THE HIGH COURT

[2026] IEHC 556

Record No. 2025/616JR

BETWEEN

L.M.

APPLICANT

AND

INTERNATIONAL PROTECTION OFFICE

AND THE MINISTER FOR JUSTICE

RESPONDENTS

JUDGMENT of Mr. Justice Barr delivered electronically on the 13th day of August 2026.

Introduction

1. In these proceedings the applicant challenges the second respondent's review decision not to grant her permission to remain (hereinafter "*PTR*") in the State on humanitarian or other grounds pursuant to s.49 of the International Protection Act 2015.

2. In essence, the applicant submits that the impugned decision was vitiated on the following grounds: because there was a significant error of fact regarding the applicant's current employment status; there was a failure to consider all relevant facts as part of humanitarian considerations; there was a failure on the part of the decision-maker to give any or any adequate reasons for the decision; and there was a failure to consider all relevant documentation and submissions in the case.

Background.

3. The applicant is 48 years of age. She is a national of Malawi. She is married, but estranged from her husband. He resides in Malawi. She has two adult daughters, who reside in Zambia.

4. The applicant arrived in the State on 21 March 2012 on a student visa, which was renewed on several occasions until it expired for the final time on 30 September 2017. Thereafter, the applicant remained in the State without any lawful permission to reside or work in the State. This continued for a period of four years.

5. On 23 September 2021, the applicant applied for international protection on the basis that she had been forced into an arranged marriage with her husband, which had been arranged by her uncle. She stated that she had been subjected to extensive domestic violence at the hands of her husband, who was displeased that she had not produced a son. He became further enraged when he discovered that she had been using contraception to avoid further pregnancies. She stated that she feared that if she were to return to Malawi her estranged husband would assault her and would kill her.

6. The applicant's application for asylum or international protection was refused at first instance by the International Protection Office (IPO).

7. The applicant appealed that decision to the International Protection Appeals Tribunal ("*IPAT*"). An oral hearing was held on 26 November 2024. On 14 January 2025, the IPAT confirmed the decision refusing refugee status and subsidiary protection. While the IPAT accepted that the applicant was a victim of domestic violence in Malawi, it found that state protection was available to her in that country.

8. The original report produced by the IPO, as well as recommending that she be given neither a declaration of refugee status, nor subsidiary protection; had refused her permission to remain in the State. By letter dated 20 January 2025, the applicant submitted a request for a review of the refusal of permission to remain decision.

9. In a decision dated 8 April 2025, the second respondent refused the applicant permission to remain pursuant to s.47 of the 2015 Act.

10. On 7 May 2025, the applicant issued the present judicial review proceedings challenging the lawfulness of the review decision dated 8 April 2025.

The Challenged Decision.

11. Before coming to the challenged decision dated 8 April 2025, it will be appropriate to set out in very brief terms the essential case that was made on behalf of the applicant as to why, when considering his discretion under s.49 of the 2015 Act, the Minister failed to have any or any adequate regard to the private life and humanitarian aspects of the applicant's application for PTR.

12. In essence, the applicant's case was that she had resided in the State for a period of 13 years prior to the time when the decision was taken. Nine years of that period were lawful in terms of having a permission to reside and work in the State; at first under various student visas, and from 2021 onwards, she had a permission to remain

while her application for international protection was being determined. It was accepted that there was a period of approximately four years between 2017 and 2021 when the applicant had lived and worked in Ireland without permission to do so.

13. The applicant's case was that in the 13 years during which she had resided in Ireland, she had trained and worked as a home care assistant, looking after elderly people with dementia and other similar conditions in their homes. In support of her application she had submitted a significant quantity of documentation showing that she had attended at various courses relevant to aspects of health care in the home and had obtained certificates as a result of completing the courses.

14. In addition, the applicant had submitted several references which had deposed to her strong work ethic. Two of these were from her employer and one was from the son of a lady whom the applicant had cared for during the Covid era. That lady had suffered with dementia. The reference from her son was glowing in relation to the level of care and compassion that was demonstrated by the applicant towards his mother.

15. In addition, it was submitted that the applicant had integrated well into the community in Ireland. In particular, it was asserted that she had taken part in various community activities which had been run through her church. She had also demonstrated evidence that she had made charitable donations to UNICEF. Finally, it was asserted that the applicant was suffering with arthritis. It was stated that she required continuous medical care. A letter had been submitted from a Dr. Nikookam of Jervis Medical Centre, who had described her symptoms as a progressive worsening of pain with swelling in both wrists, both hands, in all the fingers and in both feet and in all the toes. The applicant had also submitted various medical letters, certificates, receipts and prescriptions that documented her engagement with health services in the State.

16. It was submitted that taking all of these matters into account, and while accepting that her period of lawful presence in the State had at all times been precarious, meaning that it was subject to temporary visas of one sort or another, it was submitted that the combination of circumstances and in particular, the length of her presence in the State, meant that the private life and humanitarian considerations in the case outweighed the State's right to control the entry and presence of foreign nationals in the State; such that she should be granted PTR.

17. Turning to the challenged decision, it began by setting out a brief summary of the applicant's background prior to arrival in the State. It went on to summarise the provisions of s.49 of the International Protection Act 2015. It gave a list of the documents that had been submitted by the applicant, both as part of her original application and as part of the review application. The decision also listed the various documents of country of origin information that had been submitted on behalf of the applicant.

18. Under the heading "*Nature of the Applicant's Connection with the State*", it noted that the applicant had been granted permission to access the labour market from 23 March 2022 until 23 March 2023, which permission had been renewed periodically thereafter until the most recent permission, which was to last until 7 February 2026, or until such time as the applicant received a final decision on her international protection application, whichever should first occur. The decision went on to state as follows in relation to the applicant's demonstrated employment history: -

> "*The applicant's legal representative provided various payslips, revenue documents and employment letters which document the applicant's engagement in the labour market and her contributions to the State in terms of taxes. It is*

noted that no submissions with relevant dates were provided to show if the applicant is in employment currently."

19. The decision went on to note that there was evidence that the applicant had worked during a period when she had been undocumented in the State. The decision referred to the various character reference letters that had been provided and the references from her an employer. The decision also noted that it had been submitted that the applicant had completed a significant number of courses which had resulted in her becoming upskilled and qualified in the area of home care assistance. The decision noted that during the 13 years that the applicant had been present in the State, it had been submitted that during that period she had made every possible effort to fully integrate and contribute to Irish society and to that end, had completed several courses to enable her to gain employment in Ireland and to develop strong relationships in the country. Having noted that it was submitted that the applicant suffered with arthritis and was receiving medical treatment in the State for that condition, and having noted the exemplary character references that had been submitted on her behalf, the decision went on to reach the following conclusions:

"*Whilst the above indicates some level of connection to the State, these were formed during a time when the applicant's status was precarious and her length of residency cannot be considered lengthy or exceptional.*

As per MK (Albania) the ECHR has consistently asserted that "These cases must be seen in the context of the principle that migrants are not entitled to a choice of their country of residence". It further outlines that "It is important to emphasise that duration of stay or residence does not itself form part of the consistent Strasbourg jurisprudence, but may only become a factor in

exceptional cases of very lengthy residence". While the applicant has been living in the State, albeit as an unsettled migrant, she has formed connections with her community through education and employment. These connections were formed during a time when her status in the State was precarious. Furthermore, the applicant's length of time in the international protection process is three years and six months and cannot be considered very lengthy or exceptional in nature.

It is acknowledged that moving countries can often be a challenging and difficult situation for individuals, however, the European Court of Human Rights consistently asserted that migrants are not entitled to choose their country of residence and there are no exceptional circumstances arising in the applicant's case. In conclusion and based on submissions received from or on behalf of the applicant, it is decided that connections to the State do not warrant a grant of permission to remain."

20. Under the heading of "*Humanitarian Considerations*", the decision effectively repeated the analysis that had been carried out earlier in the decision. It also included reference to various pieces of country of origin information that had been submitted. It noted that the IPAT decision had found that the applicant had been subjected to significant domestic violence in Malawi, but had gone on to hold that there was state protection available to her. The review decision concluded as follows on this aspect:

"*It can also be noted that the submissions made on behalf of the applicant in support of her review of the permission to remain decision does not include any new or further information relating to the fear the applicant claims in Malawi. Therefore, no new information or a change of circumstances has been*

advised and the credibility findings of the Tribunal remain valid in this case. The COI submitted by the applicant's legal representative has been considered but has not demonstrated that the applicant would be subjected to further harm should she be returned to Malawi, nor does it relate to any aspect of her claim. Therefore, no further consideration of the applicant's claim of physical harm or attack in Malawi will be considered."

21. The decision went on to deal with the medical aspects of the applicant's case. It determined that the applicant had not demonstrated that if she were returned to Malawi, she would not be able to find appropriate medical treatment for her condition of arthritis. Accordingly, on the humanitarian considerations, the second respondent reached the decision that the common good in maintaining the integrity of the international protection and immigration system outweighed the humanitarian features of the applicant's application.

22. The decision then went on to deal with the issue of the character and conduct of the applicant. In this regard it found that the applicant was of very good character and there was no evidence of any bad conduct on her part. Similarly, there were no considerations of national security or public order that were adverse to her application.

23. Under the heading "*The Common Good*", the decision noted that it had been submitted that through her work and through participation in various courses and in other areas, the applicant had developed numerous friendships since her arrival in Ireland. She considered Ireland to be her home. It had been submitted on behalf of the applicant that to grant her PTR would not offend against the common good. The decision also noted that it was in the interests of the common good to uphold the international protection and immigration related procedures of the State.

24. Under the heading consideration of "*Private Life*" the decision repeated the comments that had been made earlier in the decision about the lack of submission of any documentation with recent dates demonstrating that the applicant was in employment currently. It also dealt with the submission that had been made on behalf of the applicant as to the number of courses that she had attended and that she suffered from arthritis. The decision went on to note that the rights of the applicant were not absolute. All rights had to be considered in the context of the factual matrix of the case. The decision again reiterated that the ECtHR had consistently asserted that the cases had to be seen in the context of the principle that migrants are not entitled to choose their country of residence. The decision came to the following conclusion on this aspect:

> "*This information presents some details of the applicant's associations and personal development in the State, although it is noted that this is limited in nature. Having examined the facts and circumstances, it is not considered that there are exceptional circumstances arising.*"

25. The decision went on to note that it had been recognised in Irish case law that while considerations such as state security or criminal behaviour would add significant weight to the State's interest in deportation in individual cases, it was not necessary to have resort to such considerations to justify refusal of leave to remain to a migrant whose residence has been precarious, and who could point to something more than such residence. The decision went on to reach the following conclusion:

> "*Having examined all of the facts in this case and weighing the competing interests of the individual's private life rights, against the rights and interests of the State in controlling immigration, ensuring the economic well-being of the country, and protecting the rights and freedoms of others, it is considered that*

the balance lies in favour of the State's interests in the particular circumstances of this case."

26. On this basis, the decision concluded that the decision to refuse the applicant PTR did not breach her rights under Arts. 3 and 8 of the ECHR; nor had she demonstrated that there were sufficient other considerations that would warrant a grant of PTR being made in her favour.

Submissions of the Parties.

27. On behalf of the applicant, it was submitted by Mr. O'Dwyer SC that the impugned decision ought to be struck down on a number of grounds. First, it was submitted that there was a significant error of fact regarding the applicant's continued employment in the State. It was accepted that while the references that had been submitted, had been submitted earlier in the process and related to her period of employment up to and including 2023; it was submitted that the legal submissions that had been lodged on her behalf for the purposes of the review decision had made it clear that she continued to work as a home care assistant. That was supported by the permissions that had been granted to her to enter into the labour market until February 2026, or until her application for international protection and/or PTR was finally determined. It was submitted that in these circumstances the statement in the decision that the applicant had not demonstrated any documents showing her continued employment as a home care assistant, was a significant error.

28. It was submitted that this error was significant in view of the fact that under s.49 of the 2015 Act, the decision-maker had to have regard to a number of matters including the applicant's employment history in the State and/or his or her prospects of

employment in the future. It was submitted that the inference to be drawn from this statement in the decision, which had been repeated on three separate occasions throughout the decision, was that the applicant had not shown that she was currently employed in the capacity of home care assistant at the time of the review decision. It was submitted that that was erroneous and related to a fundamental aspect of her application.

29. Grounds 2 and 3 that were submitted on behalf of the applicant can be taken together. It was submitted that the decision had failed to have adequate regard to the fact that the applicant had been present in the State for a very considerable period of time, upwards of 13 years, at the time of the review decision. During that time, she had participated in many courses; she had worked consistently as a home care assistant and had participated in various church activities. In these areas she had developed strong and lasting friendships, which demonstrated a close connection with the State. It was submitted that the length of her stay in the country made her case somewhat different to other cases of a similar nature. It was submitted that this had not been given due consideration under the proportionality assessment that was required to be carried out.

30. Allied to that ground, it was submitted that the decision failed to disclose that the decision-maker had had adequate regard to a salient fact in the case, being the length of time for which the applicant had been present in the State and the submissions that had been made in that regard. It was submitted that that could only be demonstrated by the giving of adequate reasons referring to these matters; which, it was submitted, were conspicuous by their absence from the impugned decision.

31. Finally, it was submitted that there had been little or no engagement in the impugned decision with the submissions that had been made by the applicant and/or with the documentation that had been submitted in support of her claim for PTR.

32. On behalf of the respondent, Ms. Cooney BL submitted that the impugned decision in this case had been a detailed decision, which had correctly applied the law and had dealt more than adequately with the facts of the case and the submissions made on behalf of the applicant.

33. It was submitted that it was important to bear in mind that the applicant's rights based case had already been determined in the course of her application for international protection. That had been refused at first instance and again on appeal. That appeal decision had not been challenged. Accordingly, it was submitted that insofar as the applicant had any right to remain in the State, a final determination had been made against her in that regard.

34. It was submitted that what was at issue in the present matter that was before the second respondent by way of the review application, was an exercise of discretion by the Minister as to whether there were sufficient other circumstances that would warrant granting the applicant PTR, notwithstanding that she had no right to reside in the State and having regard to the right of the State to implement its immigration laws and control entry through its borders.

35. It was submitted that in this regard, the decision-maker had referred to all the documents that had been submitted by the applicant, both in relation to the various courses that she had attended; her medical documentation and the COI submitted on her behalf. It was submitted that the decision-maker had also had regard to the submissions that were made in relation to her level of integration in the State. She had also referred to the exemplary references that had been submitted on behalf of the applicant by her employer and by the son of a woman for whom she had cared.

36. It was submitted that the decision made it clear that the decision-maker had had regard to the relevant legal authorities both from the European Court of Human Rights

and under Irish law and had correctly applied the principles set out therein. Insofar as it had been submitted on behalf of the applicant that the decision-maker had not paid sufficient regard to the length of the applicant's presence in the State, it was submitted that that objection was not sustainable because the decision-maker had referred on a number of occasions to the fact that the applicant had been present in the State for some 13 years at the time of the review decision.

37. Insofar as it had been asserted that the sentence which stated that no new documentation had been submitted by or on behalf of the applicant demonstrating that she was currently in employment, was erroneous; that was not sustainable because that statement was in fact correct. No new documentation had been submitted confirming the applicant's current position of employment at the time of the review decision. The payslips that had been in furnished as part of the original application were dated from 2022. The references that had been obtained were also earlier in time and one of these was undated. The reference from the son of the lady who had been cared for by the applicant, related to care that had been given by her to his mother during the Covid 19 pandemic. Thus, it was asserted that the statement of fact contained in that sentence, was correct.

38. It was submitted that insofar as there was any complaint that there had not been a sufficient analysis either of the applicant's rights under the ECHR, or of her submissions in relation to interference with her private life and/or other humanitarian considerations, that analysis had been carried out in a detailed way in the decision. It was submitted that the decision itself was more than adequately reasoned. In this regard, counsel submitted that Irish case law demonstrated that the Minister had a wide discretion when considering the exercise of the discretionary power to grant PTR: see *MK (Albania) v Minister for Justice & Equality* [2024] 2 IR 113; *SM v Minister for*

Justice [2025] IEHC 629; *M v Minister for Justice, Home Affairs and Migration* [2025] IEHC 761.

39. It was submitted that when the decision was read as a whole, it was clear that the second respondent had carried out a detailed analysis of the rights held by the applicant under the ECHR and of her submissions under the general headings of private life and humanitarian considerations and had carefully balanced same as against the right of the State to enforce its immigration laws and protect its borders. It was submitted that in coming to the decision in this case, the second respondent had acted fairly and proportionately. Accordingly, it was submitted that there was no basis on which the decision should be set aside.

Relevant Statutory Provisions.

40. When considering an application for PTR, s.49 of the 2015 Act provides that the Minister shall have regard to the information (if any) submitted by the applicant and to any relevant information presented by the applicant in his or her application for international protection, including any statement made by him or her at his or her preliminary interview and personal interview.

41. Section 49(3) provides that in deciding whether to give an applicant a permission, the Minister shall have regard to the applicant's family and personal circumstances and to his or her right to respect for his or her private and family life, having due regard to the following: the nature of the applicant's connection with the State, if any; humanitarian considerations; the character and conduct of the applicant; considerations of national security and public order; and any other considerations of the common good.

42. Section 49(4) provides that the Minister, having considered the matters referred to above, shall decide to give the applicant a permission, or refuse to give the applicant a permission.

43. Section 49(9) provides that for the purposes of a review of a refusal of PTR, the applicant may submit information that would have been relevant to the making of a decision had it been in the possession of the Minister when making such decision; and shall, where he or she becomes aware of a change of circumstances that would have been relevant to the making of a decision had it been in the possession of the Minister when making such decision, inform the Minister forthwith of that change.

The Law.

44. The case law in this area establishes that in exercising his discretion as to whether a person should be granted PTR, the Minister has a large margin of appreciation.

45. The nature of that discretion, arose for consideration in somewhat different circumstances in *DE (An infant) v Minister for Justice* [2018] 3 IR 326, which involved a consideration of the discretion enjoyed by the Minister when dealing with an application for revocation of a deportation order. In that case, the Supreme Court was considering an appeal from a refusal in the High Court to grant leave to seek judicial review of the decision of the Minister not to revoke the deportation order in question. The applicant's mother had arrived in Ireland on 23 January 2009. The applicant had been born on 1 July 2011. He had lived all his life in Ireland. He suffered from sickle cell disease. The applicant challenged the deportation order on the grounds that it ran contrary to a policy decision which had allegedly stated that people who had

been in the State for upwards of five years, ought to be allowed to remain; he further argued that the Minister in making the deportation order and/or in refusing to revoke it, had failed to have adequate regard to the fact that he was suffering from a serious medical complaint for which he could not obtain the necessary treatment in his country of origin. When leave to proceed by way of judicial review had been refused in the High Court, the applicant appealed to the Supreme Court.

46. Dealing with the nature of the discretion enjoyed by the Minister when considering an application that he should revoke a deportation order, it was noted by Clarke CJ. delivering the majority judgment, that in such a case, the legal rights or entitlements of the applicant, would normally have been decided at an earlier stage in the proceedings. Nevertheless, there was a residual issue for the Minister to consider on an application to revoke a deportation order which was not concerned with whether there was a legal right to remain in the State, but rather with whether the Minister should exercise the more general humanitarian jurisdiction which is conferred on the Minister. The judgment went on to deal with the nature of the application that was before the Minister on an application to revoke a deportation order as follows:

> "*... Such an issue is not, strictly speaking, concerned with legal rights and entitlements but rather are subject only to the entitlement of a relevant person to make representations to the Minister as to the basis on which it is said that the Minister might be persuaded to grant humanitarian leave and to the entitlement to have the Minister consider those representations. But the criteria under the legislation to be applied in respect of such an application are very much at the open-ended end of the spectrum. In such an application the Minister is not concerned with whether a legal entitlement exists, but rather whether general humanitarian considerations ought to lead to the person concerned not*

being deported.… However, on the assumption that no legal entitlement arises, then the decision of the Minister can, in my view, be properly described as one involving the exercise of a very broad discretion."

47. In his concurring judgment, O'Donnell J. (as he then was) stated as follows at para. 92:

"*… Situations which may not reach the high threshold posed by Article 3 may nevertheless properly be taken into account by a decision-maker in considering the broad question of humanitarian leave to remain. In the present case, the Minister can decide to permit the applicant to remain in Ireland, even if the Minister considered that he was not obliged to do so because of the ECHR or the Constitution. Here the appellant has been more than nine years in this country, was born here, and has lived all his life here. Not only does he suffer from a serious medical condition, but he has had the benefit of committed expert medical care since birth. The Minister is entitled, indeed required, to take all that information into account, including his medical condition, prognosis, history of treatment and likely future care, as well as the degree of integration in the community and other factors in deciding whether on deportation or on revocation of any deportation order. Humanitarian considerations are not the sole preserve of the courts, national or supra – national. It may also be useful to recall that even after ECHR and constitutional considerations are exhausted, the exercise of discretion remains the subject of domestic law. After the issue of 'must' has been determined, the question of 'may' properly remains, and any decision in that regard may still be subject to searching review for conformity with domestic principles including the consideration of all relevant factors, and*

the exclusion of irrelevant considerations, as well as for rationality and proportionality."

48. In that case, the Supreme Court upheld the refusal of leave to proceed by way of judicial review proceedings that had been made in the High Court. This was due to the fact that no cogent medical evidence had been forthcoming that the applicant's medical condition could not be adequately treated in his country of origin. Clarke CJ. noted that it was always open to the applicant to make a fresh application for revocation of the deportation order based on the necessary medical evidence.

49. In *MK v Minister for Justice*, the Supreme Court had to consider the discretion enjoyed by the Minister when considering an application for PTR. The court held that it was only in exceptional circumstances and where there was something more than the inevitable disruption caused by removal from a country in which a person had lived, that it could be argued that Art. 8 ECHR rights prevailed, or more precisely that interference with that private life was not justified by the State interest involved. That question ought to be addressed by considering a proportionality assessment and factoring in the precarious nature of the applicant's residence in that balance.

50. The court further held that where residence was precarious, the State's interest in maintaining an orderly immigration system prevailed and justified interference with private life that a refusal of leave to remain in the country, or indeed, deportation, necessarily involved, unless there was something more. It was sufficient that without something more the State interest in maintaining the integrity of the immigration system justified interference with private life when all that could be asserted was that a life had been lived in a country where that residence was and was known to be precarious. The court held that individual circumstances seldom outweighed the rights of a contracting state.

51. *In A (Albania) v Minister for Justice & Equality* [2023] IEHC 692, Simons J. applied the principles that had been set down by the Court of Appeal in *H.K. (Western Sahara) v Minister for Justice & Equality* [2022] IECA 141, where it had been held that a s.49 assessment involves more than just an analysis of whether the applicant's rights under Arts. 3 & 8 of ECHR had been infringed.

52. The court held that the *HK* case had set down that the assessment under s.49 of the 2015 Act required more than simply a consideration of whether there had been a breach of the person's rights under the ECHR. The individual's rights under Art. 8 ECHR must be considered, but the s.49 considerations went further than that and reached into all aspects of private and family life.

53. In *SM v Minister for Justice*, Bradley J. held that the entitlement of an applicant insofar as his claim pursuant to s.49 of the 2015 Act was in relation to consideration of humanitarian matters, was concerned with making representations to the Minister as to the basis on which it was said that the Minister might be persuaded to grant humanitarian leave and the entitlement to have the Minister consider those representations.

54. Bradley J. went on to note at para. 75 that the jurisprudence of the Strasbourg Court established that it will only be rarely and in exceptional circumstances that the State's interest will not justify the interference with the applicant's private life by being removed from the State.

55. In relation to the duty to give reasons on such an application, Bradley J. stated at para. 86 that generally the "*reasons*" jurisprudence explained that as an adjunct to the requirement of fair procedures, a recipient of a decision should be able to understand how their arguments were addressed by the decision-maker and to allow an applicant and their legal representatives to assess the validity and correctness of the process. On

the facts of that case, Bradley J. refused the reliefs sought by the applicant. That decision is currently under appeal to the Supreme Court.

56. In *M v Minister for Justice, Home Affairs and Migration*, O'Higgins J. in an *ex-tempore* judgment, referred extensively to the judgment in the *SM* case. Applying the principles set out therein, he refused leave to challenge the decision of the respondent to refuse PTR to the applicant.

57. In that case, the decision-maker had expressly acknowledged the contribution that the applicant had made to the Irish economy through his commitment to upskilling and his volunteering in the community since he arrived in Ireland. It was held that the decision-maker had taken into account the applicant's point that it would be contrary to the common good to train and educate the applicant only to deport him, particularly in light of the shortage of healthcare workers in Ireland. However, the decision-maker had determined that that came up short in that it had not been considered sufficient to discharge the "*preloaded onus of placing 'something more' into the scales*".

58. O'Higgins J. held that the respondent had weighed and considered the applicant's representations, finding that the applicant had not established the requisite "*something more*" as per *MK (Albania)* to outweigh the State's interest in maintaining an orderly immigration system. He held that on a fair appraisal of the decision, the reasons why the application had been refused were evident from the decision. Accordingly, he refused leave to the applicant to challenge the refusal of PTR by way of judicial review proceedings.

Discussion and Conclusions.

59. Before turning to the substantive grounds of challenge raised in these proceedings, I make the following general comments: first, these are judicial review proceedings; it is not an appeal from the decision of the second respondent. Therefore, the views of this Court on the merits of the applicant's application for PTR, are not relevant.

60. Secondly, the court accepts the dicta cited above, which are to the effect that the Minister has a wide margin of discretion when considering PTR applications. The court accepts that the normal position is that where a person does not have a right to live and work in the State, the interests of the State in controlling the entry and residence of foreign nationals in the State, will normally take precedence, unless the applicant can point to "*something more*" than his mere residence in the State, which would justify the Minister exercising his discretion to grant PTR.

61. Having said that, the court also recognises that the decision-maker has a duty to engage in a real way with the facts of the case before him/her. The fact of such engagement can only be demonstrated by the content and cogency of the reasoning given in the decision.

62. The first ground of challenge is that the decision-maker fell into error because she stated on a number of occasions: "*It is noted that no submissions with recent dates were provided to show if the applicant is in employment currently*". It was submitted that that demonstrated that the decision-maker had not had regard to the submissions that were filed on behalf of the applicant for the purpose of the review application, which had clearly stated that she "*works*" (in the present tense) as a home care assistant. In addition, it was submitted that the decision-maker had not had regard to the fact that the applicant had an extant permission to enter the labour market at the

time of the review decision, which was to continue until February 2026, or until final determination of all aspects of the international protection application.

63. It was submitted that this sentence, which had been repeated on three occasions in the decision, demonstrated that the decision-maker had not had regard to the up-to-date submissions that had been submitted on behalf of the applicant. More importantly, it meant that the decision-maker appeared to question whether the applicant was in continuing employment as a home care assistant at the time of the review application. It was submitted that that was significant because one of the considerations that had to be taken into account by the Minister on such an application for review, was the employment history of the applicant in the State and their employment prospects.

64. In response, Ms. Cooney BL on behalf of the respondent had submitted that the sentence merely stated that the applicant had not submitted any further documentation demonstrating that she was in current employment at the time of her review application. It was submitted that that was a correct factual statement.

65. While a literal reading of the sentence in the decision may be correct, in that the applicant had not furnished any new documentary evidence demonstrating her continuing employment as a home care assistant, the court finds that the inference of the sentence contained in the decision has to be that the decision-maker was not satisfied that the applicant had demonstrated that she continued in employment as a home care assistant. That implicit finding was made despite the statement in the submissions that had been lodged on behalf of the applicant that she "*works*" as a home care assistant.

66. The fact that that sentence was repeated on three occasions in the decision, shows that it was a matter of some importance to the decision maker. I accept the submission made on behalf of the applicant that the sentence in question deals with a fundamental part of the applicant's application for PTR, that she had worked and

continued to work in the healthcare sector in Ireland. I accept that that submission was fundamental to the consideration of her employment history and her employment prospects.

67. In view of the fact that the applicant had furnished submissions which stated that she was currently working in the home care sector and had furnished an extant permission for her to enter the labour market, I am satisfied that this sentence demonstrates a serious erroneous impression on the part of the decision-maker. In effect, it is tantamount to saying that she was putting forward a fraudulent application on the basis that she continued to work in the particular sector, when there was no documentation to demonstrate that that was true.

68. In argument at the bar, Ms. Cooney BL on behalf of the respondent pointed to the fact that one of the references which have been furnished by the applicant from her employer Liberty Homecare appeared to state that the applicant had worked with the company and had been a very reliable employee. It was stated that that document seemed to suggest that her employment with Liberty had ceased. I do not accept that submission for two reasons: first, that reason was not given by the decision-maker in her decision. Secondly, the letter in question is (a) undated and (b) it does not refer to the dates during which the applicant may have been employed by Liberty. I am satisfied that it was in fact a general reference that was produced by the company deposing to her exemplary qualities as a home care assistant. I am not satisfied that it can properly be interpreted as meaning that the applicant's employment with Liberty had ceased at any given time. It is also contradicted by the reference dated 30 March 2023 furnished by Rachel McGaley, the recruitment manager with Liberty Homecare, which clearly stated that the applicant was working with that company at that time.

69. I accept the submission that was made by counsel on behalf of the respondent that it is not appropriate to pars a decision looking for tiny discrepancies or errors that may occur in one sentence. However, I am satisfied that where a particular sentence has significance for the overall consideration of the case and where that sentence has been repeated on three separate occasions in the decision, one cannot be accused of unfairly parsing the decision in reaching the conclusion that a serious error was made. I am satisfied that on the basis of this error, the decision must be set aside.

70. Turning to the second and third grounds of challenge which can be taken together, which are to the effect that the decision did not properly analyse and address the length of residence of the applicant in the country as part of the assessment of the effect of the decision to exclude her from the State on her private life and other humanitarian considerations. It is true to say that the decision did refer to the fact that she had been present in the State for 13 years and that 9 of those years had been subject to a permission, albeit one that was precarious in nature. Despite these comments, it is very difficult to see how the decision-maker could have come to the conclusion that the length of residence in this case was not "*lengthy*" or "*exceptional*".

71. When one looks at the length of residence that was involved in other cases which involved similar considerations, one sees that much shorter periods were involved, yet they were held to give rise to the need for an analysis of the effect of deportation on a person's private life and for other humanitarian reasons. In *HK* the applicant had arrived in Ireland in 2015, when he was 15 years of age. His first application for asylum/international protection had been refused. The applicant appealed that decision but left the State before the appeal came on for hearing in July 2017. Due to the entry into force of the 2015 Act, the applicant was given the opportunity to fill out a questionnaire on his return to Ireland. Unfortunately, the date

of his return is not given in the judgment. There was a somewhat complex process thereafter, leading to a refusal of PTR in October 2019. So essentially, in that case one was dealing with two periods of in or about two years each when the applicant was resident in the State.

72. In *MK v Minister for Justice*, the applicant arrived in Ireland in 2016, when he was aged 16 years. He had been present in the State for in or about two years when the application arose. Of that, approximately 16 months had been subject to a lawful, but precarious permission.

73. In the *SM* case the applicant had been present in the State for approximately two years. In the *M* case the applicant had been present for in or about one year.

74. In the present case, the applicant had been present in the State for 13 years prior to the review decision. There was extensive evidence that she had engaged in multiple courses; she had exemplary work references as a home care assistant and there was evidence that she had integrated into the community by participating in church activities and in forming friendships within her social and work circles.

75. I am satisfied that given the substantial length of her presence in the State, albeit that 9 years of that was subject to various precarious permissions, the sheer length of time, coupled with the fact that she was engaged in gainful employment had demonstrated a significant integration into the community, which demanded that the decision-maker had to carry out a careful analysis of the facts when considering the proportionality of the decision not to grant her PTR. Given that the decision-maker had decided that the length of her presence in the State was neither "*lengthy*" or "*exceptional*", it is difficult to see that any proper analysis of the facts was carried out in this case.

76. In addition, no regard appears to have been taken of the fact that the applicant was employed in an area in which there is a significant shortage of skilled workers. While the court cannot take judicial notice of that fact, it is appropriate for the court to recognise that in the area of home care assistance, the large proportion of such employees are foreign nationals. In the *M* decision, it was noted that the fact that the applicant in that case, who was also employed in the healthcare sector, was employed in a sector where there was a shortage of healthcare workers in Ireland, had been taken into account by the decision-maker.

77. In the present case, there is no evidence in the decision that the decision-maker considered the very important contribution that was being made by the applicant in her work as a home care assistant. This is a factor that ought to be taken into account when considering the common good. It is certainly arguable that the common good for the public generally in Ireland is to have skilled workers who are ready and willing to work in the area of home care assistance.

78. I am satisfied that on a fair appraisal of the decision in this case, it has not been demonstrated that the decision-maker has sufficiently engaged with the length of residency of the applicant in the State, or with the value of her employment and upskilling to the common good of the Irish people generally. Accordingly, on this basis, the decision must be struck down.

79. Finally, it was submitted that there had not been sufficient engagement by the decision-maker in the submissions of the applicant and with the documentation submitted on her behalf. To an extent, the court has already recognised this frailty in the decision. The court accepts the submission that the decision does not appear to analyse the serious impact on the applicant's social ties and relationships that she has developed both on a social level and with her clients and with their families, if she is

removed from the State. Accordingly, this ground is subsumed with the general finding above of a lack of engagement with the particular facts of this case in reaching the decision.

80. For the reasons set out herein, the court is satisfied that an order of *certiorari* must be granted in respect of the decision of the second respondent dated 8 April 2025.

Proposed Final Order.

81. Having regard to the findings in this judgment, the court proposes that the final order should be to grant the reliefs sought at paras. 1, 2 and 3 of the applicant's notice of motion filed on 30 May 2025.

82. The court will hear the parties in relation to any further ancillary orders that should be made.

83. As this judgment has been delivered electronically, the parties shall have until 15 September 2026 to furnish brief written submissions of not more than 1000 words on the terms of the final order and on costs and on any other matters that may arise.

84. The matter shall be listed for mention at 10.30 hours on 14 October 2026 for the purpose of making final orders.