
- 72.** As this judgment is being delivered electronically, the parties will have two weeks within which to file brief written submissions on the terms of the final order and on costs and on any other matters that may arise.