



# THE SUPREME COURT

S:AP:IE:2019:000154

BETWEEN

MUHAMMAD UZAIR PERVAIZ

**Applicant/Respondent**

-and-

THE MINISTER FOR JUSTICE AND EQUALITY, IRELAND

AND THE ATTORNEY GENERAL

**Respondents/Appellants**

## **RULING of the Court on the Costs Application**

1. This was a leapfrog appeal from the order of Barrett J. granting *certiorari* of a decision of the Minister refusing the application of Mr. Pervaiz to be treated as a permitted family member of a Union citizen pursuant to the Regulations implementing the Citizens Directive.
2. Two matters were at issue before the court, and the Minister lost the appeal in relation to one of those arguments regarding the standing of Mr. Pervaiz to commence the proceedings without the joinder of his EU citizen partner as a party thereto. The standing question required a case management direction before a panel of this Court, and the EU citizen partner of Mr. Pervaiz was joined as a notice party for the purposes of the argument, the Court not at that point being in a position to decide the issue.

3. The other matter at issue in the appeal was the manner by which the Minister is to approach an application by a third country national to be treated as a permitted family member of a European Union citizen by reason of being in a durable relationship with that person. Mr. Pervaiz's counsel argued that the Regulations of 2015 did not properly transpose the Citizens Directive.

4. The practical consequence of the decision of this Court was to set aside the order of the High Court quashing the decision of the Minister on the grounds that the High Court had been correct regarding the transposition argument, and that the test applied by the Minister was neither vague nor uncertain, nor had the Minister fettered his discretion.

5. The Minister argues that the "event" was the reversing of the decision of the High Court and that it should be awarded the costs in those circumstances.

6. The respondent argues that the judgment of this Court has clarified the law and that he should be awarded the costs, as the proceedings meet the test for a "test case". It appears that three other judicial reviews were at the relevant time awaiting hearing in the High Court immigration judicial review list that might have been impacted by the decision.

### **Decision**

7. It could be said a great many, if not all, appeals before this Court clarify the law and concern matters of general public importance. These factors cannot of themselves justify the award of costs to Mr Pervaiz nor the refusal of the Minister's application.

8. However, it does seem to the Court that the respondent did succeed in the standing argument, and that regard should be had to the fact that the Court considered the application form to be completed by applicants under the scheme provided by the Irish regulations lacked clarity.

**9.** In the circumstances, it seems just that while the result of the appeal was that the order of the High Court was set aside, the Minister should be awarded 50% only of his costs, subject also to the proviso that the respondent be entitled to the costs of the case management direction hearing in regard to the standing question and any costs incurred by the unnecessary joinder of the EU citizen as a notice party.

**10.** The award of costs thus calibrated should apply to the costs of this appeal, and the costs of the High Court so that the Minister is to be awarded 50% of the costs of the High Court, 50% of the costs of this Court, and subject to a reduction to reflect the proviso set out above.