H609

Judgment

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[2019] IEHC 609

THE HIGH COURT

JUDICIAL REVIEW

[2017 No. 724 JR]

BETWEEN

LUKASZ DABROWSKI

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr Justice David Keane delivered on the 6th August 2019

Introduction

1. This is a challenge to a decision made by the Minister for Justice and Equality ('the Minister') on 13 September 2017, affirming a removal order, under Reg. 20 of the European Communities (Free Movement of Persons) Regulations 2015 ('the 2015 Regulations') and a five-year exclusion order, under Reg. 23 of those Regulations, each made on 27 June 2017, against the applicant, a Polish national and, hence, European Union citizen. For ease of reference, I will refer to the decision of 13 September 2017 as 'the review decision.'

2. The 2015 Regulations were made under the powers conferred on the Minister under s. 3 of

the European Communities Act 1972 for the purpose of giving effect to Directive 2004/38/EC ('the Citizens' Rights Directive').

The applicant's criminal conduct
3. The applicant was born in 1983. It is unclear when he arrived in the State. He has variously asserted that he arrived in the State on 2 February 2014 or at some time in 2012.

4. The applicant first came to the attention of An Garda Síochana on 15 October 2015 in relation to a theft offence. He has since accumulated a total of 47 convictions and been sentenced by the District Court on ten separate occasions between 11 November 2016 and 7 March 2017, for 21 motoring offences, 22 theft offences, two burglaries and two failures to appear in court.

The removal and exclusion orders against the applicant
5. The Garda National Immigration Bureau ('GNIB') wrote to the Minister on 3 May 2017 to request that consideration be given to making removal and exclusion orders against the applicant. On 29 May 2017, through the Irish Naturalisation and Immigration Service ('INIS'), the Minister wrote to the applicant to notify him of the Minister's proposal to make both a removal order and an exclusion order against him. The Minister was proposing to make a removal order under the power to do so conferred by Reg. 20(1)(b) of the 2015 Regulations where, in the opinion of the Minister, the person represents a danger for public policy or public security by reason of the fact that his or her personal conduct represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society to warrant his or her removal. The conduct identified was the commission of the various motoring, theft, burglary and failure to appear offences already described, as evidenced by his conviction and sentence for those offences on various dates in 2016 and 2017.

6. The letter went on to notify the applicant that the Minister was also proposing to make an exclusion order against him, under Reg. 23(1) of the 2015 Regulations, for a period of five years from the date of his removal from the State.

7. The letter notified the applicant of his entitlement, in accordance with Regs. 21(b) and 23(4)(b) of the 2015 Regulations, to make representations to the Minister within 15 days of the date of issue of the notification. No such representations were received.

8. The Minister made both a removal order and an exclusion order against the applicant on 27 June 2017. Those orders were based upon a six page 'examination of file' report and recommendation, made by an officer of the Minister on the same date.

9. On 10 July 2017, and (oddly) again the following day, through his solicitor, the applicant sought a review of the decision to make a removal order, pursuant to Reg. 25(1) of the 2015 Regulations, and the suspension of the enforcement of that order, pursuant to Reg. 25(6) of those Regulations. Those requests included various representations on the applicant's behalf.

The decision now under challenge
10. On 13 September 2017, the decision to make a removal order and a five-year exclusion order against the applicant was affirmed. That is the review decision now under challenge.

11. By letter of 15 September 2017, the Minister notified the applicant of that decision, furnishing him with a copy of it and the nine-page report and recommendation on which it was based.

The present proceedings
12. The application is based upon a statement of grounds filed on 19 September 2017, supported not by an affidavit of the applicant but an affidavit of the applicant's solicitor, sworn on the same date, ostensibly on the basis of urgency.

13. Although the relevant Order was not produced in the course of the hearing before me, I was informed that the applicant was given leave to challenge the review decision by seeking the following principal orders:

(i) An order of *certiorari* quashing the review decision and

(ii) An order of *certiorari* quashing both the removal order and the exclusion order, each made on 27 June 2017.

14. The Minister's statement of opposition was filed on 20 November 2017. It is grounded on an affidavit of Tom Doyle, an assistant principal officer in the Minister's department, sworn on an illegible date in November 2017, though filed on 28 November 2017.

Proceedings under European Arrest Warrant Act 2003

15. On 16 December 2015, a District Judge in the District Court of Krakow, Poland, issued a European Arrest Warrant ('EAW') for the applicant to serve three prison sentences of 14 months, 8 months and 18 months imposed on him on 15 December 2009, 30 November 2012 and 22 November 2013, respectively, for various offences of assault, criminal damage, theft, and unlawful possession of controlled drugs. Those offences were committed on various dates between July 2009 and June 2013.

16. The High Court endorsed the EAW for execution on 14 November 2016 under the provisions of the European Arrest Warrant Act 2003, as amended ('the Act of 2003'). The applicant was produced before the High Court on foot of that warrant on 16 January 2017. The applicant chose to contest his surrender and was remanded in custody from time to time, pending the necessary hearing. Those proceedings were entitled '*Minister for Justice and Equality v Dabrowski* [2016 No. 205 Ext.]'. In particular, the applicant sought to rely on a point that was then the subject of a pending Supreme Court Appeal in *Minister for Justice and Equality v Lipinski* [2016] IESCDET 96 (4 July 2016). That point was later made the subject of a preliminary reference to the Court of Justice of the European Union in *Minister for Justice and Equality v Lipinski* [2017] IESC 26 (Unreported, Supreme Court, 22 May 2017).

The grounds of challenge

17. In his statement of grounds, the applicant advances twelve grounds upon which he seeks relief. The apparent procedural efficiency of summarising those grounds in the applicant's written legal submissions as raising five legal issues is immediately undermined by the identification of ten separate sub-issues as part of the third issue.

18. I am satisfied that the present application raises just two broad issues, which capture all the grounds identified and issues raised by the applicant.

19. Those issues are:

(a) Did the Minister's decision to make the removal and exclusion orders against the applicant breach the separation of powers under the Constitution of Ireland or breach the rights of the applicant under the Act of 2003, the Constitution of Ireland, the European Convention on Human Rights, or the Charter of Fundamental Rights of the European Union?

(b) Was the Minister's decision to make the removal and exclusion orders against the applicant lawfully made under the Citizens' Rights Directive and the 2015 Regulations?

The First Issue

20. The removal order made on 27 June 2017, recites on its fact that the applicant was to leave the State within the period specified in the notice given to him under Regulation 21(4) of the 2015 Regulations. That notification, addressed to the applicant in Cork Prison, is also dated 27 June 2017. It recites in material part as follows:

'In accordance with Article 30(3) of [the Citizens' Rights Directive] please be aware the time allowed to you to leave the territory of the State shall be not less than one month from the date of this notification, save in duly substantiated cases of urgency.'

21. The Minister's letter to the applicant of 15 September 2017, notifying him of the review decision, included the statement:

> 'The manner and timing of your removal from the State is now an operational matter for the Garda National Immigration Bureau.'

22. The applicant was, at the material time, serving a number of prison sentences that had been imposed on him in the District Court for the various offences he has committed in the State and was also on remand in custody, pending the hearing of the proceedings against him under the Act of 2003.

23. A significant number of the grounds relied upon, and issues raised, by the applicant start from the proposition that the enforced removal of the applicant from the State in accordance with the terms of the removal order made under the 2015 Regulations would have had the effect of setting at naught the proceedings under the Act of 2003, or frustrating or circumventing the applicant's defence of them, or both. The applicant argues that the Minister, in making that order, was trespassing into the judicial domain under the Act of 2003, or breaching the procedural and substantive rights of the applicant in those proceedings, or both.

24. Without prejudice to the contention that the Minister can make a removal order lawfully under the 2015 Regulations while proceedings under the Act of 2003 are pending before the High Court, the Minister has expressly pleaded, at paragraph 18 of the statement of opposition filed on his behalf on 20 November 2017:

> 'The Minister shall not remove the applicant from the State on foot of the removal order made [on] the 27th June 2017 prior to the determination by the High Court of proceedings bearing record number 2016/205EXT.'

25. In the course of the hearing before me, *inter partes* correspondence, in the form of a letter, dated 4 December 2017, from the Minister' legal representatives to those of the applicant was produced to the court without objection. It states:

> 'Our client agrees to give an Undertaking not to remove the applicant from the State pending the determination of the EAW proceedings subject to the applicant remaining in custody or if granted bail, complying with the terms of bail. If admitted to bail, the applicant will be given 48 hours' notice before the withdrawal of the undertaking in the event of a breach of bail conditions.'

Subsequent developments

26. Very shortly after judgment was reserved on 7 February 2018, the Supreme Court delivered final judgment in *Minister for Justice v Lipinski* [2018] IESC 8, (Unreported, Supreme Court, 13 February 2018). Having referred to that Court's earlier decision to make a preliminary reference to the CJEU, Clarke CJ (O'Donnell, MacMenamin, Dunne and O'Malley JJ concurring) explained that the reference had been withdrawn in light of the subsequent clarification provided by the judgments of the CJEU in Case C-270/17 Ta *das Tupikas* ECLI:EU:C:2017:628 and Case C-271/17 *SÂ³awomir Andrzej Zdziaszek* ECLI:EU:C:2017:629, and, subsequently, in Case C-571/17 *Samet Ardic* ECLI:EU:C:2017:1026. Clarke J then addressed the merits of the issue relied upon by both the appellant in that case and the applicant in this one in the following terms:

> 3.4 The issue which remained for consideration was the second question which was the subject of a reference on this appeal. As appears from the earlier judgment on this appeal, Mr. Lipinski initially obtained the benefit of what, in Irish law, might be considered to be the Polish equivalent of a suspension of part of his sentence. However, that suspension was subsequently revoked because of the failure of Mr. Lipinski to comply with the terms attached to it and, thus, the original sentence was restored. Mr. Lipinski was not present at the hearing which led to the revocation of the suspension and the re-imposition of the initial sentence. Indeed, it was the very fact that Mr. Lipinski had left Poland and come to Ireland, and thus did not comply with the probation type obligations imposed on him, which led to both the revocation of the suspension and the difficulties in notifying him of the hearing leading to that revocation.
>
> 3.5 The issue which therefore arose was as to whether his absence at the

hearing which led to the re-imposition of his original sentence could be said to breach the *in absentia* requirements of the Framework Decision and thus preclude his surrender.

3.6 However, the judgment of the Court of Justice in *Samet Ardic* is clear in that regard. The ruling of the Court is in the following terms: -

> 'Where a party has appeared in person in criminal proceedings that result in a judicial decision which definitively finds him guilty of an offence and, as a consequence, imposes a custodial sentence the execution of which is subsequently suspended in part, subject to certain conditions, the concept of "trial resulting in the decision", as referred to in Article 4a(1) of Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as not including subsequent proceedings in which that suspension is revoked on grounds of infringement of those conditions during the probationary period, provided that the revocation decision adopted at the end of those proceedings does not change the nature or the level of the sentence initially imposed.'

3.7 It is clear, therefore, that a hearing at which a suspension of sentence is revoked on grounds of infringement of conditions attaching to that suspension is not considered to be part of a 'trial resulting in the decision' for the purposes of the Framework Decision unless the revocation decision changes 'the nature or the level of the sentence initially imposed'. If the consequence of the revocation is to alter the sentence originally imposed then different considerations may apply. However, it is clear on the facts of this appeal, and I did not understand counsel for Mr. Lipinski to argue otherwise, that the sole consequence of the revocation order made by the Polish courts in this case was to reinstate the original sentence without variation.

3.8 It is clear, therefore, that the decision of the Court of Justice in *Samet Ardic* has clarified the second issue sought to be raised on behalf of Mr. Lipinski in a manner unfavourable to him so that that ground too must fail.'

27. When the decision of the Supreme Court in *Lipinski* came to my attention after judgment in this case had been reserved, I directed that the proceedings be relisted to permit the parties an opportunity to apprise the court of the up-to-date position in respect of the proceedings against the applicant under the Act of 2003 and to make any further submissions on that basis that they might wish.

28. On behalf of the Minister, Alan King, an official within the INIS, swore an affidavit on 17 July 2019 that was filed the following day. In it, Mr King avers that the proceedings against the applicant under the Act of 2003 were listed for hearing on 23 November 2018, resulting in an Order made by Donnelly J on 23 November 2018, directing the surrender of the applicant to Poland, which surrender was effected on 13 December 2018.

Mootness

29. Whether there was ever any risk of the enforced removal of the applicant from the State, or of the prosecution of the applicant for failure to leave the State, either while he was in custody or while the proceedings against him under the Act of 2003 were still pending, is not a matter I can determine in these proceedings.

30. However, it is plain that the question of whether the departure or removal of the applicant from the State in accordance with the terms of the removal order made against him under the 2015 Regulations, should it occur, would interfere with the proceedings against him under the Act of 2003 and, thus, constitute an impermissible interference with the exercise of the judicial power of the State; or with the applicant's procedural rights under that Act; or with the applicant's fundamental rights in the face of his proposed surrender to Poland under that Act, is one that is now moot.

31. Hence, the resolution of those issues could have no impact at this juncture on any live controversy between the applicant and the Minister. The relevant judicial power of the State has been exercised without any attempt at interference or constraint and, in the absence of an appeal, there is no reason to believe that the procedural and fundamental rights of the applicant have not been fully respected in the course of the legal process under the Act of 2003.

32. Thus, in application of the principles identified by the Supreme Court in *Lofinmakin v Minister for Justice, Equality and Law Reform* 4 IR 274 (at 293) and *Goold v Collins* [2005] 1 ILRM 1, I conclude that the first issue is no longer justiciable, and I do not propose to consider it.

The second issue

33. The second broad issue that the applicant has raised is whether the Minister's decision to make removal and exclusion orders against him under the 2015 Regulations was otherwise lawful. That issue remains live because those orders remain in effect.

34. The applicant has raised various arguments under that heading.

i. non-refoulement

35. In the representations that his legal representatives made to the Minister on his behalf on 11 July 2017 in support of his request for a review of the decision to make removal and exclusion orders against him, the assertion was made that any such orders would breach 'the prohibition of *refoulement*' . Quite what was meant by that is even now unclear. The broader definition of the principle of *non-refoulment* contained in s. 50 of the International Protection Act 2015 extends beyond the concept of non-refoulment recognised under the Geneva Convention of 28 July 1951 and Protocol of 31 January 1967 (together, 'the Refugee Status Convention') - *i.e.* protection from a threat to life or freedom for reasons of race, religion, nationality, membership of a particular social group or political opinion - to include protection from a serious risk of being subjected to the death penalty, torture or other inhuman or degrading treatment or punishment. But, quite apart from the fact that the applicant did not seek international protection, no such threat of persecution or serious risk of inhuman or degrading treatment or punishment was ever identified.

36. Instead, the applicant makes a more technical argument that the decision under challenge was internally contradictory and, hence, irrational because, while it noted that a representation had been made on his behalf invoking the prohibition of *refoulement* , it then went on to state '[the applicant] has not made any claim that removing him to Poland would be in breach of the prohibition on *refoulement* .'

37. I do not accept that argument. An administrative decision cannot be construed as strictly or as literally as legislation might be. Rather, it must be considered in the round when assessing its reasonableness. I am satisfied that, by making the statement just quoted, the decision-maker intended to convey that the applicant had not established the basis for a claim of breach of the principle of *non-refoulement* , not that the bare assertion of such a claim had not been made on the applicant's behalf.

38. Thus, I reject the argument that the decision was irrational or unreasonable in the manner in which it dealt with the applicant's claim concerning the principle against *non-refoulement.*

ii. a present threat

39. The applicant argues that, because he was in custody, serving various prison sentences, when the decision to make a removal order and exclusion order against him was made, his conduct could not represent a 'present' threat affecting one of the fundamental interests of society, as a condition precedent to a removal order under Reg. 20(1)(b) of the 2015 Regulations, transposing the requirements of Art. 27(2) of the Citizens' Rights Directive.

40. That is not a tenable argument.

41. As Advocate General Szpunar noted in his Opinion dated 24th October 2017 in Joined

Cases C-316/16 and C-424/16 *B v Land Baden-Wuttenburg and Secretary of State for the Home Department v Vomero* ECLI:EU:C:2017:797 (at para. 73):

> 'In the first place, I think it is unlikely that a Union citizen could constitute a threat to a fundamental interest of society, warranting his expulsion, without having committed a crime of such seriousness that a prison sentence would be justified. Consequently, the vast majority of individuals concerned by protection against expulsion on grounds of public policy or public security, as provided for in Article 28 of Directive 2004/38, at least in systems where expulsion measures are subsequent to the criminal conviction, are in custody when the question of expulsion arises or have recently served a prison sentence. Article 28(3) of Directive 2004/38 would, to a large extent, be deprived of its substance if the imposition of a prison sentence were, as a matter of course, to prevent the grant of protection as provided for in that provision.'

42. Or, as the ECJ put it more directly in Case C-193/16 *E v. Subdelegación del Gobierno en Álava* ECLI:EU:C:2017:542 (at para. 27):

> '.... the second subparagraph of Article 27(2) of [the Citizens' Rights Directive] must be interpreted as meaning that the fact that a person is imprisoned at the time the expulsion decision was adopted, without the prospect of being released in the near future, does not exclude that his conduct represents, as the case may be, a present and genuine threat for a fundamental interest of the society of the host Member State.'

iii. the public policy proviso

43. In various ways, the applicant attempts to argue that his personal conduct, as evidenced by his 47 criminal convictions, does not represent a sufficiently serious threat affecting one of the fundamental interests of society to permit the Minister to make a removal order against him under Reg. 21(1) of the 2015 Regulations.

44. In addressing that argument, it must first be noted that the applicant had no entitlement to any enhanced protection against removal under the 2015 Regulations transposing the Citizens' Rights Directive, whether the requirement under Reg. 20(5) of *serious* grounds of public policy or public security to remove a person entitled to permanent residence in the State, or the requirement under Reg. 20(6) of *imperative* grounds of public security to remove a Union citizen who has resided in the State for the previous 10 years.

45. Second, it must be remembered that, as Stewart J noted in *M.V. (Lithuania) v Minister for Justice and Equality* [2016] IEHC 432, citing the Opinion of Advocate General Stix-Hackl in Joined Cases C-482/01 and C-493/01 Orfano *poulos v Land Baden-WÃ¼rttemberg* and *Oliveri v Land Baden-WÃ¼rttemberg* (at paragraph 64), repeated recidivism can militate in favour of expulsion.

46. The applicant argues that the failure to refer to the penalty available, or the sentence that he actually received, for each of the 47 offences he committed is somehow fatal to the conclusion that his personal conduct represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society to warrant his removal.

47. In doing so, the applicant relies on the observation (at para. 37) in the Opinion of the late Advocate General Bot in Case C-348/09 *P.I. v OberbÃ¼rgermeisterin der Stadt Remscheid* that the level of disturbance to the public policy engaged is normally reflected in the degree of severity of the penalty laid down in respect of the offence represented by the prohibited conduct, and the assessment of the personal conduct involved normally finds expression and is given a weighting by the penalty actually imposed. As the context makes clear, there is no suggestion that Advocate General Bot was identifying an inflexible rule to that effect. Moreover, the case was one in which the Union citizen involved had been continuously resident in the Member State concerned for 10 years and could only be removed on imperative grounds of public security.

48. Further, as the applicant acknowledges, the decision under challenge expressly notes: first, that the applicant had 'appeared before the Irish courts on 10 separate occasions in

relation to 47 offences, 21 x 'road traffic offences', 22 x 'theft', 2 x 'burglary' and 2 for 'failing to appear in court; and second, that the applicant 'has been incarcerated since 20/01/2017 and is not due for release until 19/09/2017.' It is a striking feature of this case that the applicant committed so many offences in a short space of time. The Minister was entitled to have regard to that in considering the applicant's propensity to engage in criminal conduct.

49. In the circumstances, the applicant has failed to persuade me that that the decision that his personal conduct represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society to warrant his expulsion was either a disproportionate or an unreasonable one.

iv. fair procedures

50. The applicant raises various complaints of lack of fair procedures. First, it is suggested that the decision fails to acknowledge the applicant's request that, in considering whether to make a removal order against him under the 2015 Regulations, the Minister should have regard to the proceedings against him under the Act of 2003. But the applicant fails to make clear on what basis he contends that the latter are, or were, relevant to the former. Insofar as the relevance contended for is the risk of those two distinct statutory procedures giving rise to inconsistent orders, I have already concluded that the issue is moot.

51. Second, the applicant submits that the Minister failed to disclose to him various documents that the Minister referred to in the decision to make removal and exclusion orders and in the review decision, namely 'the individual assessment', 'removal application' and 'information on convictions'.

52. As far as I can gather and as the Minister submits, the recital in the decision that the applicant has been given 'an individual assessment' is simply a reference to the assessment of the applicant's personal conduct and personal circumstances that is contained in the decision itself.

53. The 'removal application' appears to be the letter of 3 May 2017 from GNIB to the Minister, requesting that consideration be given to making removal and exclusion orders against the applicant under the 2015 Regulations because of his personal conduct, evidenced by his criminal convictions. I cannot see that anything turns on the disclosure of that letter and the applicant has not identified any specific issue in that regard.

54. Finally, 'information on [the applicant's] convictions' was set out at length in the Minister's letter to the applicant of 29 May 2017, notifying him of the proposal to make removal and exclusion orders against him and, in any event, as Humphreys J pointed out in *A.M.A. v Minister for Justice* [2016] IEHC 466, (Unreported, High Court, 29th July 2016) (at para. 57), albeit in the different context of an application for naturalisation, there is no requirement to correspond with a person in relation to something of which he or she is already aware.

55. For those reasons, I reject the applicant's submission that there was a breach of his entitlement to fair procedures.

v. error of fact

56. The Minister acknowledges that the review decision does contain one error of fact based on an evident misunderstanding on the part of the immigration process decision-maker of the nature and implications of the criminal process. The applicant's legal representatives had pointed out in the representations that they made in the review process on the applicant's behalf that the first instance decision had wrongly referred to the applicant as driving while disqualified, whereas he had not been convicted of any such offence.

57. The error, which was repeated in the review decision, appears to have arisen from a misconstruction of the applicant's long list of convictions for motoring offences. Specifically, because the applicant was disqualified from driving for two years on conviction at Mallow District Court on 7 February 2017, the decision-makers at first and second instance, appear to have concluded that his subsequent convictions for various motoring offences at Clonmel District Court on 28 February 2017 and at Killarney District Court on 7 March 2017

necessarily imply that he had been driving while disqualified when those offences were committed. But, of course, that would not follow if, as seems likely, the motoring offences that the applicant was convicted of in Clonmel District Court and Killarney District Court occurred on dates prior to his disqualification from driving at Mallow District Court. And the error is confirmed by the fact that none of the applicant's 47 criminal convictions is for driving while disqualified.

58. The question I must consider is what, if anything, turns on that obvious mistake. If the error concerned had been made in convicting and imposing sentence in the District Court it would, of course, have been fatal to any such decision. But the decision makers in this case were not engaged in the conduct or administration of the criminal process. Their incorrect use of the term 'driving while disqualified' was vernacular, rather than technical. As the Minister points out in his submissions, and as the relevant decision-makers were aware at the material time, the applicant was convicted of driving without a driving licence and driving without insurance on five separate occasions within what must have been a relatively short space of time. The conclusion drawn by those decision-makers, that the applicant was risking his own life and that of his fellow road users, flows just as clearly and obviously from those facts as it does from the erroneous description of that state of affairs as one in which the applicant was driving while disqualified.

59. Once again, it is important to remember that the decision must be considered in the round and should not be unpicked by reference to any isolated infelicity of language or expression. And it must also be remembered that the focus of the Citizens' Rights Directive and, in consequence, the 2015 regulations is on the personal conduct of the applicant and not on the specific criminal conviction or convictions to which that conduct may have given rise.

60. For those reasons, I am satisfied that, in the specific circumstances of this case, the erroneous reference in the decision to the disqualification from driving of the applicant does not render the decision bad in law.

61. Applying the same principles, I reject also the submission that the decision-maker fell into error by describing the offence that the applicant committed, contrary to s. 106(1) of the Road Traffic Act 1961, as amended, in the vernacular as a 'hit and run' offence, *i.e* . one of becoming involved in a road traffic accident and not stopping at or near the scene.

62. Thus, I am satisfied that the decision is not rendered unlawful by any material error of fact identified by the applicant.

Conclusion
63. The application for judicial review is refused.