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## Judgment

**Title:** Rehman v The Minister for Justice and Equality

**Neutral Citation:** [2018] IEHC 779

**High Court Record Number :** 2017 No. 553 JR

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**Court:** High Court

**Judgment by:** Keane J.

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[2018] IEHC 779

## THE HIGH COURT JUDICIAL REVIEW

[2017 No. 553 JR]

BETWEEN

MOHAMMAD FAISAL UR REHMAN

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

**JUDGMENT of Mr Justice David Keane delivered on the 21st December 2018**

### Introduction

1. This is the judicial review of a decision by the Minister for Justice and Equality ('the Minister'), dated 14 April 2017 ('the decision'), under Regulation 25 of the European Communities (Free Movement of Persons) Regulations 2015 ('the 2015 Regulations'), to uphold on review a first instance decision of 12 March 2016 to refuse the application of Mohammad Faisal Ur Rehman, a national of Pakistan, for a residence card as a permitted family member of his brother Naveed Ur Rahman, a British - and, hence, European Union - citizen, exercising free movement rights in the State.

2. The 2015 Regulations were made, in exercise of the powers conferred on the Minister by s. 3 of the European Communities Act 1972, to give effect to Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the rights of the citizens of the Union and their family members to move and reside freely within the territory of

the Member States ('the Citizens' Rights Directive'). They came into operation on 1 February 2016.

3. In substance, the reason the Minister gave for the decision is that Mr Rehman failed to establish that he is a 'permitted family member' of Mr Rahman, within the meaning of that term under Regulations 2(1) and 3(6) of the 2015 Regulations (transposing the requirements of Article 3(2) of the Citizens' Rights Directive concerning 'other family members'), because he failed to establish that in the United Kingdom (as the country from which he had come), he was either: (a) a dependant of Mr Rahman, as a Union citizen; or (b) a member of the household of Mr Rahman, as a Union citizen.

### **Procedural history and grounds of challenge**

4. The application is based on a statement of grounds dated 6 July 2017, supported by an affidavit of Mr Rehman sworn on the previous day.

5. By order made on 10 July 2017, O'Regan J granted Mr Rehman leave to seek the reliefs identified, on the grounds specified, in his statement of grounds. Principal among those reliefs is an order quashing the Minister's decision.

6. Mr Rehman impugns that decision on the following four grounds. First, the Minister erred in law in construing the term 'household of the Union citizen' under the 2015 Regulations. Second, the Minister failed to provide adequate reasons for the decision.

Third, the decision was unreasonable or irrational because of the manner in which the Minister addressed the evidence constituted by certain utility bills furnished by Mr Rehman in support of his application. Fourth, the Minister's decision was reached in breach of Mr Rehman's entitlement to fair procedures and, in particular, the principle *audi alteram partem* in that the Minister's view on the significance of the utility bills provided was not put to Mr Rehman for comment beforehand.

7. The Minister delivered a statement of opposition dated 6 October 2017. It is supported by an affidavit, sworn on 3 November 2017 by Stacy Morris, a higher executive officer of the EU Treaty Rights Review Unit in the Department of Justice and Equality.

### **Background**

8. Mr Rehman has provided the following account of his immigration history.

9. He was born in Pakistan on 4 October 1972 and is a Pakistani citizen. His brother, Naveed Ur Rahman was born in Pakistan on 2 December 1974 and is a naturalised British citizen, having first entered the United Kingdom in 1999. Mr Rehman acknowledges that he first entered the UK from Pakistan in 1998 and claimed asylum there, before returning to Pakistan approximately three years later. Mr Rehman returned to the UK in 2008 and reactivated his asylum application in 2009. That application was ultimately refused at the conclusion of the appellate process in 2015. While present in the UK during that period, Mr Rehman was never legally entitled to work.

10. Mr Rehman asserts that, while in the UK between 2008 and 2015, he never held a bank account and was supported by his brother Mr Rahman, who provided him with bed and board in his family home, travel expenses and pocket money. As part of his application for a residence card, Mr Rehman indicated that the UK property concerned was owned by Mr Rahman and his wife and that proof of ownership would be forthcoming as soon as it was to hand, although that did not occur. Among the documents submitted in support of Mr Rehman's application was an unsworn statement of Mr Rahman (described as a declaration), asserting that the property was held in his

wife's sole name, although he had purchased it jointly with her.

11. On or about 1 May 2015, Mr Rahman entered the State in the exercise of his free movement rights under EU law accompanied by Mr Rehman who entered the State unlawfully without a visa. The brothers now reside together as joint tenants in rented accommodation. Mr Rahman's wife and three children remain resident in the UK. Mr Rahman immediately took up employment in the State and is now self-employed as the owner/operator of a fast food outlet under a franchise agreement. Mr Rehman asserts that Mr Rahman pays for their rent, food and utilities, as well as providing him with €70 per week as pocket money. Mr Rehman has opened a bank account in Ireland.

12. On 29 June 2015, Mr Rehman applied for a residence card as a 'permitted family member' of Mr Rahman under Regulation 7 of the European Communities (Free Movement of Persons Regulations) 2006 and 2008 ('the 2006 Regulations'), then in force. By letter dated the 14th October 2015, the Irish Naturalisation and Immigration Service ('the INIS') acknowledged receipt of that application on behalf of the Minister and requested certain additional documentation including, under the heading 'Evidence of relationship with the EU citizen', the following:

*'For other family members*

- Evidence of dependence on the EU citizen, including dependence prior to residing in the State OR evidence of membership of the EU citizen's household prior to residing in the State....'

13. In addition, under the quite separate heading 'Evidence of residence of applicant and EU citizen in the State', the INIS directed:

*'If renting, copies of the following documents should be provided:*

- Letter of Registration of Tenancy from the Private Residential Tenancies Board

- Utility bills for applicant and EU citizen'

14. On 9 March 2016, the Minister refused Mr Rehman's application for a residence card on the ground that she was not satisfied that he was a permitted family member of an EU citizen, in material part because he had failed to submit satisfactory evidence of dependence on Mr Rahman, including dependence [upon him] prior to residing in the State. Although the 2015 Regulations had come into operation on 1 February 2016, Mr Rehman's application was assessed in accordance with the transitional provisions of reg. 31(3) of those regulations which state in relevant part:

*'where, before the date on which these Regulations come into operation, a person produced evidence in accordance with Regulation 5(1) of the Regulations of 2006 and, by that date, the Minister has not established under that Regulation whether the person concerned is a permitted family member -*

*(a) that Regulations shall continue to apply for the purpose of establishing whether the person is a permitted family member under the Regulations of 2006....'*

15. By letter dated the 4 April 2016, an entity styling itself 'IKIC Legal Services and Commissioner for Oaths' submitted an application for a review of the Minister's decision on Mr Rehman's behalf, on the stated grounds, amongst others, that he was both a dependant of Mr Rahman and a member of Mr Rahman's household in the United Kingdom, as the country from which he had come. The letter stated, in material part:

*'Prior to residing in the State, both Applicant and EU citizen brother were residing in the United Kingdom at 33 Conway Street, Leeds, LS8 5JF [the*

Conway Street address']. The said property was purchased by Mr Naveed and his wife, Mrs Fozia Ur Rahman but maintained by EU citizen, Mr Naveed. We shall furnish proof of ownership as soon as same is to hand.

We are instructed that Applicant was never allowed to work in the United Kingdom and Mr Naveed was his sole sponsor in the United Kingdom who provided Applicant with free accommodation, food, travel and other utilities including pocket money in the shape of cash, since Applicant never hold (sic) a bank account in the United Kingdom to meet his travel expenses.'

16. The copy documents enclosed with that letter in support of that aspect of Mr Rehman's claim were:

(i) An 'Overseas Pakistanis, National Identity Card' issued to Mr Rehman by the Government of Pakistan, recording the Conway Street address as his present address and an address in Rawalpindi, Pakistan as his permanent one, together with a similar card issued to Mr Rahman in materially identical terms.

(ii) A document, described on its face variously as an affidavit and a statutory declaration, although it is more obviously the latter, made by Mr Rahman at the office of a firm of solicitors in Leeds, West Yorkshire, on 31 March 2015 ('the UK statutory declaration'), in which Mr Rahman declared, in material part: (i) that he had been residing with Mr Rehman at the Conway Street address; (ii) that he had been supporting Mr Rehman in the United Kingdom; and (iii) that Mr Rehman was his dependent.

(iii) Three invoices from a company named SS Medical Services (UK) Ltd addressed to one 'Naveed Urrehman' at the Conway Street address, dated 20 May 2012, 3 September 2012 and 9 January 2013 in the aggregate amount of £1,560 for services provided to 'our mutual client' Mr Rehman.

(iv) Six telephone bills, covering each of the six months between November 2014 and April 2015, addressed to a 'Mr NN Ur-Rehman' at the Conway Street address.

(v) A 'British Gas' 'annual electricity summary', dated 23 November 2015, addressed to 'Mr N Urrehman M Urrehman, [and] F Naheed' at the Conway Street address.

(vi) A 'Yorkshire Water' water and sewerage bill, dated 1 April 2015, and addressed to 'Mr Mohammed Faisal Ur Rehman' at the Conway Street address.

(vii) A letter from a general practitioner's medical surgery in Leeds, dated 25 November 2015, confirming that Mr Rehman and Mr Rahman, each of the Conway Street address, had been registered with that practice from 17 April 2008 and 5 March 2001, respectively, together with a medical report from 2008 and an appointment confirmation from 2015 directed to Mr Rehman at that address.

(viii) A letter from a member of Leeds City Council named Mohammed Rafique, dated 17 November 2015, stating that he has known Mr Rehman of the Conway Street address since 2008 when Mr Rehman arrived in Leeds, where he stayed with his brother Mr Rahman until he moved to

Ireland. Councillor Rafique went on to state: 'I believe Faisal has good business acumen and given the opportunity he would excel in any business or area of work.'

(ix) A document, described on its face as a declaration (although it is not a statutory declaration and appears to be merely a signed written statement), dated 1 April 2016, in which Mr Rehman states, in material part: that he arrived in the UK in 2008 as a visitor who was not allowed to work or engage in any kind of business there; that, while in the UK, he stayed with his brother Mr Rahman at the Conway Street address; and that Mr Rahman provided for all of his needs, including cash for pocket money, as he did not have a bank account there.

(x) A document of the same kind of the same date, in which Mr Rahman makes broadly similar statements while adding: '[The Conway Street] property was bought by my wife, Fozia Ur Rahman, and I but is in the sole name of my wife.'

17. On 26 April 2016, the INIS wrote to Mr Rehman's 'immigration consultants' on the Minister's behalf, acknowledging his application for a review of the decision to refuse him a residence card. The Minister's letter pointed out that Mr Rehman would have to demonstrate that he was, in the country from which he had come, either (in material part) a dependent or member of the household of the Union citizen Mr Rahman, and that it was open to him to submit any additional supporting documentation he may wish to be considered for that purpose. The letter then continued by stating (in relevant part):

'Therefore, in order for this office to process your client's application further, please submit copies of the following documents by registered post to [the INIS]:

Evidence of relationship with the EU citizen, Naveed Ur-Rahman

- Evidence of Mr Faisal-Ur-Rehman's dependence on the EU citizen, including dependence prior to residing in the State
- Evidence of Mr Faisal-Ur-Rehman's membership of the EU citizen's household prior to residing in the State

...'

(emphasis in original)

18. In view of one of the arguments advanced on Mr Rehman's behalf, it is significant to note that it was separately and specifically in connection with his current residence in the State that the INIS suggested in that letter that, if he was renting accommodation, copies of 'utility bills or other official correspondence' in his name in respect of that property 'should be provided', in addition to a copy of the PRTB letter of registration of Mr Rehman's tenancy there.

19. On 26 August 2016, the 'immigration consultants' acting for Mr Rehman wrote to the INIS enclosing copies of a number of money transfer forms to evidence seven money transfers from Mr Rahman in the UK to Mr Rehman in Pakistan between 20 February 2007 and 4 March 2008 in the aggregate amount of £3,110. On 25 January 2017, a

firm of solicitors wrote to the INIS, enclosing various copy documents to evidence Mr Rehman's dependence upon, and membership of the household of, Mr Rahman in the State and Mr Rahman's economic activities in the State as a Union citizen.

20. On 14 April 2017, Ms Morris wrote to Mr Rehman on behalf of the Minister, notifying him that his application had not been successful on review, for reasons that included the following:

*'(i) a dependant of the EU Citizen*

In respect of your dependence on the EU Citizen there is no evidence supplied to suggest that the EU Citizen was providing you with any funds in order to support yourself in the State. There is no evidence of payments being made from the EU citizen to yourself. In fact, the documentation provided in respect of the application shows that in your previous residence in the UK you were contributing to the payment of bills for the address as the utility bills provided for Yorkshire Water and British Gas are addressed to yourself.

In this regard I am satisfied that you failed to supply evidence to show that you were a dependant of the EU Citizen prior to entering the State.

*(ii) a member of the household of the EU citizen*

Prior to entering the State you have supplied some documentation to show that you were residing at [the Conway Street address]. In support of this you have supplied a number of documents including medical reports, a letter from your GP regarding your registration, and utility bills in respect of Yorkshire Water along with a British Gas bill for yourself. In respect of the EU citizen you have submitted a number of Virgin Media bills dated between November 2014 and April 2015, the British Gas bill is in joint names and also the letter from the GP names the EU Citizen as a patient.

In support of your application, you have submitted a number of documents in respect of both yourself and the EU citizen however, the majority of the documentation provided is in respect of you the applicant. There is no tenancy agreement or mortgage statement in respect of the property. Whilst it is noted that there are a number of documents provided in respect of the residence of yourself and the EU citizen in the UK, there is no evidence to suggest that the household was that of the EU Citizen and that you were a member of that household.

Having examined the documentation supplied I am satisfied that you have failed to provide sufficient documentation to show that you were a member of the household of the EU citizen prior to entering the State.'

21. On the same date, Ms Morris wrote separately to Mr Rehman to inform him that the Minister proposed to make a deportation order against him, pursuant to the power to do so conferred on the Minister under s. 3 of the Immigration Act 1999, as amended.

### **The law**

22. Article 1 of the Citizens' Rights Directive lays down, amongst other things, the conditions governing the exercise of the right of free movement and residence within the territory of the Member States by Union citizens and their family members. Article 2

of the Citizens' Rights Directive defines both a 'Union citizen' and the 'family member' of a Union citizen for the purposes of the exercise of those rights. Under Article 2(2), a 'family member' is defined as: (a) the spouse; (b) registered partner (in certain defined circumstances); (c) direct descendant under the age of 21 or a dependant of the Union citizen, spouse or partner (so defined); and (d) dependent direct relative in the ascending line of the Union citizen, spouse or partner (so defined). As Article 3(1) of the Citizens' Rights Directive confirms, these are the persons who are the designated beneficiaries of the rights the exercise of which it conditions.

23. Article 3(2) states:

'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:

(a) any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen;

(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.'

24. Article 10 provides, in material part:

'1. The right of residence of family members of a Union citizen who are not nationals of a Member State shall be evidenced by the issuing of a document called "Residence card of a family member of a Union citizen" no later than six months from the date on which they submit the application. A certificate of application for the residence card shall be issued immediately.

2. For the residence card to be issued, Member States shall require presentation of the following documents:

...

(e) in cases falling under Article 3(2)(a), a document issued by the relevant authority in the country of origin or country from which they are arriving certifying that they are dependants or members of the household of the Union citizen...;

...'

25. As has frequently been noted, Recital 6 in the preamble to the Citizens' Rights Directive states:

'In order to maintain the unity of the family in a broader sense and without prejudice to the prohibition of discrimination on grounds of nationality, the situation of those persons who are not included in the

definition of family members under the Directive, and who therefore do not enjoy an automatic right of entry and residence in the host Member State, should be examined by the host Member State on the basis of its own national legislation, in order to decide whether entry and residence could be granted to such persons, taking into consideration their relationship with the Union citizen or any other circumstances, such as their financial or physical dependence on the Union citizen.'

26. The Citizens Rights Directive is now transposed in Ireland by the 2015 Regulations.

27. Under the heading 'Interpretation', Regulation 2(1) of the 2015 Regulations provides that:

"family member" means a qualifying family member or a permitted family member;

...

"permitted family member" means, in relation to a particular Union citizen, a person who is, under Regulation 3(6), a permitted family member of the Union citizen;

"qualifying family member" means, in relation to a particular Union citizen, a person who is, under Regulation 3(5), a qualifying member of the Union citizen

....'

28. Regulation 3 states, in material part:

'(1) This paragraph applies to—

(a) Union citizens entering or remaining in the State in accordance with these Regulations, and

(b) a family member of a Union citizen referred to in subparagraph (a) who—

(i) enters the State in the company of the Union citizen,

(ii) enters the State for the purpose of joining the Union citizen, or

(iii) becomes a family member while in the State and seeks to remain with the Union citizen in the State.

...

(5) For the purpose of these Regulations, a person is a qualifying family member of a particular Union citizen where—

(a) subparagraphs (a) and (b) of paragraph (1) apply, respectively, to the Union citizen and the person, and



(b) the person is—

(i) the Union citizen's spouse or civil partner,

(ii) a direct descendant of the Union citizen, or of the Union citizen's spouse or civil partner, and is—

(I) under the age of 21, or

(II) a dependent of the Union citizen, or of his or her spouse or civil partner, or

(iii) a dependent direct relative in the ascending line of the Union citizen, or of his or her spouse or civil partner.

(6) For the purposes of these Regulations, a person is a permitted family member of a particular Union citizen where—

(a) subparagraphs (a) and (b) of paragraph (1) apply, respectively, to the Union citizen and the person, and

(b) the Minister has, in accordance with Regulation 5, decided that the person should be treated as a permitted family member of the Union citizen for the purposes of these Regulations, which decision has not been revoked pursuant to Regulation 27.'

29. Regulation 5 states, in pertinent part:

(1) This paragraph applies to a person who—

(a) irrespective of his or her nationality, is a member of the family (other than a qualifying family member) of a Union citizen to whom paragraph (2) applies and who in the country from which the person has come—

(i) is a dependant of the Union citizen, [or]

(ii) is a member of the household of the Union citizen....

(2) Where a Union citizen has entered or is residing in the State in accordance with these Regulations or is proposing to do so, a person to whom paragraph (1) applies may apply to the Minister for a decision that he or she be treated as a permitted family member for the purposes of these Regulations and shall, for the purposes of such an application, produce to the Minister—

(a) (i) where the applicant is a national of a Member State, a valid passport or national identity card, or

(ii) 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) one of the following:

(i) documentary evidence from the relevant authority in the country of origin or country from which he or she has come, that he or she is a dependant, or a member of the household, of the Union citizen;

....

(3) Upon receipt of the evidence referred to in paragraph (2), and on being satisfied that the applicant is a person to whom paragraph (1) applies, the Minister shall cause to be carried out an extensive examination of the personal circumstances of the applicant in order to decide whether the applicant should be treated for the purposes of these Regulations as a permitted family member of the Union citizen concerned.

(4) For the purposes of his or her decision under paragraph (3), the Minister may require the applicant to produce such additional evidence as the Minister may reasonably require.

(5) The Minister, in deciding under paragraph (3) whether an applicant should be treated as a permitted family member for the purposes of these Regulations, shall have regard to the following:

(a) where the applicant is a dependant of the Union citizen concerned, the extent and nature of the dependency and, in the case of financial dependency, the extent and duration of the financial support provided by the Union citizen to the applicant prior to the applicant's coming to the State, having regard, amongst other relevant matters, to living costs in the country from which the applicant has come, whether the financial dependency can be satisfied by remittances to the applicant in the country from which the applicant has come and other financial resources available to him or her;

(b) 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;

...

(e) whether the relationship described in subparagraph (a), (b), (c) or (d), as the case may be, was brought about with the objective of obtaining permission to remain in the State or a Member State;

(f) the capacity of the Union citizen concerned to continue to support the applicant in the State in the event that the applicant is to be treated as a permitted family member under these

Regulations.

(6) The Minister, following an examination under paragraph (3), shall—

(a) where he or she decides that an applicant should be treated as a permitted family member for the purposes of these Regulations, notify the applicant in writing of the decision, or

(b) where he or she decides that an applicant should not be treated as a permitted family member for the purposes of these Regulations, notify the applicant in writing of the decision and of the reasons for it.

....'  
30. Regulation 7 provides:

7. (1) A family member who is not a national of a Member State-

(a) may, within 3 months of the relevant date, apply to the Minister for a residence card, and

(b) shall, where an application under paragraph (a) has not been made within the period specified in that paragraph, before the expiry of 4 months after the relevant date, apply to the Minister for a residence card.

(2) In paragraph (1), the "relevant date" means-

(a) in the case of a qualifying family member, the date on which he or she-

(i) entered the State as a qualifying family member, or

(ii) having already been in the State, became a qualifying family member,

and

(b) in the case of a permitted family member—

(i) the date on which he or she first entered the State as a permitted family member, or

(ii) where he or she was present in the State on the date on which the Minister decided that he or she should be treated as a permitted family member, that date.

(3) An application under paragraph (1) shall contain the particulars specified in Schedule 2 and shall be accompanied by such additional information requirements provided for in that Schedule as are applicable.

(4) The Minister shall cause to be issued a notice acknowledging receipt of

an application under paragraph (1).

(5) The Minister shall, within 6 months of the date of receiving an application under paragraph (1)—

(a) where he or she is satisfied that it is appropriate to do so, issue a residence card containing the particulars set out in Schedule 3 to the family member concerned, or

(b) notify the family member concerned that his or her application has been refused, which notification—

(i) shall be accompanied by a statement of the grounds for the refusal, and

(ii) may be accompanied by a notification under Regulation 21(1) or 23(3), or both.

(6) An applicant under paragraph (1) may remain in the State pending a decision on the application.'

31. Regulation 25 states:

(1) A person who has, or who claims to have, an entitlement under these Regulations to enter or reside in the State may seek a review of any decision concerning such entitlement or claimed entitlement.

(2) An application for review under this Regulation shall be submitted to the Minister within 15 working days of the receipt by the person concerned of the decision and shall set out in writing the grounds for review and the particulars specified in Schedule 4.

(3) The Minister may, where he or she is satisfied that it is warranted in the particular circumstances, extend the period referred to in paragraph (2) within which a review must be submitted.

(4) A review under this Regulation of a decision under paragraph (1) shall be carried out by an officer of the Minister and who—

(a) shall be a person other than the person who made the decision, and

(b) shall be of a grade senior to the grade of the person who made the decision.

(5) The officer carrying out the review shall have regard to the information contained in the application and may make or cause to be made such enquiries as he or she considers appropriate and may—

(a) confirm the decision the subject of the review on the same or other grounds having regard to the information contained in the application for the review, or

(b) set aside the decision and substitute his or her determination for the decision.

(6) A person who makes an application under paragraph (1) for the review of a removal order may, at the same, make an application for the suspension of the enforcement of the order.'

(7) Where a person makes an application under paragraph (6), the removal of him or her from the State shall, unless the officer carrying out the review is of the view that the removal decision is based on imperative grounds of public security, be suspended until such time as that officer makes his or her decision under paragraph (5).

### **Analysis**

i. *an unduly narrow construction of the term 'member of the household of the Union citizen' ?*

32. Mr Rehman argues that the Minister applied an improperly or artificially narrow conception of the term '*member of the household of the Union citizen*' for the purpose of Article 3(2) of the Citizens' Rights Directive and, by extension, Regulation 5(1)(a) of the 2015 Regulations.

33. As a term of European Union law, that term must be interpreted according to the following principles summarised by the European Court of Justice ('ECJ') in Case 283/81 CILFIT [\[1982\] ECR 3415](#)

'18. To begin with, it must be borne in mind that Community legislation is drafted in several languages and that the different language versions are all equally authentic. An interpretation of a provision of Community law thus involves a comparison of the different language versions.

19. It must also be borne in mind, even where the different language versions are entirely in accord with one another, that Community law uses terminology which is peculiar to it. Furthermore, it must be emphasized that legal concepts do not necessarily have the same meaning in Community law and in the law of the various Member States.

20. Finally, every provision of Community law must be placed in its context and interpreted in the light of the provisions of Community law as a whole, regard being had to the objectives thereof and to its state of evolution at the date on which the provision in question is to be applied.'

34. In *KG (Sri Lanka) and AK (Sri Lanka) v Secretary of State for the Home Department* [\[2008\] EWCA Civ 13](#), a decision of the Court of Appeal for England and Wales, the second of the two appellants, AK, was a national of Sri Lanka, born in 1981, who lived in the family home in Sri Lanka until 1991 with his parents, a brother, three sisters, his mother's sister, the latter's husband and their four daughters and two sons; a household of 15 persons. In 1991, the family was dispersed by the civil strife then endemic in that country. AK arrived in the United Kingdom in 2000, where his refugee status claim was refused. His appeal against that refusal was rejected in 2001, after which he remained in the UK unlawfully. He claimed residence rights as a family member of a daughter of his mother's sister - hence, his cousin - who had left Sri Lanka in 1992 and successfully claimed asylum in France, becoming a French - hence, a Union - citizen, in 2000, before

moving to the UK in the exercise of her free movement rights in 2005.

35. In a portion of the judgment in that case headed "Members of the household of the Union citizen ", the Court of Appeal (per Buxton LJ; Sedley and Hooper LJJ concurring) held (at paras. 77 and 78):

"77. There was some tendency in the argument before us to read this requirement as one of being members of the same household; or, as was said on behalf of AK, members of a communal household. That is not what ["the Citizens" Rights Directive] says, nor was that the condition in Regulation 1612/68, which requires [a family member - or "other family member" ("OFM") - within the terms of Art. 10(2) of Regulation 1612/68] to have been, in relation to the Union citizen, under his roof, not under the same roof. It seems very likely that the assumption is that the household will indeed have been that of the Union citizen, that is, that he was in colloquial terms head of it, the relations were under his roof, and on that basis he can reasonably wish to be accompanied by the members of it when he leaves for another country. If, on the other hand, the liberty extends to what might be called collateral members of the same household, then it is very difficult to see why for instance cousins with a close relationship but not actually living together are excluded; or why, to give a concrete example, it should be crucial to the case of AK that he was living in the same house, rather than the same street, as his cousin.

78. KG asserts membership of the Union citizen's household, but the household in their case was clearly that of their parents. AK asserts that the household headed by his parents was the household of his seventeen year old cousin who was living there with her own parents. That seems to be an abuse of language. The claim also demonstrates the reach of the appellants' case. The household in question was lived in by fourteen people, all of whom if living unlawfully in the United Kingdom would on the appellants' argument qualify for a residence permit as soon as the Union citizen relative arrived here. To them would have to be added any other relatives of the Union citizen with whom she happened to have lodged or shared a flat either in Sri Lanka or in any other country that she passed through on her way to France."

36. In *Bigia & Ors. v. Entry Clearance Officer* [\[2009\] EWCA Civ 79](#) , the Court of Appeal was required to consider the extent to which certain propositions in *KG (Sri Lanka) and AK (Sri Lanka)* , including the one just quoted, required modification in light of the judgment of the Court of Justice of the European Union ("CJEU") in Case C-127/08 *Metock v Minister for Justice, Equality and Law Reform* [ECLI:EU:C:2008:449](#). The Court of Appeal (per Maurice Kay LJ; Clarke MR and Tuckey LJ concurring) reached the following conclusion (at para. 43):

"In my judgment, *Metock* does not impact on those propositions. I accept that Article 3.2(a) is based on the same policy considerations as Article 2.2 - 'ensuring the protection of the family life of nationals of the Member States in order to eliminate obstacles to the exercise of the fundamental freedoms guaranteed by the EC Treaty' (here the right of free movement and residence of the Union citizen) and aiming 'to strengthen the right of free movement and residence of all Union citizens'. That is why the Directive goes beyond Article 2.2 family members and makes provision, albeit in a different way, for OFMs. However, the emphasis remains on elimination of obstacles to the Treaty rights of the Union citizen rather than a policy of family reunification."

37. *Secretary of State for the Home Department v MR & Ors* [\[2010\] UKUT 449](#) , was a judgment of the Immigration and Asylum Chamber of the Upper Tribunal, sitting in

Belfast, which culminated in the preliminary reference that resulted in the judgment of the CJEU in Case C-83/11 *Secretary of State for the Home Department v Rahman* [ECLI:EU:C:2012:519](#). At paragraph 35 of its judgment, having observed that the membership involved is that of Union citizen's household, the Upper Tribunal recognized that membership of the household requires at least physical cohabitation under the same space. It is important, however, to read that statement in the context of both the paragraph in which it appears and the judgment overall. The Upper Tribunal was there considering the judgments of the Court of Appeal in *KG (Sri Lanka)* and *Bigia* and, in doing so, was considering the extent to which "dependency" and "membership of the household" had been treated together for convenience in some parts of those judgments, without forgetting that they are alternative concepts with materially different requirements, as evidenced by the fact that "dependence" does not necessarily require physical cohabitation at the material time, whereas membership of a household does. I find it impossible to read the Upper Tribunal's judgment as authority for the proposition that mere residence in the same household as that in which a Union citizen resides qualifies as membership of the household of that Union citizen for the purposes of Art. 3(2) of the Citizens' Rights Directive.

38. In *Moneke v Secretary of State for the Home Department* [\[2011\] UKUT 341](#), the Upper Tribunal, in providing guidance to immigration judges in that jurisdiction, specifically considered the meaning of Article 3 (2) of the Directive, pending the determination of the reference in *Rahman*, holding in material part (at para. 40):

"Membership of a household has the meaning set out in *KG (Sri Lanka)* and *Bigia* (above): that is to say it imports living for some time under the roof of a household that can be said to be that of the EEA national for a time when he or she had such a nationality. That necessarily requires that whilst in possession of such nationality the family member has lived somewhere in the world in the same country as the EEA national, but not necessarily in an EEA state."

39. The Upper Tribunal returned to the issue once more in *RK v Secretary of State for the Home Department* [\[2010\] UKUT 421](#). That was a case that turned, ultimately, on the question of whether the appellant in India could be considered to come within the terms of Art. 3(2) of the Citizens' Rights Directive as a dependant of her Portuguese - and, hence, Union citizen - mother-in-law in the United Kingdom. The appellant's parents-in-law had moved to the United Kingdom exercising Treaty rights in 2003. The appellant's husband had joined his parents there in 2005 as a dependent family member within the terms of Art. 2(2) of the Citizens' Rights Directive. The appellant and her husband had married in India in 2007, following which the appellant had moved into the house in India owned by her father-in-law, in which her parents-in-law had lived prior to their departure for the UK. The appellant's claim was that she was both a member of her Union citizen mother-in-law's household in India and a dependant of her mother-in-law, through remittances she received from her parents-in-law there. The Upper Tribunal shortly disposed of the former contention in the following way (at paras. 17 and 18):

'17. Before us Mr Jafferji focused his principle argument on the submission that *Metock* and the subsequent case of C-162/09 *Lassal* demonstrate that a broad meaning has to be given to the word "household" and applying that broad meaning the appellant could be said to have been residing in her in laws' household in India. He recognised that nothing in the case law he relied on was addressed to Article 3(2) or the meaning of a household.

18. We do not consider that such an argument has any substance. As Buxton LJ pointed out in *KG (Sri Lanka)* the previous expression used in Article 10(2) of Regulation 1612/68 was 'under his roof'. This suggests that not merely is a household a community that lives together in the same accommodation but the household should be that of the Union citizen. The appellant has never lived in her mother in law's household.

She lives in a house owned by her father in law in which the mother in law used to live, but ceased living there four years before she became a member of the mother in law's family.'

40. It is true that, in the subsequent case of *Wang & Ors v Minister for Justice* [2012] IEHC 311, (Unreported, High Court (Cooke J), 23rd July, 2012), this Court concluded - for the purpose of an application for leave to seek judicial review - that, while the proposition may have been novel, it was not unarguable that a third country national mother of a Union citizen infant daughter might be considered a member of the household of that Union citizen for the purpose of Article 3(2) of the Citizens' Rights Directive. But three points about that decision must be borne in mind. First, Cooke J was only required to decide - and only did decide (perhaps, rather generously) - that the proposition was arguable, not that it was correct. Second, even in that context, Cooke J went on to observe that the notion of 'household' normally connotes a group of individuals living together under 'a head of household'. Third, the judgment in *Wang* suggests that none of the English jurisprudence just discussed had been opened to the court in argument.

41. I do not accept Mr Rehman's argument that, despite the clear statements of principle in the judgments of the England and Wales Court of Appeal in *KG (Sri Lanka)* and the Upper Tribunal there in *RK v Secretary of State for the Home Department*, each of those cases must be viewed as limited to its own facts.

42. Nor do I accept the novel - if not audacious - argument that, in seeking to properly construe the European Union law term 'member of the household of the Union citizen', the English courts erred in the judgments I have discussed by failing to do so in accordance with the construction as a matter of English law of the term 'household' as it appears in s. 2(5) of the UK Divorce Reform Act 1969; see *Santos v Santos* [1972] 2 WLR 889 at 899 (per Sachs LJ), and in s. 1A of the UK Inheritance (Provision for Family and Dependents) Act 1975; see *Gully v Dix* [2004] 1 WLR 1399 at 1406 (per Ward LJ). Such an approach cannot be reconciled with that stipulated by the ECJ in Case 283/81 *CILFIT* [1982] ECR 3415.

43. Even if it could, it would not avail Mr Rehman in this case. The relevant term in both s. 2(5) of the UK Divorce Reform Act 1969 and s. 1A of the UK Inheritance (Provision for Family and Dependents) Act 1975 is 'living ... in the same household'. Even if EU law terms fell to be construed by reference to the meaning ascribed to the same terms in domestic law statutes of a particular Member State (and they quite plainly do not), the term 'member of the household of the Union citizen' is not the same as the term 'person living in the same household.'

44. I reject Mr Rehman's argument that the construction of Article 3(2) of the Citizens' Rights Directive recognised by the England and Wales Court of Appeal (and, indeed, by this court in *Subhan v The Minister for Justice and Equality* [2018] IEHC 458 (Unreported, High Court (Keane J), 25 July, 2018) (at para. 50)), is an 'antiquated' one because, as that argument appears to run, the conception of any person as the head of a household is an outmoded one. As I observed in *Subhan*, I see no reason why there cannot be more than one head of household, comprising a person or persons of any gender or, for that matter, none. There is no basis for Mr Rehman's suggestion that the term so construed is in any way limited in its application to the 'traditional family in which the husband is the breadwinner and the wife takes care of the household and the children', which, according to Advocate General Geelhoed in his Opinion in Case C-413/99 *Baumbast* (5 July 2001) (at para. 23), was the sort of family relationship that the social legislation of the 1950s and 1960s made provision for at the time when Regulation 1612/68, the predecessor of the Citizens' Rights Directive, was adopted.



45. The point is quite simply that there must be at least one person in any family household, however constituted, with the necessary level of authority, responsibility or control to be the householder. In seeking to eliminate obstacles to the fundamental freedoms guaranteed by the Treaty on the functioning of the European Union, it makes perfect sense to act to ensure the protection of the family life of every economically active (or semi-active) Union citizen as a householder. I do not see how it can be said that the attainment of that objective entails acting to ensure a coincidental or windfall benefit for every family member of the same household as a Union citizen exercising free movement rights.

46. In support of his argument that the concept of a 'head of household' is an old-fashioned one, Mr Rehman cites a passage from the judgment of Charleton J in *Hickey v McGowan* [2017] 2 IR 196 (at 255), quoting the reference in the Australian text Sappideen and Vines, *Fleming - The Law of Torts*, 10th ed. (2011) (at para. 19.10) to the responsibility historically placed upon the head of the household for the conduct of his *familia* as the genesis of the master's liability for the torts of his servants. While the idea of the liability of a head of household for the conduct of his *familia* may well be old-fashioned, I am quite satisfied that the concept of a head (or heads) of household is a useful and enduring one.

47. Mr Rehman submits that the clear distinction and separation between dependency on the Union citizen and membership of the household of the Union citizen in Article 3(2) of the Citizens' Rights Directive would be rendered superfluous or redundant if the latter concept was not defined to extend to 'membership of the same household as the Union citizen' because otherwise the two terms would be, in effect, synonymous. While I have no doubt that the situations in which a family member is dependent on a Union citizen will often overlap with those in which a family member is a member of a household headed by that Union citizen, it is equally clear that there will be situations in which only one of those characteristics is present. It is perfectly possible for a person to be a family member of the household of a Union citizen without being dependent upon that Union citizen.

48. Contrary to Mr Rehman's submission, I am satisfied that the use of the word 'household' in Article 132 of the Polish Code of Criminal Procedure and in the text of a particular European arrest warrant issued in Poland, as considered in the preliminary ruling of the ECJ in Case C-108/16 *Dworzecki* [ECLI:EU:C:2016:346](#), provides no assistance regarding the proper construction of the term 'member of the household of the Union citizen' in the quite different context of Article 3(2) of the Citizens' Rights Directive and Regulation 5 of the 2015 Regulations. Nor is there any assistance to be gleaned from the use of the term 'persons who are living in the same household as the debtor' in the very different context of Article 14(1)(a) of Regulation (EC) No. 805/2004 of 21 April 2004 creating a European Enforcement Order for uncontested claims.

49. Similarly, there is nothing in the judgment of the ECJ in Joined Cases 401/15, 402/15 and 403/15 *Depesme, Kerrou and Lefort* [ECLI:EU:C:2016:955](#), upon which Mr Rehman seeks to rely, to support the construction of Article 3(2) of the Citizens' Rights Directive for which he contends. In those joined cases, the ECJ reiterated (at para. 60) that the status of a dependent family member for the purpose of Article 10 of Regulation No 1512/68 and, later, Article 2(2)(c) of the Citizens' Rights Directive ( *i.e.* a direct descendant of the Union citizen or of the spouse or partner of the Union citizen who is dependant on the Union citizen or the spouse or partner of the Union citizen) is the result of a factual situation, which it is for the Member State to assess. The ECJ, in dealing with dependency status - and not 'membership of the household of the Union citizen' - in that context, went on to observe that it may be evidenced by objective factors 'such as a joint household shared by that worker and the student.'

50. Finally on this point, Mr Rehman submits that the proper construction of the term 'members of the household of the Union citizen' in Article 3(2) of the Citizens' Rights Directive should be the same as, or fundamentally informed by, that of the term 'members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State, who have been authorized to join him' in Article 7 of Decision 1/80 of the EEC-Turkey Association Council of 19 September 1980, as interpreted by the ECJ in Joined Cases C-508 and C-509/15 *Ucar and Kilic* [ECLI:EU:C:2016:986](#) or Case C-484/07 *Pehlivan* [ECLI:EU:C:2011:395](#) . I am satisfied that the need for a duly registered Turkish worker's family member who has been authorised to join him to cohabit with him in the same household for the required minimum three year period as a condition of access to employment in that Member State has nothing to say about the proper construction of Article 3(2) of the Citizens' Rights Directive.

51. For the reasons I have given, I must reject Mr Rehman's argument that the Minister adopted an unduly narrow construction of the term 'member of the household of the Union citizen.'

ii. *failure to give reasons*

52. Mr Rehman contends that the Minister's decision to uphold on review the decision to refuse him a residence card is invalid due to a lack of clarity or a lack of adequate reasons or both.

53. In seeking to invoke the status of 'permitted family member' for the purpose of Regulation 3(6) and 5(1) of the 2015 Regulations, which is essentially that of 'other family member' under Article 3(2) of the Citizens' Rights Directive, Mr Rehman was obliged to satisfy the Minister that, in the UK as the country from which he had come, he was either a dependent of the Union citizen Mr Rahman or a member of his household.

54. Under Regulation 5(2)(c) of the 2015 Regulations, reflecting the requirements of Article 10(2) of the Citizens' Rights Directive, in claiming that status on the basis upon which he did, Mr Rehman was obliged to produce to the Minister documentary evidence from the relevant authority in the country from which he had come that he was a dependant, or a member of the household, of Mr Rahman. In reality, Mr Rehman was entirely at large on the issue of both the evidence he chose to present in support of his claim and the means whereby he chose to adduce it; Case C-215/03 *Oulane* [\[2005\] ECR I-1215](#) (at para. 53), Case C-1/05 *Jia* [\[2007\] 1 CMLR 41](#) (at para. 41). Nonetheless, whatever evidence he did submit was always going to be subject to qualitative assessment and, in particular, as the ECJ has made clear in *Jia* (at para. 42), 'a mere undertaking from a Community national or his spouse to support the family member concerned need not be regarded as establishing that family member's situation of real dependence.'

55. For that reason, I reject as fundamentally misconceived Mr Rehman's argument that the Minister was obliged to attribute evidential significance to a declaration and statement of Mr Rahman amounting to the provision of such an undertaking on the authority of certain English cases on the weight to be attributed to sworn and unsworn statements of family members in refugee status cases and naturalisation applications (see *R (on the application of SS ) v SSHD ("self-serving" statements)* [\[2017\] UKUT 164](#) and *The Queen on the application of MK (a child by her litigation friend CAE) v. The Secretary of State for the Home Department* [\[2017\] EWHC 1365 \(Admin\)](#)).

56. In *Moneke* , already cited, the Upper Tribunal stated (at paras. 42 and 43):

"42. We of course accept...that dependency does not have to be

'necessary" in the sense of the [United Kingdom] Immigration Rules, that is to say an able bodied person who chooses to rely for his essential needs on material support of the sponsor may be entitled to do so even if he could meet those needs from his own economic activity; see [ *SM (India) v Entry Clearance Officer (Mumbai)* [\[2009\] EWCA Civ 1426](#) ]. Nevertheless, where, as in these cases, able bodied people of mature years claim to have been always dependent upon remittances from a sponsor, that may invite particular close scrutiny as to why this should be the case. We note further that Article 10(2)(e) of the Citizens Directive contemplates documentary evidence. Whether dependency can ever be proved by oral testimony alone is not something we have to decide in this case, but Article 10(2)(e) does suggest that the responsibility is on the applicant to satisfy the Secretary of State by cogent evidence that is in part documented and can be tested as to whether the level of material support, its duration and its impact upon the applicant combined together meet the material definition of dependency.

43. Where there is a dispute as to dependency (as there was in the present case) immigration judges should therefore carefully evaluate all the material to see whether the applicant has satisfied them of these matters."

57. That appears to me to be a correct statement of the law. It follows the onus was on Mr Rehman to satisfy the Minister by cogent evidence that was in part documented and could be tested either that the level of material support he received from Mr Rahman, its duration, and its impact upon his personal financial circumstances combined together to meet the material definition of dependency in the UK (as the country from which he had come) or that he had lived for some time under the roof of a household that could be said to be that of Mr Rahman in the UK (as the country from which he had come) so as to establish membership of his household. The Minister concluded that Mr Rehman had failed to do so.

58. In the written submissions filed on his behalf, Mr Rehman variously contends that he submitted a 'considerable amount of documentation and declarations' and 'extensive documentary evidence' that he was dependent upon, and a member of the household of, Mr Rahman in the United Kingdom. I have already listed and described (at paras. 17 and 20 above) what seems to me to be the very limited and not very cogent documentary evidence that Mr Rehman, through his immigration consultants, provided to the Minister.

59. It will be remembered that the Minister gave the following reasons for concluding that Mr Rehman had failed to supply evidence to show that he had been dependent upon Mr Rahman in the UK;

'In respect of your dependence on the EU Citizen there is no evidence supplied to suggest that the EU Citizen was providing you with any funds in order to support yourself in the State. There is no evidence of payments being made from the EU citizen to yourself. In fact, the documentation provided in respect of the application shows that in your previous residence in the UK you were contributing to the payment of bills for the address as the utility bills provided for Yorkshire Water and British Gas are addressed to yourself.'

60. If the first sentence just quoted is read literally as referring to funds used to support Mr Rehman in this State, it is plainly wrong, although - equally plainly - it is irrelevant to the Minister's decision on whether Mr Rehman had been dependent on Mr Rahman in the UK. And, as the ECJ pointed out in Case C-83/11 *Secretary of State for the Home Department v Rahman* [ECLI:EU:C:2012:519](#) (at para. 45), the question whether the

issue of the residence card referred to in Article 10 of the Citizens' Rights Directive may be conditional on the requirement that the situation of dependence for the purposes of Article 3(2)(a) of that directive had endured in the host Member State is one that does not fall within the scope of the directive. I have no doubt that, if the erroneous assertion that no evidence had been supplied to suggest that Mr Rahman was providing Mr Rehman with funds to support him in the State was genuinely intended rather than a typographical error, it would be a severable error on the principles described by Humphreys J in *R.A. v R.A. T.* [2015] IEHC 686 (Unreported, High Court, 4th November, 2015) as it could not have affected the Minister's conclusion that Mr Rehman had failed to establish that he was a dependent of Mr Rahman in the United Kingdom.

61. If, on the other hand, it is assumed - as seems most likely - that, by a typographical error, the word 'State' was wrongly used instead of the acronym 'UK' or something similar (as the use of the past continuous tense in respect of the provision of funds suggests), then the statement is correct; there is no evidence that Mr Rahman was providing Mr Rehman with funds in order to support him in the UK (although it might have been acknowledged that there is some documentary evidence to suggest that Mr Rahman may have directly discharged certain relatively modest medical bills for treatment provided to Mr Rehman there in 2012 and 2013).

62. Similarly, Mr Rehman's name does appear (presumably as that of the householder or bill payer) on the copies of the Yorkshire Water bill and British Gas statement that he provided to the Minister; an unusual circumstance for an indigent refugee status applicant without a bank account and a fact for which no explanation was ever provided.

63. As already pointed out, Mr Rahman's 'affidavit' of 31 March 2015 is, by reference to its own terms, not an affidavit at all but rather a statutory declaration made in the UK on that date under the provisions of the Statutory Declaration Act 1835. In this State, the relevant provision of that statute (s. 18) was repealed by s. 7 of the Statutory Declarations Act 1938. While s. 50 of the Civil Law (Miscellaneous Provisions) Act 2008, inserted a new s. 3A into the Act of 1938, permitting a statutory declaration made in a place outside the State to be regarded as having been validly made subject to appropriate authentication, no attempt was made to prove the authenticity of Mr Rahman's declaration in accordance with s. 3A of the Act of 1938 or to explain the circumstances in which Mr Rehman came to make that purported declaration before leaving the UK. The bare assertions it contains - that Mr Rahman had been residing with Mr Rehman at the Conway Street address, and that he was supporting Mr Rehman as his dependent in the UK - do not amount to cogent evidence that is in part documented and can be tested of Mr Rehman's asserted dependence on Mr Rahman, much less do they amount to documentary evidence from the relevant authority in the UK that Mr Rehman was a dependant, or a member of the household, of Mr Rahman there.

64. The 'declarations' that Mr Rehman and Mr Rahman each signed, perhaps aptly, on 1 April 2016 are not statutory declarations at all; they are simply statements. The signature on each has not been witnessed or otherwise authenticated. They have no evidential value. Even if they did, as with Mr Rahman's statutory declaration, the bare assertions they contain would not meet the evidential requirements of either the 2015 Regulations or the Citizens' Rights Directive.

65. The copy of a letter of reference, dated 17 November 2015, from a Leeds City councillor is not authenticated either. That may be just as well, as it goes no further than asserting that councillor's knowledge that Mr Rehman stayed at the Conway Street address with Mr Rahman from the time of his arrival in Leeds. It does not speak to the questions of whether Mr Rahman maintained a household there and whether Mr Rehman was Mr Rahman's dependent. And surprisingly, in view of Mr Rehman's averment in these proceedings that he was never permitted to work in the UK and was supported at all times there by his brother Mr Rahman, the councillor concerned includes in that very

short reference an expression of belief that Mr Rehman 'has good business acumen.'

66. The Minister gave the following reasons for his conclusion that Mr Rehman had failed to provide sufficient documentation to show that he was a member of Mr Rahman's household in the UK:

'Prior to entering the State you have provided some documentation to show that you were residing at [the Conway Street address]. In support of this you have supplied a number of documents including medical reports, a letter from your GP regarding your registration, and utility bills in respect of Yorkshire Water along with a British Gas bill for yourself. In respect of the EU citizen you have submitted a number of Virgin Media bills dated between November 2014 and April 2015, the British Gas bill is in joint names and also the letter from the GP names the EU Citizen as a patient.

In support of your application, you have submitted a number of documents in respect of both yourself and the EU citizen however, the majority of the documentation provided is in respect of you the applicant. There is no tenancy agreement or mortgage statement in respect of the property. Whilst it is noted that there are a number of documents provided in respect of the residence of yourself and the EU citizen in the UK, there is no evidence to suggest that the household was that of the EU Citizen and that you were a member of that household.'

67. In their letter of 4 April 2016, seeking a review of the Minister's decision, the immigration consultants who were acting on Mr Rehman's behalf, asserted, amongst other things, that the Conway Street address had been purchased by Mr Rahman and his wife but was maintained by Mr Rahman, and that they would provide proof of the ownership of that property as soon as it came to hand. That proof was never provided. In the statement, described as a declaration, that Mr Rahman ostensibly signed on 1 April 2016 and which was without evidential value, he stated, amongst other things, that the Conway Street property was purchased by him and his wife together but was owned by his wife. For the purpose of these proceedings, Mr Rehman now avers that he lived at the Conway Street address with Mr and Mrs Rahman and their three children and that the property is owned by Mrs Rahman. It is plainly the case, as the Minister's decision records, that the Minister was never provided with any evidence concerning the ownership or tenancy of that property.

68. Mrs Rahman's ownership of the property, if it be so, is not a fact devoid of significance. As Regulation 5(1) of the 2015 Regulations and Article 3(2) of the Citizens' Rights Directive plainly establish, and as the England and Wales Court of Appeal confirmed in *Soares v Secretary of State for the Home Department* [2013] 3 C.M.L.R. 847 at 855 ( *per* Davis LJ; Longmore and McFarlane LJJ concurring), in order to qualify as a permitted (or 'other') family member it is necessary to show dependence upon, or membership of the household of, the Union citizen concerned in the country from which the person concerned has come, and dependence upon, or membership of the household of, the Union citizen's spouse there is of no avail.

69. For the reasons I have just set out, I find that the Minister provided clear and cogent reasons for the decision on review to confirm the decision not to grant Mr Rehman a residence card. For that reason, this aspect of Mr Rehman's challenge to the Minister's decision cannot succeed.

iii. *lack of sufficient reasons*

70. Mr Rehman suggests that his position is directly equivalent to that of the applicants in the case of *T.A.R. & Anor. v Minister for Justice, Equality and Defence* [2014] IEHC 385 (Unreported, High Court (McDermott J), 30th July, 2014) and, in essence, that the Minister's decision is devoid of the level of information necessary to enable either him or the court to establish whether it is lawful, in breach of both his entitlement to natural and constitutional justice and fair procedures and his right of access to the courts.

71. In my view, the position of the applicant in this case could hardly be more different from that of the applicants in *T.A.R.* The first distinction is that, although the submissions filed on behalf of Mr Rehman baldly assert that he submitted to the Minister a 'considerable amount of documentation and declarations', 'extensive documentary evidence' or 'comprehensive documentary evidence of dependency and membership of the household of the EU citizen', I have already described the very limited and not very cogent documentary evidence concerned. It seems to me to stand in stark contrast to, what McDermott J adumbrated and described (at para. 13 of his judgment) as 'the very extensive documentation' supplied by the applicants to the Minister in that case.

72. A second distinction is that the Minister's reasons for concluding that Mr Rehman had failed to establish that he had been either dependent upon, or a member of the household of, Mr Rahman in the United Kingdom were clearly and specifically articulated, rather than delivered in a terse and generic form of administrative shorthand, as was the case with the Minister's decision in *T.A.R.* As McDermott J expressly pointed out (at para. 24), the shortness of the reasons given by the Minister for the decision under challenge there rendered it difficult for the court to understand the basis for the decision. No such difficulty is present here.

73. A third distinction is that the formulaic reasons provided by the Minister in *T.A.R.* did not engage with the evidence presented, in contrast to the decision of the Minister in this case, which set out the Minister's conclusions on what the documentation submitted on behalf of Mr Rehman did and did not prove.

74. In *T.A.R.* (at para. 27), McDermott J was careful to qualify his conclusion that it was not possible to determine what the reasons provided meant with the words 'in the context of the particular case.' Mr Rehman seeks to read too much into the observation of McDermott J (at para. 25) that in order to address 'any suggested deficiencies in their proofs', the applicants were entitled to 'a more detailed explanation of the evidential shortfall.' It cannot mean, as Mr Rehman suggests, that all administrative decision-makers, including the Minister, are obliged to identify not only the manner in which any evidence presented falls short of proving any applicable requirement (as was done on behalf of the Minister in this case) but also 'what type of evidence should be provided if applying again.'

#### *iv. unreasonableness or irrationality*

75. Mr Rehman suggests that the Minister's decision is irrational and unreasonable because the Minister found that Mr Rehman's claim of dependency on Mr Rahman in the UK was undermined by the fact that his own name was on certain utility bills that he had produced to the Minister in respect of the Conway Street address, whereas the Minister had invited Mr Rehman to submit such utility bills in respect of his residence with Mr Rahman in the State. That submission is based on a misunderstanding of the law. To qualify as a permitted family member, Mr Rehman was obliged to prove dependency on, or membership of the household of, Mr Rahman in the UK, as the country from which he had come, and Mr Rehman had produced copies of the relevant utility bills to the Minister for that purpose. The Minister's stated reason for the standard form request that, if renting accommodation in Ireland, Mr Rehman and Mr Rahman should submit copies of their utility bills was to enable the Minister to be satisfied that

they are resident here. Any question of the dependence of Mr Rehman on Mr Rahman within the State is completely irrelevant, at the very least as a matter of EU law in that context. Accordingly, I can find no irrationality in the Minister's decision on that basis.

vi. *audi alteram partem*

76. Mr Rehman submits that the Minister breached the *audi alteram partem* principle, in failing to put to him for comment the fact that his own name appears on certain of the copy utility bills for the Conway Street address that he had submitted to the Minister, before concluding that those bills tended to contradict, rather than to support, his claim of dependence on Mr Rahman there. Ignoring the fact that he was the person who chose to provide those documents to the Minister without context or explanation, Mr Rehman asserts that, had he been asked, he could have explained that his name was on them merely to provide him with 'proof of address' for a purpose he does not specify and that, despite having assumed the liability to do so, he did not pay them - an explanation that, it might be argued with some force, raises at least as many questions as it answers.

77. In support of that argument, Mr Rehman relies on *I diakheua v Minister for Justice, Equality and Law Reform* [2005] IEHC 150, (Unreported, High Court (Clarke J), 10th May, 2005), a decision on an application for leave to seek judicial review. In material part, that case dealt with the arguability of the proposition that there was a requirement upon the Refugee Appeals Tribunal, as a body presiding over an inquisitorial process, to bring to the attention of any person whose rights might be affected by its decision any matter of substance or importance with the potential to affect that decision. However, Clarke J (at p. 11) drew a clear distinction between matters that an applicant knew of and had the opportunity to address in the course of the process and those that an applicant was not on notice of and, thus, did not have the opportunity to address. In contrast, this case cannot be described as an instance of the decision-maker paying selective regard to external material without drawing it to the applicant's attention and allowing the applicant an opportunity to address it. Here, the Minister was doing no more than giving proper consideration to the material that Mr Rehman himself had chosen to submit.

78. A decision of more obvious direct relevance to the argument that Mr Rehman makes is that of Faherty J in *Khan & Ors. v. Minister for Justice and Law Reform* [2017] IEHC 800. That case involved a challenge to a refusal by the Minister to grant permission to enter the State to the applicants as 'qualified family members', specifically as the dependent parents, of a UK and, hence, Union citizen, exercising free movement rights here. On an argument of precisely the same type as Mr Rehman now raises, Faherty J concluded as follows (at paras. 83 to 85):

'83. Much of the criticism levelled at the respondent in the course of this application centred around the failure of the respondent to give advance warning to the applicants of perceived deficiencies or contradictions in the documents submitted with visa applications prior to the respondent reaching a decision on the respective appeals. Counsel for the applicant maintained that had the applicants been forewarned they would have been able to address the perceived deficiencies or contradictions.

84. Counsel for the respondent submits that it was incumbent on the applicants to put their best foot forward and to present such relevant facts and evidence as might be necessary to support their applications, including facts and evidence which would tend to prove dependency. Accordingly, the respondent cannot be criticised, in these proceedings, for the condition of the applicant's own proofs, because the respondent was not willing to accede to their application while in receipt of insufficient

proof of dependency.

85. I agree with the respondent's submissions in this regard. As stated in *A.M.Y. v Minister for Justice* [2008] IEHC 306 " *there is no onus on the Minister to make inquiries seeking to bolster an applicant's claim; it is for the applicant to present the relevant facts.*" '

79. I respectfully agree with that analysis and I reject Mr Rehman's submission that there was an obligation on the Minister to put the views that the Minister had formed on the material that Mr Rehman had submitted to Mr Rehman for further comment or submission before making a decision on Mr Rehman's application.

### **Conclusion**

80. Mr Rehman's application for judicial review is refused.

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