THE HIGH COURT

[2022] IEHC 408

[2021/285/JR]

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

BETWEEN

A.

APPLICANT

AND

THE MINISTER FOR JUSTICE

RESPONDENT

DECISION of Ms. Justice Bolger delivered on the 4th day of July, 2022

Introduction

1. In these proceedings the applicant seeks an order of *certiorari* quashing the decision of the Minister dated 22 February 2021. The effect of the decision dated 22 February 2021 was a refusal to renew the applicant's Stamp 4 permission that had previously been granted by the Minister on a discretionary basis. The impugned decision noted a change in circumstances arising from an earlier decision of 5 September 2019, wherein the Minister found that the permission held by the applicant under EU Treaty Rights was invalid *ab initio* upon a finding that he had engaged in a marriage of convenience. An order of *certiorari* is not being sought, and cannot be sought, for the decision of 5 September 2019.

2. For the reasons set out below I refuse this application.

Background

3. The applicant is a citizen of Pakistan who arrived in the State on a student permission in December 2006. On 11 June 2009 he married a Latvian national, whom he says he met first in February 2007, and on the basis of that marriage he was granted a residence card pursuant to Directive 2004/38/EC ("the Directive") on 2 December 2009 for a period of five years. During that five-year period in July 2013 his wife was granted a divorce in Latvia. He informed the Minister of this on 12 September 2014, and sought retention of his residence card, which was refused by letter dated 7 April 2016 because the Minister said there was no evidence that the applicant's ex-wife had exercised her EU Treaty Rights in the State since 14 January 2010 and that his derived rights ceased to be valid from then. However the Minister did exercise her executive discretionary power to grant him a Stamp 4 permission for a period of 12 months.

4. By letter dated 26 April 2016, the applicant sought a review of the Minister's refusal to grant him retention of his residence card. The Minister confirmed her decision to uphold the refusal of his residence card by letter dated 8 May 2017. He was granted permission to remain in the State on a Stamp 4 basis pursuant to the Minister's executive

discretionary power for a further period of 12 months and was informed that this permission could be extended provided his circumstances did not change. This Stamp 4 permission was extended by the Minister on two further occasions.

5. On 5 June 2019, the Minister informed the applicant that it was proposed to revoke his EU residence card as his marriage to his ex-wife was now found to be one of convenience for the following reasons:

   i. The applicant and his ex-wife married on 11 June 2009 but there were no records from the Department of Employment Affairs and Social Protection showing any income for the applicant's ex-wife until 2009 which suggests that she entered employment in the State around the time of the marriage solely to facilitate his application for a residence card.

   ii. The short period of time between the marriage, the approval of the application for a residence card, and the applicant's ex-wife ceasing employment in 2010.

   iii. The applicant had never provided an explanation as to how the applicant's ex-wife supported herself in the State between the period in which she obtained her PPSN in March 2007 and her alleged entry into employment in June 2009.

   iv. The applicant had never addressed the fact that the applicant's ex-wife had left the State in 2009 and moved to the Netherlands where, according to her Facebook profile, she continues to reside. The Minister maintained that the applicant "sought to create the illusion" that his ex-wife had remained resident in the State exercising her rights until 2013.

6. The applicant was advised that if it was found that he entered into a marriage of convenience, the other permissions granted pursuant to the Minister's discretionary powers (i.e. his Stamp 4 right of residence) may also be re-examined. He was allowed 21 days to make representations to the Minister's concerns about his marriage.

7. The applicant submitted representations by letter dated 17 June 2019 through his solicitors in which he disputed the Minister's claim that his marriage was one of convenience and asserted that he had entered into a genuine marriage that had unfortunately later broken down. He submitted documents including Facebook correspondence and posts with his ex-wife, letters, prescriptions, bills, his ex-wife's employment contract and a tenancy agreement addressed to and signed by him and his ex-wife.

8. By letter dated 5 September 2019, the Minister informed the applicant that she had considered his representations and concluded that he failed to fully address the concerns. His residence card was revoked on the basis that it was found to have been obtained through a marriage of convenience. The letter went on to state:

   "In addition, the permission issued to you on 08/05/2017, pursuant to the Minister[`s] discretionary [power] will now be considered separately".

The applicant was also advised that if he felt that the decision maker had erred in law or fact that he could apply for a review. The applicant, who still had the Stamp 4 permission given to him in August 2019 (which he had been advised was to be considered separately) did not apply for a review or take any further steps at that time.

9. On 18 September 2019, the applicant's Stamp 4 permission was renewed for one further year. On 30 October 2020 he was informed that the decision of 5 September 2019, that he had entered into a marriage of convenience, represented a change in his circumstances and had this information been available to the Minister at the time of the Minister's exercise of her discretionary executive power, that it was unlikely he would have been granted that permission. The Minister confirmed her intention not to renew the applicant's permission and he was allowed 21 days within which to submit representations.

10. By letter dated 18 November 2020, the applicant submitted representations through his solicitors which can be summarised as follows:

    i. There was no change in circumstances because the Minister was aware of the material information at the time the permissions were granted on an exceptional basis.

    ii. The findings made on 5 September 2019 were *res judicata*.

11. By decision dated 22 February 2021 ('the impugned decision') the Minister refused the applicant further permission to remain in the State. As his marriage had since been found not to be genuine the Minister asserted that he did not have a legal right of residence in the State and therefore between September 2009 and December 2014 he was illegally present in the State. The Minister stated that had she been aware of this in April 2016, consideration would have been given to this factor, together with the fact that the applicant only held a precarious student permission and thereafter had been illegally present in the State for five years.

12. The impugned decision then states:

    "The permission granted to you in April 2016, was granted on consideration of the permission held by you which also includes the permission which was considered valid at that time on the basis of his marriage. When the information now before the Minister is considered, it is not justified to provide you with further permission on the basis of your conduct which the Minister is now aware of. You should not continue to enjoy the benefit of permission granted on the circumstances particular to his case at that time where it has now become apparent that the Minister was deceived by you in order to obtain an immigration advantage". [sic]

Legal issues

13. The applicant sets out the following legal questions/issues to be resolved in this case:

i. Was a full, proper and individual consideration given to the applicant's case, prior to a decision being made to revoke the permission previously granted to him?

ii. Was the Minister's finding that the marriage of convenience had been contracted, made in accordance with due process and fair procedures?

iii. Was the Minister correct to retrospectively void permissions that were granted to the applicant subsequent to the refusal to extend/renew his residence card, in circumstances where the Minister relied on purportedly new facts that were, in fact, matters already known to the Minister and, therefore, *res judicata*?

14. The Minister added a fourth legal issue:

iv. Should relief be refused on a discretionary basis?

The applicant's case

15. The applicant is the former spouse of an EU citizen and while he accepts that this marriage has ended and that he is therefore not entitled to a residence card, he does not accept the Minister's finding that his marriage was one of convenience.

16. The applicant submits that it is incumbent on the Minister to consider the submissions made by the applicant in a meaningful manner, and to do otherwise renders meaningless the principle of *audi alterem partem*. He submits that the consideration given to the representations he made fell short of the requisite thresholds as there was only a "perfunctory engagement" with his specific circumstances. He also claims that the Minister failed in her obligation to give reasons for the decision and to address the relevant statutory criteria.

17. The applicant suggests that the sequencing of events was unusual, where the Minister refused to grant a retention of the residence card which the applicant had previously obtained when he applied for it "on a personal basis," and informed the Minister of the fact that his marriage had ended. The Minister instead granted the applicant a "free-standing" Stamp 4 status based on his overall circumstances, including the fact that he had a work record and had been in the State for an extended period of time. This decision was issued in April of 2016. The applicant sought a review of the decision refusing to grant him a retention of his residence card in a personal capacity. The initial refusal was upheld in May 2017 but a further free-standing Stamp 4 granted.

18. The applicant submits that the reasons given for the refusal to grant the applicant a residence card in a "personal capacity" are noteworthy, in that they pertained to periods of absence from the State of his then wife. The applicant submits that similar concerns were relied on to make a finding that the marriage was one of convenience but that by then, those issues were *res judicata*. The Minister, the applicant submits, was aware of those issues at the time that a decision was made to grant a free-standing Stamp 4 to the applicant. The applicant submits that the revival of these considerations for the finding of

a marriage of convenience amounted to viewing these matters through a "different prism" two years on.

19. The applicant acknowledges that the Minister takes issue with him not having sought a review of the finding that the applicant's marriage was one of convenience within the requisite timeframe but submits that the finding of a marriage of convenience has been brought into extraneous matters, and has been positioned in a manner that invalidates all permissions that were granted to the applicant. The applicant attributes his failure to challenge the finding of a marriage of convenience to what he says was a "disjointed" approach taken by the Minister. When the initial finding of a marriage of convenience was made, the applicant submits that he was residing here lawfully on foot of a separate permission, and that it was only in February 2021 when matters "crystallised". The applicant submits that it was only then it became apparent to him that there was a finding of a marriage of convenience which, in effect, collapsed his entire immigration status in the State.

20. The applicant suggests that the Minister could be estopped from making a finding of a marriage of convenience in circumstances where it was not done promptly and was, in fact, determined after different permissions were granted at a time when the facts and circumstances of the marriage were known.

21. The applicant submits that as a matter of due process, it is increasingly difficult for a person to bring a meaningful challenge to a marriage of convenience finding, particularly the further in time from that marriage that such a decision was made. His marriage was contracted in June 2009 and dissolved in 2013 and it was well after that that the Minister first indicated any concern around it having been a marriage of convenience. The applicant submits that it is not clear what procedural safeguards were in place, or if any interview was carried out with the applicant's ex-wife, or if any effort was made to have her input into a decision which directly concerned her, as it imputes wrongdoing to her as well as to him. The applicant relies on the decision of Humphreys J. in *Abouheikad v The Minister for Justice and Equality* [2019] IEHC 124, where he recognised the difficulties in obtaining documentation and/or assistance form an estranged spouse, especially if the spouse in question has departed the jurisdiction. The applicant also relies on the decision of Barret J. in *S v The Minister for Justice and Equality* [2019] IEHC 584 as to whether or not a finding of fact with regard to a marriage of convenience had been made, where the review of the decision was withdrawn and Barret J. found that the applicant was entitled to withdraw it. The applicant submits that the facts here are similar in that there was no application on the basis of a subsisting marriage.

22. The applicant submits that different issues arise where the marriage of convenience finding invalidates the residence card previously granted to the applicant on the basis of the marriage. Here the applicant's permissions were not granted on the basis of a marriage and did not derive from the Directive as they were free standing Stamp 4 immigration permissions granted to the applicant on the basis of the Minister's discretion. The applicant notes that despite the fact that he had been residing in the State for a

period of approximately 13 years, his entire permission has been removed and has been invalidated as if it were never granted in the first place. This, the applicant submits, is not a lawful approach for the Minister to take, and does not comply with the established and accepted standards of fair procedures and due process.

23. The applicant submits that the Minister seeks to rely on Regulation 28 of the Regulations and Article 35 of the Directive, which relates to situations where rights were acquired by means of fraud. The Minister asserted that the applicant's marriage was one of convenience, and falls into this category. The revocation of his residence card amounts in fact to it being rescinded on the basis that he never properly enjoyed any rights arising therefrom. The applicant submits however that he himself appraised the Minister of developments in his marriage and, in particular, the fact that his wife had departed the State. It was apparently this, according to the applicant, that led to the Minister implementing a process to revoke the applicant's residence card. The Minister then, at a point in time when the factual circumstances of the applicant's wife's departure from the State were fully known, granted the applicant permission to remain on an alternative basis. The applicant submits that over two years later, the Minister sought to revive the issues relating to the applicant's marriage, and thus retrospectively imported issues into an unrelated permission which the Minister had granted to the applicant.

24. Additionally, the applicant takes issue with the manner in which the marriage of convenience finding was arrived at. In this regard, the applicant cites Barrett J. in *Saneechur & Anor v The Minister for Justice and Equality* [2021] IEHC 356. There, the court held that in cases where the Minister makes findings of fraud, this must be based on a rigorous assessment and investigation having been carried out.

Respondent's case

25. The Minister sets out in submissions eleven principles, which she submits apply to the court's considerations of the within proceedings, citing Humphreys J. at para. 15 of *MH (Pakistan) v The International Protection Appeals Tribunal & Ors* [2020] IEHC 364:

    i. There is a presumption of validity for administrative decisions as per Finlay P. in *In re Comhaltas Ceoltóirí Éireann* (Unreported, High Court, 5 December 1977) and per Keane J. in *Campus Oil v Minister for Industry and Energy (No.2)* [1983] IR 88 at 102.

    ii. There is a presumption that material has been considered if the decision says so as per Hardiman J. in *GK v Minister for Justice, Equality and Law Reform* [2002] 2 I.R. 418, [2002] 1 I.L.R.M. 401.

    iii. The State has a wide discretion in immigration matters as per Keane C.J. in *In re Illegal Immigrants (Trafficking) Bill 1999* [2000] IESC 19, [2000] 2 I.R. 360 (paras. 82-83), citing Costello J. in *Pok Sun Shum v Ireland* [2986] I.L.R.M. 593 at 599.

iv. The common good includes the control of non-nationals, and the normal system of application to enter the State is from outside as per Hardiman J. in *F.P. v Minister for Justice* [2002] 1 I.R. 164 at p. 174.

v. Judicial review is not an appeal on the merits and it is not for the court to step into the shoes of the decision maker as per Finlay C.J. in *the State (Keegan) v Stardust Compensation Tribunal* [1986] I.R. 642 at 654; as per Denham J. in *Meadows v Minister for Justice, Equality and Law Reform* [2010] IESC 3, [2010] 2 I.R. 701 at 743; as per Clarke J. (McKechnie and Dunne JJ. concurring) in *Sweeney v. Fahy* [2014] IESC 50 (Unreported, Supreme Court, 31 July 2014), at paras. 3.8 to 3.15.

vi. The weight to be given to the evidence is quintessentially a matter for the decision-maker as per Birmingham J. in *M.E. v Refugee Appeals Tribunal* [2008] IEHC 192 (Unreported, High Court, 27 June 2008) at para. 27.

vii. The onus of proof remains on the applicant at all times as per Denham J in *Meadows v Minister for Justice, Equality and Law Reform* [2010] IESC 3, [2010] 2 I.R. 701 at 743.

viii. It is not for the applicant to dictate the procedures to be adopted as per Ryan P. in *A.B. v The Minister for Justice and Equality* [2016] IECA 48 (Unreported, Court of Appeal, 26 February 2016) at para. 43.

ix. An applicant does not have a legal entitlement to a discursive narrative decision addressing all submissions as per Clarke J. (Fennelly and MacMenamin JJ. concurring) in *Rawson v Minister for Defence* [2012] IESC 26 (Unreported, Supreme Court, 1 May 2012) at para. 6.9.

x. A judicial review applicant is confined to what is pleaded - while the view of Costello P. regarding the circumstances of amendment of pleadings evolved significantly since *McCormack v Garda Síochána Complaints Board* [1997] 2 I.R. 489 at 503, his view that the scope of judicial review is limited by the order granting leave remains fundamental.

xi. A judicial review applicant must plead with specificity - O. 84, r. 20(3) that an "assertion in general terms" is inadequate, but the applicant must "state precisely each such ground, giving particulars where appropriate".

26. Insofar as the applicant specifically complains that the Minister failed to provide reasons, the Minister submits that this is not a complaint contained within the statement of grounds, and is outside the scope of these proceedings. Without prejudice to this, the Minister submits that the decision is very detailed and reasoned, provided a proper and individual assessment of the applicant's case and should have left him in no doubt as to why the Minister refused to renew his permission.

27. The Minister contends that the finding that a marriage of convenience had been contracted was made in accordance with due process and fair procedures. The Minister

determined that the applicant had engaged in a marriage of convenience by a previous decision and revoked his permissions granted under EU Treaty Rights dated 5 September 2019. That is the not the decision being challenged. The decision of 5 September 2019 was never contested by the applicant by either seeking a review of same or by instituting judicial review proceedings and the applicant is now statute barred from challenging it.

28. Without prejudice to this, the Ministers submit that it is clear that in reaching that decision, the applicant was provided with fair procedures including the opportunity to make representations which the applicant did by letter dated 17 June 2019. The Minister submits that it can be seen in the decision of 5 September 2019 that she carried out a comprehensive assessment of the applicant's circumstances before determining that his permissions granted under derived EU Treaty rights, procured under a false marriage, should be revoked. In her decision she afforded the applicant to right to request a review under the Regulations but the applicant chose not to do so despite the fact that he had legal representation and had already submitted two previous review applications in seeking permissions under EU Treaty rights.

29. The Minister therefore contends that the decision of 5 September 2019 is outside the remit of these proceedings and that the applicant's complaints are in fact a collateral attack on same. Without prejudice to this, and even if the applicant were entitled to make these complaints, the Minister submits that the applicant was provided with ample opportunity to address her concerns regarding the issue of his marriage of convenience. Moreover, having been expressly advised of his right of review, available in circumstances where he felt that the deciding officer made an error of law or fact, he elected not to seek the same. Accordingly, the Minister submits, the question of whether or not the applicant entered into a marriage of convenience is settled.

30. Regarding the question of *res judicata*, the Minister reiterates that the decision of 5 September 2019 is not challenged in these proceedings, nor could it be. Nonetheless, the Minister submits that it is clear that the applicant was refused retention of his permission (obtained under EU Treaty Rights) in 2017 because the Minister had decided that the applicant's ex-wife was not exercising her EU Treaty rights in the State at the relevant time. The Minister had not at that stage made any determination regarding the applicant's marriage to his ex-wife. The Minister submits that she could not be disentitled to later find that the applicant had engaged in a marriage of convenience.

31. The Minister submits that the invocation of the doctrine of *res judicata* is misplaced as it applies within the context of legal proceedings and applies, broadly, where a court or tribunal has finally determined a matter in dispute but has no application to the Minister's performance of her executive functions in the context of immigration and her obligation thereunder to uphold the integrity of the immigration system. The Minister submits that even if this doctrine did apply, the finding of a marriage of convenience was never re-opened. Rather, the fact of same was relied upon by the Minister in the subsequent impugned decision. The Minister submits that this is not a breach of the doctrine, if it applies.

32. The Minister distinguishes the decision of Barrett J. *in S. v The Minister for Justice and Equality* [2019] IEHC 584 as it involved the formal withdrawal of an application for EU Treaty rights in circumstances where the applicant had stated to the Minister that his relationship had broken down and that he was separated. The High Court determined that it was unlawful for the Minister to proceed to consider the application (which resulted in a finding that there had been a marriage of convenience) despite its formal withdrawal.

33. Finally the Minister submits that all discretionary relief available by way of judicial review should be refused because the applicant has flagrantly breached the immigration laws of this State for a considerable period of time. The Minister cites the decision of Humphreys J. in *Akhtar v Minister for Justice and Equality* [2018] IEHC 781 at para. 10:

> "Even if I am wrong in relation to all the above, I would uphold the plea at para. 16 of the statement of opposition that 'given that the applicant has pursued his various immigration claims in a fraudulent manner and by the fraudulent presentation of facts and supporting documentation the court should refuse relief on discretionary grounds also'. It is well- established that discretion is not confined to matters occurring during the proceedings itself. Indeed, in *G. v. D.P.P.* [1994] I.R. 374 refusal of leave on discretionary grounds was acknowledged as a feature of the process, which by definition cannot relate to matters that arose during the proceedings themselves. The examination of file sets out details of the applicant's frauds, including providing documents from an alleged employer that never operated from the stated address, an inability to provide the address at which the applicant himself resided and inability to give the business address of his alleged employers".

Decision

34. The decision the applicant challenges in these proceedings is that of 22 February 2021 and not that of the 5 September 2019. The applicant accepts that he is out of time to challenge the earlier decision but also seeks to justify his failure to challenge the earlier decision by the fact that he had the residence permission given to him in August 2019 and pleads that the decision was not made in accordance with due process and fair procedure.

35. The Minister's decision of September 2019 was a significant one and not simply a procedural step in relation to the applicant's residential rights. The decision condemned what the applicant says was a true and genuine marriage and expressly advised him that the residence permission granted to him on 8 May 2017 may be considered separately. The applicant now maintains that decision was incorrect but nevertheless he chose not to avail of the offer of a review of it until he says matters "crystallised" in February 2021, when he finally seems to have become concerned about the consequences that a finding that he had engaged in a marriage of convenience had for his residence rights.

36. It is not open to the applicant to now seek to challenge, by way of collateral attack or otherwise, the September 2019 decision that he had obtained a residence card through a marriage of convenience, whether the substantive decision or the basis on which it was

reached, in circumstances where the applicant chose not to avail of the review offered to him and where he is well out of time to challenge the decision by way of judicial review. Therefore, the decision stands and I approach the applicant's challenge to the decision of 22 February 2021 to revoke his stamp for permission on the basis of a valid and subsisting finding that the applicant wrongly obtained his earlier residence card by entering into a marriage of convenience.

37. For the avoidance of doubt and in the event that I am incorrect in my approach, I consider the reasoning applied by the Minister to her decision of September 2019 to have been fair, lawful and based on available evidence including evidence to which the applicant declined to respond in spite of being given the opportunity to do so.

38. The Minister advised the applicant on 30 October 2020 that she intended not to renew his permission because he had been found to have entered into a marriage of convenience. The Minister was entitled to rely on her finding of September 2019 vis-a-vis the applicant's involvement in a marriage of convenience and his attempts to wrongly and unlawfully seek to reside in the State on that basis. The doctrine of *res judicata* does not apply to that administrative decision. The Minister had, in good faith, exercised her executive discretionary power to allow the applicant to reside in the State after the breakdown of what the Minister believed and was led by the applicant to believe was a valid marriage. The Minister subsequently became aware of the applicant having misled the State into treating him as someone who had acquired legal rights by his marriage. The Minister could not be precluded from taking the applicant's fraudulent conduct into account in the exercise of her discretionary executive power simply because the Minister only appreciated the fraudulent nature of his conduct some time after he had been given a right of residence on the basis of that fraudulent conduct.

39. If I am incorrect in my finding that the doctrine of *res judicata* does not apply to this type of administrative decision, then I find that the doctrine was not breached by the Minister relying on the fact of the applicant having entered into a marriage of convenience. The finding was not being reopened by the Minister relying on it and on the applicant's deception of the Minister in her subsequent decision of February 2021.

40. Marriage is an institution that is afforded the highest of legal, constitutional and societal recognition in the State, including advantages and entitlements in the immigration process. McKechnie J. in *MKFS (Pakistan) v Minister for Justice and Equality* [2022] IESC 48 determined (at para. 66) that "the whole point of having a marriage of convenience provision under Regulation 28 is to prevent one obtaining an advantage or entitlement, in the general immigration process, by reason of that fact". The fact that this applicant sought to abuse the immigration advantages afforded to a party to a *bona fide* marriage and in doing so engaged in fraudulent and deceptive activity, is a matter the Minister was entitled to take account of regardless of the passage of time since the marriage and the absence of any change in circumstances, other than the Minister having become aware of the fact that the applicant's marriage was a marriage of convenience.

41. Insofar as the Minister is required to give reasons for her decision, she did so adequately in identifying the applicant's conduct in entering into a marriage of convenience which was fraudulent conduct designed to secure rights of residence.

42. I therefore refuse the applicant's application for an order of *certiorari* quashing the decision of the Minister dated 22 February 2021.

43. If I am incorrect in my findings in refusing *certiorari* of the Minister's decision of February 2021, I wish to make it clear that I would not consider this case to be one in which to exercise my discretion to refuse relief sought by way of judicial review due to the applicant's conduct. The applicant disputes that his marriage was a marriage of convenience and contends he did not seek a review or a challenge to the September 2019 decision because he already had a subsisting right of residence. Whilst I question the wisdom of his apparent willingness not to seek to establish the veracity of what he says was a true marriage, I do not consider his conduct falls into the extreme category of "serious and significant in the context of the system as a whole" as identified by McKechnie J. in para. 109 of *MKSS*. The test for abusive conduct may be principally objective but there must also be room for some subjective consideration and whilst even subjectively the applicant's conduct suggests a casual approach to the status of his marriage and thereby to the institution of marriage, his explanation for why he did not seek a review is not such as to merit the exercise of the court's discretion to refuse relief - particularly as it is a discretion which must be exercised sparingly.

Indicative view on costs

44. As the applicant has not succeeded in his application, my indicative view on costs is that, in accordance with s.169 of the Legal Services Regulatory Act, the Minister is entitled to her costs against the applicant.

45. I will list the matter for mention before me at 10 a.m. on 20 July to allow the parties to make such further submissions on costs as they wish to make and to hear whatever submissions the parties wish to make on the final orders to be made. I am not requiring written submissions but if the parties do wish to make them they should be lodged with the court at least 24 hours before the matter is back before me.