High Court of Ireland Decisions

Judgment	
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[2016] IEHC 132

THE HIGH COURT

JUDICIAL REVIEW

[2014 No. 687 J.R.]

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

BETWEEN

YASWIN BALCHAND, CHANDRIKA GOPEE AND CIERON LAKSH BALCHAND (A MINOR SUING BY HIS FATHER AND NEXT FRIEND YASWIN BALCHAND)

APPLICANT

AND

MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 4th day of March, 2016

1. The applicants in this case are two students from Mauritius and their six year-old son. The parents challenge the decision of the Minister to refuse to renew their permissions to be in the State and complain that account should have been taken of their private and family life.

2. On 7th December, 2006, the first named applicant arrived in the State in possession of a "stamp two" student permission.

3. On 21st June, 2008, the first and second named applicants married. Shortly thereafter on 25th June, 2008, the second named applicant arrived in the State, also in possession of a stamp two permission. At the time of the entry of the applicants into Ireland, Mauritius was not a country whose nationals required a visa to enter. That situation has changed in the meantime.

4. On 17th July, 2009, the third named applicant was born in the State.

5. With effect from 1st January, 2011, a new policy document was adopted regarding non-EEA students. It set out time limits for the pursuit of degree courses and non-degree courses, and an overall time limit of seven years' presence in the State as a student. While great stress has been laid on the lack of formality at the time of original entry, that is irrelevant because policies may lawfully tighten up from time to time and it is clear that the applicants were properly subject to the 2011 policy as persons with no other right or title to be in the State than such permissions as the Minister saw fit to grant as she saw fit.

6. The policy document did not set out any clause whereby the terms of the scheme could be waived in exceptional circumstances. It was accompanied by a further document for the information of persons in a transitional category such as the applicants reaffirming the maximum period of seven years' presence in the State (exhibited at exhibit KOS4 to the affidavit of Kevin O'Sullivan).

7. The document made abundantly clear that presence in the State as a student would not be taken into account for the purposes of long-term residency, and that no family reunification rights arose.

8. On 19th December, 2013, shortly before the expiry of the first named applicant's permission, solicitors for the applicants sent a lengthy (125-page) submission to the Minister seeking a variation of the permissions and to change to "stamp four" status (namely residence in the State with an entitlement to enter employment and receive social welfare payments) based on their long residence.

9. On 30th January, 2014, the first named applicant's permission expired. He was, thereafter, unlawfully in the State until 22nd October, 2014, when the application for long-term residency was refused by the Minister pursuant to s. 4(7) of the Immigration Act 2004. The parents were directed to leave the State by 3rd December, 2014. The first named applicant was granted a temporary and transitional permission to be in the State for the period between 22nd October, 2014 and 3rd December, 2014, in order to finalise his affairs. A similar clause was included in a letter to the second named applicant, but in that regard it had been overlooked by the Minister and she still had a subsisting permission at that point.

10. An application for leave pursuant to s. 5 of the Illegal Immigrants (Trafficking) Act 2000 was made to Mac Eochaidh J. on 20th November, 2014, within time. Leave was granted on 1st December, 2014.

11. As of the date of the hearing, 17th February, 2016, there had been no proposal to make a deportation order.

Is the Minister required to consider private and family life when deciding on a permission?

12. The present application arises in slightly unusual circumstances in that it raises an issue very similar to that decided by Barr J. in *Luximon v. Minister for Justice and Equality* [2015] IEHC 227 (20th March, 2015), a decision regarding the extent to which the Minister is required to give consideration to private and family rights under Art. 41 of the Constitution or art. 8 of the ECHR, in the context of persons who applied for permission at a time when they did not have a subsisting permission to remain in the State. In the present case, the parents did have subsisting permissions as of the date of their application.

13. On what might be termed a first principles basis, having regard to cases such as *East Donegal Cooperative Livestock Mart v. Attorney General* [1970] I.R. 317, and to s. 3 of the European Convention on Human Rights Act 2003, I would venture to hope that it would be uncontroversial to suggest that private and family rights (or any constitutional or ECHR rights) should be considered in the context of an administrative decision if two conditions are met:-

> (i) that applicant enjoyed those rights in the first place to the appropriate threshold of substance and materiality; and
>
> (ii) that those rights were in fact improperly interfered with by the decision to a material extent.

14. Clearly, an applicant cannot quash a decision by reference to rights which he or she does not enjoy. Nor can a decision be quashed if it does not interfere with those rights in an unconstitutional or unlawful manner.

15. To the extent that *Luximon* is to be read as incorporating the test I have just referred to, then I would have no hesitation in following such an approach. The real question is whether either or both of those conditions are met in circumstances such as the present case.

Are private or family rights engaged?

16. In *Luximon*, Barr J. took the view that the applicant's rights in that case were sufficiently engaged to warrant the quashing of the refusal of a permission by reason of a failure to consider private and family rights.

17. The one thing that the court in *Luximon* cannot be criticised for is failing to engage in a form of "*inspired legal clairvoyance*" (*per* O'Donnell J. in *People (D.P.P.) v. J.C.* [2015] IESC 31 at para. 53) in anticipating decisions that had not, at that time, being handed down.

18. Subsequent to *Luximon*, the Court of Appeal in *C.I. v. Minister for Justice, Equality, and Law Reform* [2015] IECA 192 (30th July, 2015), at paras. 42 to 46, held that, in general, persons whose situation was "*precarious*" did not enjoy private and family rights of sufficient weight to engage art. 8.

19. Furthermore, and also after the decision of the High Court in *Luximon*, the Supreme Court gave judgment in *P.O. v. Minister for Justice and Equality* [2015] IESC 64 (16th July, 2015). In that case, both MacMenamin J. (at para. 26) and Charleton J. (at para 35) referred to the minimal art. 8 rights of persons whose situation in the State is precarious.

20. In *Li (No. 1) v. Minister for Justice and Equality* (No. 1) [2015] IEHC 638 (17th October, 2015), I had also come to the view that persons whose presence in the State was either illegal or precarious generally enjoyed art. 8 rights that were either of minimal weight or non-existent (at para. 65(iii)).

21. Applying *C.I*. and *P.O*., as I am required to do, I conclude that students who are admitted into the State pursuant to a scheme with a very clear seven-year maximum duration of permissions are persons who firmly fall into the "*precarious*" category, and in general, their private and family rights to remain in the State are minimal to non-existent and do not need to be considered by the Minister at any stage of the process, because they simply do not reach the level of significance required to engage such consideration.

22. While there will of course be some disruption to the applicants, including the third named applicant, this is not so severe as to mean that re-location back to the country of nationality is not possible, especially bearing in mind that children often find it easier than the adults to adapt. The point is made that the child speaks English, but no evidence has been presented that this will impair life in Mauritius, which is a partly-Anglophone country, or more fundamentally that he could not learn any of the other languages used in that country in the years ahead.

23. In the case of these particular applicants, that conclusion is reinforced by a number of features. This family will not be split up by the non-renewal of the permission. They will presumably return to Mauritius as a family. There is nothing to prevent them from enjoying a private and family life in Mauritius. There has been no military coup, civil disorder or other emergency of which the court has been made aware which would render such rights impossibly or even unduly difficult to assert back home. Nor, importantly, is there anything which would prevent them from making an application for permission to return to this State from their home country. Even a citizen of a non-visa country could in principle seek a permission under s. 4 of the Immigration Act 2004 from outside Ireland. There is nowhere near sufficient evidence whereby the applicants could even begin to make the case that they are "settled migrants", which they clearly are not. The whole thrust and basis of the student scheme is that such students will honour their part of the bargain and leave the State, at the latest on the expiry of the seven-year period.

24. The reference to matters preventing the exercise of family rights otherwise than in the State is by way of reminder that the ever-present spectre of "exceptional circumstances" probably cannot be banished from even this context, but that does not render a ministerial decision invalid unless the applicant concerned is actually in that exceptional category. The Minister does not have to consider whether exceptional circumstances exist in every case, any more than she has to consider whether to waive reasons that she has decided upon (as discussed in my judgment in *Okornoe v. Minister for Justice and Equality* [2016] IEHC 100 (15th February, 2016) or a court has to set out reasons for not suspending a sentence it has decided upon (*Maher v. Minister for Defence* [2016] IEHC 53 (Noonan J., 3rd February, 2016)).

25. Overstaying is not a victimless wrong. If individuals fail to comply with the terms of the permission, this will only increase the pressure on other applicants and indeed invite further scrutiny of such applicants. If students are to be held to acquire private and

family rights of the kind that appear to me to be incompatible with their precarious status, that will only have the effect of significantly curtailing the number of students that are likely to be admitted into the State, to the detriment of a much larger group of people and indeed to the State itself.

26. The applicants relied on a number of English decisions, particular *Secretary of State for the Home Department v. Pankina* [2010] EWCA Civ 719 (23rd June, 2010) and *Patel v. Secretary of State for the Home Department* [2013] UKSC 72 (20th November, 2013) at para. 32, which have taken much more extensive view as to the rights of persons on a limited permission in the context of permission renewal. *Munawar v. Secretary of State for the Home Department* (20th October, 2011 I.A./26534/2010 (Upper Tribunal, Immigration and Asylum Chamber)) is also such a case, where refusal to renew a three year student permission was deemed to be disproportionate under art. 8. It seems to me that these decisions set the bar too low in terms of the circumstances required to engage art. 8, as indeed seems to be recognised in some English decisions which do not conspicuously follow such an approach (see *Anjum v. Secretary of State for the Home Department* (29th January, 2014 I.A./00453/2013 (Upper Tribunal, Immigration and Asylum Chamber)).

27. The requirement for a quite substantial level of interference with private and family life before art. 8 is engaged is consistent with the decision of Edwards J. in *T.M. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 500, where it was held that there was no need to consider family rights because of an absence of proof that they were engaged.

28. The European Court of Human Rights has held in a number of cases that family rights did not fall to be considered for those in a "*precarious*" situation apart from exceptional circumstances. Such a statement is to be found in a large body of decided cases including: *Chandra v. the Netherlands* (admissibility decision, application no. 53102/99, 13th May, 2003); *Benamar v. the Netherlands* (admissibility decision, application no. 43786/04, 5th April, 2005); *Priya v. Denmark* (admissibility decision, application no. 13594/03 6th July, 2006); *Da Silva v. Netherlands*, (application no. 50435/99, 31st January, 2006, [2007] E.H.R.R. 72 at paras. 39 and 43); *Darren Omoregie v. Norway* (application no. 265/07 31st July, 2008 para 64); and *B.V. v. Sweden* (application no. 57442/11, 13th November 2012).

29. Reliance was placed on *Jeunesse v. Netherlands* (application no. 12738/10, 3rd October, 2014). That case related to an applicant who had been living in the Netherlands for 17 years prior to the date of the judgment and moreover was under an obligation for the start of that period under Dutch family law to cohabit with her husband (para. 102). The Grand Chamber emphasised that toleration of the presence of an alien awaiting a decision on residency does not automatically entail an obligation under art. 8 to allow him or her to settle, any more than "*confronting the authorities of the host country with family life as a fait accompli*" creates such an obligation (para. 103). The court emphasised the distinction between "*settled migrants*" as persons already formally granted a right of residence, and other non-nationals (para. 104).

30. The court referred to the margin of appreciation enjoyed by the State (para. 106), a point also emphasised in *Tuquabo-Tekle v. the Netherlands* (application no. 60665/00, 1st December, 2005) at para. 42 (see also *Ahmut v. the Netherlands* (application no. 21702/93, 28th November 1996, 1996-VI 2017 at 2031, para. 63)).

31. It also said that art. 8 "*cannot be considered to impose on a State a general obligation to respect a married couple's choice of country for their matrimonial residence*" (*Jeunesse*, para. 107, a point also made in *Tuquabo-Tekle* at para. 43, citing *Gül v. Switzerland* (application no. 23218/94, 19th February, 1996, [1996] 22 EHRR 93

at para. 38 and *Ahmut* at para. 67(c))). Reference was also made to the conclusion that the rights of an unlawful migrant cannot be equated to that of a settled migrant (*Jeunesse*, para. 102, citing *Useinov v. the Netherlands* (application no. 61292/00, 11th April 2006)).

32. The court also emphasised that "[*a]nother important consideration is whether family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of that family life within the host Stat would from the outset be precarious"* (*Jeunesse*, para. 108), an observation particularly apposite to the applicants in the present case. Other decisions to the same effect include: *Abdulaziz, Cabales, and Balkandali v. UK* (application nos. 9214/80, 9473/81, 9474/81, 28th May, 1985, series A no. 94 p. 94) para. 68; *Mitchell v. UK* (application no. 40447/98, 24th November, 1998); *Ajayi v. UK* (application no. 27663/95, 22nd June, 1999); *M. v. UK* (application no. 25087/06 24th June, 2008); *da Silva*, para. 39; *Arvelo Aponte v. the Netherlands* (application no. 28770/05, 3rd November, 2011 paras. 59 to 61; *Butt v. Norway* (application no. 47017/09, 4th December, 2012) para. 78.

33. The court noted that where children are involved, their best interests must be taken into account, albeit that alone they cannot be decisive (*Jeunesse*, para. 109). Having said that, the present case involves an intact family and does not raise questions such as those considered in *Tuquabo-Tekle* where the issue was the refusal of permission for a child outside the state to join the applicant (see para. 49 of that case)

34. Ultimately, the court in *Jeunesse* found that *"[w]here confronted with a fait accompli the removal of the non-national family member by the authorities would be incompatible with Article 8 only in exceptional circumstances"* (para. 113). Having identified particular special features of the case (particularly the fact that all members of the applicant's family were Dutch nationals, she held Dutch nationality at birth and only lost it by operation of law, her very long presence in the Netherlands, and the fact that deportation would break up the family in the circumstances) it concluded that "*the circumstances of the applicant's case must be regarded as exceptional"* (para. 122). There is simply no analogy between Ms. Jeunesse and the applicants in the present case. Similarly, in *Butt v. Norway*, rights under art. 8 were enjoyed by non-settled migrants, but the context for that finding is the express statement at para. 90 that "*the circumstances of the present case were indeed exceptional".*

35. The Strasbourg jurisprudence clearly establishes the general rule that the private and family rights of non-settled migrants are generally minimal to non-existent, although there may be exceptional circumstances to the contrary. The applicants in the present case have not established such exceptional circumstances. I do not consider that the applicants enjoy any rights under Arts. 40.3 or 41 of the Constitution of relevance to this case that are greater than those they can assert under art. 8 of the ECHR.

Are such rights interfered with by the refusal of an application for renewal of permission?

36. If I am wrong about the question of whether the applicants enjoy private and family rights of such significance as to engage any of the constitutional or ECHR provisions on which they rely, the question arises as to whether any such rights are, in fact, interfered with, to the necessary extent to trigger an obligation to consider them, by the decision of the Minister not to grant the present permission application.

37. In *Luximon*, Barr J. held that it was not a sufficient answer to such a claim that the rights could be considered in the deportation process (para. 154). I would have no difficulty in following this finding, in particular on the basis, adverted to by him, that it

would not be appropriate to hold that, in order to obtain a remedy, the applicants must first put themselves in an unlawful position whereby they would become liable to a proposal to deport. Legality is a seamless requirement, and the State cannot in effect require a person to act unlawfully in order to claim a benefit to which he or she should be entitled.

38. However, no argument (and certainly no developed argument) appears to have been addressed to Barr J. on the question of whether those rights could have been vindicated by simply requiring the applicants to renew their application from outside the State rather than await the deportation process. This question is not decided upon in the judgment. Mr. David Conlan Smyth S.C., who appeared (with Mr. Anthony Moore B.L.) for the respondent, also appeared for the State in *Luximon*, and did not have any recollection of making that argument. Ms. Patricia Brazil B.L. who appeared (with Mr. Michael Lynn S.C.) for the applicants, and also appeared in *Luximon*, suggested that there may have been some brief mention of the argument on the third day of the hearing in *Luximon*. However it seems to me from the judgment that this submission, may have been made in the context of a slightly different point, which I refer to below, and in any event clearly was not on any developed basis because it is not decided upon. The question of whether an applicant can lawfully be required to make a given application from outside the State does not feature in the judgment apart from a brief mention as part of a longer quoted extract at para. 62 from the judgment of Hardiman J. in *F.P. v. Minister for Justice, Equality and Law Reform* [2002] 1 IR 164 at pp. 173 to 74 in which reference is made to the normal system for entry to the State being from outside and that this should not be by-passed, and a reference to a submission from the respondent as to how the decision in *Tuquabo-Tekle* could be distinguished (para. 94) (which seems to me to be the probable context for Ms. Brazil's recollection as outlined to me). That submission of the respondent was accepted by the court (para. 152), but the court had not been asked to go on to address the follow-on argument that was expressly made to me by the respondent in the present case, to the effect that if in certain circumstances, the consideration of an application for permission could be required to include ECHR rights (as in *Tuquabo Tekle*), the Minister could legitimately decide, in the case of an application made from within the State that asserted such rights, that she would engage in such consideration, insofar as it arose, subject to imposing the procedural requirement that the person make that application from without the State.

39. While it has long been recognised that the point not argued is a point not decided (*The State (Ryan) v. Lennon* [1965] I.R. 70 *per* Ó Dálaigh C.J. at p. 120), it must also be acknowledged that a point which has been argued, but not decided, is also a point not decided. As outlined above, I do not in fact accept that this precise point was in fact argued in *Luximon*, but if I am wrong about that, it was clearly not argued to any developed extent. Thus, even if there was some passing reference to the possibility of an application from outside the State being an answer to the requirement to consider family rights in *Luximon*, the question of whether this satisfies the need to take the applicants' rights into account is clearly not the subject of any decision. As I have emphasised, however, I think on a reading of the judgment however that it is more likely that the reference to application from outside the State was in the context of an attempt to distinguish the *Tuquabo-Tekle* decision rather than of an attempt to advance the argument which has now been made to me in the present case.

40. In my view, as I discussed in related circumstances in *Li (No. 1),* it is entirely legitimate for the Minister to require that certain categories of permission applications should be made from outside the State. At the level of generality, this does not involve an infringement of the rights of any particular applicant. It does not require an applicant to, as it were, put themselves on the wrong side of the law and await a proposal to

make a deportation order, before they can assert their rights.

41. A system whereby the Minister can require a person to apply for permission outside the State suffers from no such infirmity. If the individual has valid grounds for the application, it will presumably be accepted, and thus they will be in a position to return to the State without undue delay.

42. For that reason, I would consider that a decision of the Minister declining to approve an application for extension of permissions from persons who did not meet the terms of the non-EEA student scheme at that stage to enable them to obtain long term residency did not, in fact, interfere with the applicant's rights. Not only were they no worse off as a result of that refusal (because their permissions were time-limited anyway), but they could also have left the State and made an application for residency from Mauritius. If such application had validity, the Minister would be required to consider it fairly. If at that point, there was a failure to consider the applicants' private and family life, judicial review would be available.

43. There is no breach of fundamental principle involved in allowing a requirement as to the manner in which an application is made to be determinative of whether its substantive content will be considered. As Fennelly J. remarked in *Hanrahan v. Gladney* [2014] IESC 80 (7th February, 2014) in the context of the court's entitlement to consider a complaint: *"It is not open to persons generally simply to present themselves in court with an affidavit".* The court will not consider a complaint about breach of rights unless that complaint is reduced to writing, embodied in a correct pleading, filed within the appropriate time in the appropriate office of the appropriate court, accompanied by the statutory stamp duty, made to a judge sitting with a registrar in open court, brought by a person with legally recognised standing, within limitation periods and being neither premature nor moot, and so on, almost *ad infinitum*. The court cannot impose a higher obligation on the Minister for Justice and Equality to unconditionally consider all submissions than it recognises for itself.

44. To that extent, while under this heading, I would arrive at a somewhat different conclusion to that in *Luximon*, it is on the basis of a point that was not decided in *Luximon*.

Was the Minister obliged to publish policies regarding treatment of those who have completed their seven-year student visas?

45. It is suggested that there was a failure by the Minister to publish policies dealing with persons in the situation of the applicants, and reliance is placed on a finding of Barr J. to this effect in *Luximon*.

46. Even assuming for the sake of argument that there is some ambiguity about the policy relating to non-EEA students, it seems to me that I can not accept this argument in the light of the decision of the Supreme Court in *Hussein v. Minister for Justice, Equality and Law Reform* (Hardiman J. 10th November, 2015), which was delivered after, and strikes a somewhat different note from, both the decision in *Luximon* and my own decision in *Li (No. 1)* on this point.

47. It is clear from *Hussein* that there are no statutory constraints on the Minister's power under s. 4(7) of the Immigration Act 2004 beyond the most general considerations of rationality and natural justice as stated at para. 14 of the judgment.

48. It seems to me to follow from the approach in *Hussein* that the Minister cannot be bound to follow a specific published scheme in the exercise of what has now been held by the Supreme Court to be a largely untrammelled discretion in this respect (leaving aside the obvious requirement to comply with the Constitution and the ECHR insofar as

they are relevant).

49. Again, the court in *Luximon* cannot be faulted for failing to foresee a decision of the Supreme Court several months later. In the light of the decision in *Hussein*, I would reject the challenge under this heading.

Claim of fettering discretion
50. Ms. Brazil suggests that the Minister unlawfully fettered her discretion by adopting the position that she never had to consider the ECHR or constitutional rights. It seems to me that this is a mis-description of the process. Taking the view that she is not obliged to consider those rights does not constitute fettering her discretion. If she had held that she was not entitled to consider those rights, that would be a different matter, but there is no such finding. All that has happened is that she has asserted an entitlement to decide the application on the basis of the published 2011 policy document. Such policy documents promote equality before the law, as I said in *Li (No. 1)* at para. 60. Her decision to apply the policy document is not unreasonable or unlawful and does not constitute a fettering of her discretion.

51. In any event it is clear that the decision was not inflexible. The applicant's submissions were considered. The first named applicant's permission was extended. Furthermore the Minister alluded to the possibility of applying for an alternative permission.

Whether there was a breach of fair procedures by the reduction in the duration of the second named applicant's permission
52. As explained in the affidavit of Barbara McKelvey, the letter issued to the second named applicant was mistaken and was not intended to have an effect on the valid permission that she had. It is not necessary to grant *certiorari* or declarations, or to have recourse to the High Court at all, to correct a mistake of this kind. That could have been done in correspondence, although no pre-action letter was sent. While there is an error in the letter, I do not consider that it warrants the grant of relief in the circumstances of this case, especially now that the point has been clarified.

Discretionary factors
53. While judicial review is discretionary, by consent of the parties it was agreed that discretion would not be an issue in terms of refusing substantive relief in this case. In any event the applicants are not entitled to substantive relief. For those reasons I do not have to consider the effect of the applicants' currently unlawful presence in the State, the fact that they have been working in breach of the criminal law of the State since the expiry of their permissions, and their failure to issue a pre-action letter before instituting the judicial review proceedings, as reasons to decline to grant relief, if I had otherwise proposed to do so.

Stare decisis
54. As the foregoing discussion makes clear, I am following *Luximon* on the broad principle that if rights exist (to the appropriate standard of materiality) and are interfered with (to the appropriate standard of materiality), they must be considered, and on the point that consideration of rights in the deportation process is not an adequate or lawful alternative to the need for consideration of such rights in the renewal of permission context, if such a need were to arise. On other aspects it is not so much a question of not following *Luximon* as it is of being required to follow decisions of the Court of Appeal and Supreme Court delivered after the judgment in *Luximon*, as well as taking a point (as to the possibility of being required to make application from outside the State) which was not the subject of any developed argument or any decision by the court in Luximon. In my view, the present case does not for those reasons throw up any

acute or unconventional problem relating to *stare decisis*.

The nature of the social contract with a temporary entrant

55. The applicants introduced evidence from Prof. Brian Lucey to show that the presence of 45,000 non-EEA students in the State was of major economic benefit to the Irish economy. No doubt this is so. However, a person who comes to the State on a limited permission as a student or indeed otherwise is subscribing to a social contract with rights and responsibilities on both sides. In the case of student permission, that person is acquiring the entitlement to pursue education in Ireland and to work for 20 hours a week during term and 40 hours a week during holidays. Such a person has obviously no entitlement to be in Ireland otherwise than pursuant to such a permission. The admission of such persons to the State, and the terms of such admission, are about as close to an absolute discretion as it is possible to get in a system based on the rule of law.

56. One of the responsibilities of a person so admitted, which is an express rather than merely an implied term of the social contract involved, is that he or she will leave the State on the expiry of their permission. The first and second named applicants are in breach of this condition. The entire scheme for the admission of students for a maximum of a generous period of seven years is based on the requirement that they then leave or else obtain some other form of permission to be in the State. Like the position of prospective adoptive parents referred to, in another context, by Hardiman J. in *N. v. H.S.E.* [2006] 4 IR 374 at para. 322, p. 463, temporary visitors enter the State in the knowledge that there may have to be a parting of the ways. Voluntary assumption of risk is the underlying principle in the context of temporary or limited entry into the State (a point which I had previously made in this context in *Leng v. Minister for Justice and Equality* [2015] IEHC 681 (6th November, 2015)).

57. Visitors such as those on student permission are inherently here on a transitional basis. It would fundamentally subvert the scheme and render an orderly immigration system impossible if they could then assert some form of right which would prevent their removal. House guests staying for the weekend cannot announce that they would like to settle in for a couple of months. Tenants at the end of their lease period cannot decide that they want to simply assert a freehold title. Temporary visitors in the applicants' position cannot simply dig in over a period of years and claim to have thereby acquired some form of private or family life which would impede the non-renewal of their permission. Of course, in a seven-year period, a student will to some extent embed himself or herself in the host country. But that is a very different form of social experience to that engaged in by a settled migrant. The applicants are not settled migrants. Their child may have been born in Ireland but his position is derivative. The notion that a fleeting visitor could convert his or her entitlements into something long-term merely by having a child in this country would subvert the rationality and workability of the immigration system at a fundamental level.

Order

58. Having regard to the foregoing, I will order that the application be dismissed. I will hear the parties forthwith on any consequential matters.

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