

| | |
|--|---|
| Subject-matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality X 2) freedom of movement and residence - Articles 5(2), 5(1), 6(2), 7(2) of the Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 28/10/2016 |
| Deciding body (in original language) | The High Court |
| Deciding body (in English) | The High Court |
| Case number (also European Case Law Identifier (ECLI) where applicable) | [2016] IEHC 691 |
| Parties | Mohammed Ahsan v Minister for Justice and Equality; Mohammed Haroon and Nik Bibi Haroon v Minister for Justice and Equality; Noor Habib, Dilbaro Habib, Fatima Habib, Aisha Habib and Mareum Habib v Minister for Justice, Equality and Law Reform |
| Web link to the decision (if available) | http://www.courts.ie/Judgments.nsf/0/B8FFD841CE0C45D18025808A00315B37 |
| Legal basis in national law of the rights under dispute | Regulations 4(3)(b), 6(1), 6(2)(a) of the European Communities (Free Movement of Persons) Regulations 2006 and 2008 |
| Key facts of the case | Mr. Ahsan is a British national who arrived in Ireland on 16 March 2015 and commenced employment immediately thereafter. His wife, a Pakistani national, applied for a Category C visa at the Visa Applications Centre in Lahore so that she and their 3 year old son, also a |

| | |
|--|--|
| (max. 500 chars) | Pakistani national, could join Mr. Ahsan in Ireland. Having submitted all the relevant documentation, and following various communications with the Visa Office in Dublin, in March 2016 Mr. Ahsan initiated judicial review proceedings on the basis that the delay in processing these applications was in breach of Article 5(2) of the Directive. Similarly, Mr. Haroon is a British national, who was working in Ireland as a self-employed person, and in June 2015, his wife, an Afghani national, applied for an EU treaty rights visa to enter Ireland. No decision had been reached on this application by October 2015 due to long delays in processing applications, and with no indication as to when such a decision might be made, Mr. Haroon also sought a review of the process. The third set of applications stemmed from Mr. Habib, a British national, who exercised his EU treaty rights when he moved to Ireland in February 2015. As a self-employed person in the state, several dependant family members - his mother, his two sons and four grandchildren applied to join him in June 2015. With no decision forthcoming by December 2015, the Habib applicants sought similar reliefs to Haroon. |
| Main reasoning / argumentation (max. 500 chars) | The Court decided in the first instance that all of the applicants were entitled to invoke Article 5(2) of the Directive. With respect to whether the Irish state had breached that article, as transposed into Irish law by Regulation 4(3)(b) of the Free Movement of Persons Regulations 2006, the Court agreed with the applicants, that the government adopted an artificial approach in dividing the visa application process into two parts, “with the clock running only when the period of actual examination of a particular application begins,” [para. 138] which is not in accordance with the spirit of Article 5(2), which envisages an expedited process for EU treaty visas. |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | Furthermore, given the limited volume of documents needed to activate entry visas for non-EU family members of EU nationals exercising their freedom to reside in another member state, the delays in the three cases cannot be attributable to complex procedures (as might be required for residency permits). Even with respect to the latter residency permits, the Court of Justice of the EU ruled that these should be processed within 6 months, and although there is no precise timeframe set out in Art. 5(2), in the Irish High Court judge argued “the framers of the Directive had in mind a considerably shorter time span than six months for the issuing of visas to qualifying family members of EU citizens who have or intend to exercise their free movement rights, given the urgency which informs the language used in the provision.” [para. 186] |
| Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars) | Writing the judgment in July 2016, Justice Faherty pointed out that although the applications were received in June and August 2015 respectively, they cannot be said to be under consideration, and that there was no projected timeline for completion of the process. Therefore, he was “satisfied that the applicants are entitled to treat the delay as so unreasonable and egregious as to constitute a breach of the Directive and to justify the application for mandamus.” [para. 189] The Court issued an order directing the Irish government to take a decision on the respective applications within six weeks. |
| Key quotations in original language and translated into | “[i]n the absence of any projected timeframe at this remove, the question of resources, as averred to in Mr. McDonagh’s affidavits, is not sufficient to outweigh the provisions of the Directive, especially given the open-ended timeframe currently contemplated by the respondent for the processing of the visa applications, and also taking into consideration the emphasis which the ECJ places on the preservation of the |

| | |
|---|---|
| English with reference details (max. 500 chars) | family life of an EU citizen who exercises his or her right of movement across the territory of the Union.” [para. 191] |
| Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article. | Counsel for Ahsan raised Articles 41 and 47 of the Charter, but the Court did not engage in these provisions in its conclusions.. |