

**THE HIGH COURT  
JUDICIAL REVIEW**

[2021] IEHC 770  
**RECORD NO. 2019/272JR**

**BETWEEN**

**AZ**

**APPLICANT**

**-AND-**

**THE MINISTER FOR JUSTICE**

**RESPONDENT**

**JUDGMENT of Ms. Justice Tara Burns delivered on 3 December 2021**

**General**

1. The Applicant is a naturalized Irish citizen who was born in Iraq. He arrived in the State, as an unaccompanied minor, on 29 January 2003 and thereupon applied for international protection. Whilst this application was rejected, the Respondent granted him humanitarian leave to remain in the State on 4 July 2008. He became a naturalized Irish citizen on 31 March 2014.
2. The Applicant married an Iraqi woman, Ms. S, on 12 August 2015 in Iraq. The Applicant met Ms. S in Iraq in 2009. He travelled to meet her again in 2013. In 2015, when he married Ms. S, he remained in Iraq for six months. Ms. S continues to live in Iraq.
3. In October 2015, Ms. S applied to the Respondent for a non-EEA family reunification visa to permit her to come to Ireland to live with the Applicant. This application was refused on 31 August 2016. An appeal of this refusal was dismissed by the Respondent on 14 February 2017.
4. On 20 January 2018, Ms. S again applied to the Respondent for such a visa. This was refused on 21 June 2018. An appeal of this refusal was brought in August 2018. The appeal was refused by the Respondent on 13 February 2019.
5. Leave to apply by way of Judicial Review seeking an order of *Certiorari* of this refusal was granted by the High Court on 27 May 2019 on the grounds that the Respondent's decision was unreasonable and/or disproportionate having regard to Article 41 of the Constitution and/or Article 8 of the ECHR; and that the strict application of the financial threshold set down by the Respondent in her policy document relating to non-EEA family reunification and/or the decision not to consider the Applicant's case as "most exceptional" on humanitarian grounds, was unreasonable and disproportionate and/or was a fixed policy.

**Financial Criteria for a Non-EEA Family Reunification Visa**

6. The Respondent's policy document relating to the issue of visas for non-EEA family reunification purposes states:

"Where Sponsor is Irish Citizen

- 17.2. An Irish citizen, in order to sponsor an immediate family member, must not have been totally or predominantly reliant on benefits from the Irish State for a continuous period in excess of 2 years immediately prior to the application and

must over the three year period prior to application have earned a cumulative gross income over and above any State benefits of not less than 40K”.

7. With respect to a sponsor being in receipt of State benefits, the Respondent has altered her policy in the following manner, as set out in an answer from the Respondent to a parliamentary question:-

“In general, the sponsor must be in a position to support such family members by not having been reliant on State benefit from the Irish State for a continuous period in excess of two years immediately prior to the application. Disability allowance payments are excluded from such a requirement. Since it must be assumed that such benefits recognize a lack of capacity to otherwise earn a living, the end result would be that a person on disability benefit could never benefit from family reunification. This would be unfair. Therefore, persons receiving disability benefits are considered eligible sponsors, subject of course to meeting any other necessary requirements.”

8. Paragraph 1.12 of the policy document permits exceptions to the criteria of the policy. It states:-

“While this document sets down guidelines for the processing of cases, it is intended that decision makers will retain the discretion to grant family reunification in cases that on the face of it do not appear to meet the requirements of the policy. This is to allow the system to deal with those rare cases that present an exceptional set of circumstances, normally humanitarian, that would suggest that the appropriate and proportionate decision should be positive.”

#### **The Applicant’s Circumstances**

9. The Applicant suffered a workplace injury on 15 May 2017. He had worked in that employment from 27 March 2017 to 23 May 2017. Prior to that employment, he had worked in stints of employment in the restaurant sector since 2008, when he became entitled to work within this jurisdiction. As a consequence of the injury, he was unable to continue with this employment which was terminated as a result. The Applicant has remained restricted in his ability to work since then. In February 2018, he was awarded disability benefit.
10. It is common case that the Applicant does not meet the financial threshold requirements set down by the Respondent in her policy document.
11. The Applicant’s solicitors submitted to the Respondent that as the reason for the Applicant being unable to meet the financial criteria was his injury at work, the financial criteria set out in paragraph 17.2 of the policy document should be waived. It was submitted that an exceptional set of circumstances presented as the Applicant *“had suffered setbacks in his history, training and work experience opportunities, due to the long period he spent in the asylum process, in direct provision in the State, and this has affected his earning capacity.”* The Applicant’s solicitors also indicated in their representations to the

Respondent that the Applicant would be willing to re-train and upskill if he was unable to resume manual work.

12. The Applicant's solicitors further submitted that another important factor of exceptionality was that *"it was not reasonable to expect the married couple to reside together in Iraq, due to the security situation in that country."*

#### **The Respondent's Decision Refusing the Visa**

13. The Respondent refused the visa appeal application, in summary, because of the Applicant's failure to meet the financial criteria set out in the policy document; the potential cost to public funds and resources of admitting Ms. S; and insufficient evidence of communication with and financial support of Ms. S, by the Applicant.

#### **Financial criteria**

14. In her decision, the Respondent accepted that the fact that the Applicant was in receipt of disability allowance did not disentitle him from being a sponsor, however she determined that she could not exercise her discretion to exempt him from complying with the financial criteria as the exemption provided for in paragraph 1.12 envisaged "the most exceptional circumstances" which did not accurately characterise the instant case. Having conducted a detailed analysis of the Applicant's earnings, bank account statements, credit union statements, social welfare payments, housing assistance payments and P45 certificates, the Respondent was of the view that the Applicant's financial and self-sufficiency circumstances gave rise to reasonable and considerable concerns. The Respondent determined that in light of the fact that the Applicant was seeking *"an almost complete derogation"* from the financial requirements of the policy, it was probable that a further burden on public funds or public resources would arise. She also was mindful of how an exemption in the instant case could have a significance in future cases. Accordingly, the Respondent determined that an exemption from the financial criteria required in the Policy document should not be applied. The Respondent stated:-

"It must be noted that Mr. Z has been in a position to undertake employment since 2008 and stints of employment have been shown to be undertaken in 2009, 2010, 2013, 2014, 2016 and 2017. Insufficient documentary evidence has been submitted to show that, prior to his workplace accident on the 15 May 2017, Mr. Z faced any sufficient obstacles preventing him from employment. This allowed the sponsor the relevant three years to earn the necessary income to meet the financial criteria prior to his workplace incident in May 2017."

#### **Suitable Living Conditions**

15. The Respondent also determined that the Applicant had not established suitable living accommodation for himself and Ms. S. He had failed to establish that she would have permission to reside in the address where the Applicant currently resided should she be granted a visa. It also was noted that the Applicant was in receipt of housing assistance payments and was on the social housing list.

#### **Security Situation in Iraq**

16. With respect to the security situation in Iraq, the Respondent stated:-

"I have considered the current circumstances in the applicant's country of origin, in particular statements submitted as to the unsafe environment in Iraq. However, it is contended that the visa system is not intended to be a protection system. While the Department is cognizant of the civil and political unrest in Iraq and sympathetic to the associated difficulties faced by many of its citizens, it cannot accept unsubstantiated evidence in individual cases. There is insufficient evidence to suggest that Ms. S is directly affected by the current security situation in Iraq, or that her circumstances are more severe to that of other Iraqi citizens to the extent that her situation is more exceptional. Furthermore, Ms. S has lived in Iraq all of her life. It follows that she will have strong links with the linguistic and cultural environment of Iraq.

While there is an obligation on the Minister to consider each case on its individual merits, he is entitled to take into account the consequences of allowing a particular applicant to enter and remain in the State where that would inevitably lead to similar decisions in other cases.

Ms. S and her reference are stated to have met in Iraq 2009 and it is stated that the reference travelled to visit the applicant in 2013 and 2015 and on the later occasion it is stated the reference remained in Iraq for approximately six months. This would indicate there are no restrictions on Mr. Z travelling to Iraq to visit and maintain the relationship with his wife in the same manner that it developed".

**Article 41**

17. The Respondent found that insufficient reasons had been provided as to why the Applicant could not continue to travel to Iraq to visit his wife with a view to maintaining and developing the relationship. The Respondent noted that living separately in Ireland and Iraq, was how the relationship commenced and developed. In light of the fact that the Applicant had travelled to Iraq on a number of occasions, and had stayed for six months on his last visit, it had not been demonstrated that there were restrictions on him returning to Iraq to visit his wife.

18. The Respondent also determined that insufficient documentary evidence had been provided to show the extent to which family life had been sustained since the Applicant and Ms. S were married and after the Applicant returned to Ireland. Twelve asserted money transfers between the Applicant and Ms. S, commencing in June 2017, were notified to the Respondent by the Applicant. The Respondent commented that documentary evidence had not been provided to establish that the money transferred originated from the Applicant or that it had been received by Ms. S.

19. The Respondent also found that insufficient evidence of face to face meetings had been provided. While photographs of the couple had been forwarded, they were limited in number and gave no detail of where or when they were taken.

20. The Respondent further determined that insufficient documentary evidence of ongoing contact or communication between the Applicant and Ms. S had been submitted. While social media exchanges had been forwarded, the parties to the communications had not been established and it was noted that the communication records commenced in February 2017 whereas the parties had married in 2015.
21. The Respondent made the following determination:-

“[I]n considering whether family life could be established elsewhere, there are no restrictions on Mr. Z travelling to Iraq to visit the applicant and continue to maintain their relationship in the manner in which it has developed.

While it is not proposed that family reunifications should become financial assessments, the State cannot be regarded as having an obligation to subsidise the family concerned and the sponsor must be seen to fulfill their responsibility to provide for her/her family members if they are to be permitted to come to Ireland.

Therefore, the visa appeals officer must take into account that costs to public funds and public resources may, as a consequence arise from a decision to grant the application, for instance in relation to, but potentially, not limited to social assistance and public healthcare.

These are costs which will be borne by the Irish State and as such, will be detrimental to the economic wellbeing of the country, and will affect the availability of State services to other potential beneficiaries, and so constitute an interference with the rights and freedoms of others.

I have considered all documentation and submissions made in support of this application. I have considered whether there are any exceptional circumstances that may give rise to an exception being made in this instance including, as laid out in the “Background” section of this document, the medical history of the reference and the security situation in the applicant’s country of origin. Having regard to the foregoing and having considered this visa application, no special circumstances have been established that would warrant the granting of this visa sought as an exceptional measure.

It has not been clearly established that the parties concerned do not have other options available to them, other than their proposition that they both reside in the State. Essentially it has not been clearly established that any unreasonable restrictions to establishing family life elsewhere exists or even in circumstances where an obstacle exists, is it an obstacle which can be realistically or reasonably overcome.

While it may be the case that the reference and the applicant would prefer to maintain and intensify their links in Ireland, the right to family life under the

Constitution does not guarantee a right to choose the most suitable place to develop family life.

All factors relating to the position of the family have been considered and these have been considered against the rights of the State. In weighing these rights, it is submitted that the factors relating to the rights of the State are weightier than those factors relating to the rights of the family.

In weighing these rights, it is submitted that a decision to refuse the visa applications in respect of Ms. S is not disproportionate as the State has the right to uphold the integrity of the State and to control the entry, presence and exit of foreign nationals, subject to international agreements and to ensure the economic wellbeing of the State.”

### **Article 8**

22. The Respondent proceeded to consider the Applicant’s Article 8 ECHR rights. It was accepted that family life existed between the Applicant and Ms. S within the meaning of Article 8 ECHR.
23. The Respondent set out the relevant legal considerations with respect to an Article 8 family life rights examination. The factual analysis conducted with respect to Article 8 mirrors the factual analysis which was engaged in with respect to the Article 41 consideration.
24. The Respondent determined that “there was no lack of respect for family life under Article 8.1 and therefore no breach of Article 8”.

### **Policy Considerations**

25. The Respondent also considered the visa application pursuant to the policy criteria governing the issue of non-EEA family reunification visas. For reasons already set out by her in her earlier Article 41 and Article 8 considerations, she determined that exceptional circumstances did not arise in this case for her to exercise her discretion to issue a visa.

### **Article 41 Constitutional Rights – Gorry v. Minister for Justice**

26. The recent Supreme Court decision in *Gorry v. Minister for Justice* [2020] IESC 55 determined that Article 41 of the Constitution does not provide a presumptive right to cohabit in the State for a married couple, one of whom is a non-national.
27. In considering this issue, the Supreme Court emphasised the importance of the State’s right to control the entry, presence, and exit of foreign nationals by stating in paragraphs 26, 28 and 70 of the judgment: -
  - “26. The exercise starts from a different point: in this case, the entitlement of the State to decide who should or should not be permitted to enter this country or reside here and without the preloading of the scales involved by characterising a right of cohabitation as worthy of the highest level of protection feasible in a modern society.

28. The correct starting point, in my view, is the opposite. It is that a non-citizen does not have a right to reside in Ireland and does not acquire such a right by marriage to an Irish citizen.
70. It seems clear that the fact of marriage alone to an Irish citizen does not create an automatic right to enter the State or to continue to reside here having entered illegally or after lawful entry but where any permission has expired. It is not per se a failure to respect the institution of Marriage to do so. There may be legitimate considerations of immigration, with added consequences for the rights of free movement in other EU Member States, which are not simply trumped by the fact of marriage.”
28. The Supreme Court also set out the considerations which the Respondent must engage in when making a decision permitting the entry into, or requiring the expulsion from the State of a non-citizen spouse at paragraphs 71, 73 and 74 of the judgment as follows:-
- “71. It follows, however, that if the couple can add to the fact of marriage the evidence of an enduring relationship that if the State were to refuse the non-citizen party entry to the State for no good reason, and simply because it was a prerogative of the State, it could be said that such an approach failed to respect the rights of those involved and, in particular, the institution of Marriage. In that respect, I fully agree with the observation of Fennelly J., as slightly reframed by Finlay Geoghegan J. in the Court of Appeal, that – unless there was some other consideration in play – it would be difficult to envisage a valid decision refusing entry to the State to the long-term spouse of an Irish citizen seeking to return to Ireland to live... Nevertheless, the starting point is that citizenship of one spouse plus marriage plus prospective interference with cohabitation does not equal a right of entry to a non-national spouse or give the Irish citizen spouse an automatic right to the company of their spouse in Ireland although, as discussed above, any refusal of entry would require clear and persuasive justification.
73. It may be said, in some cases, that the provision refusing entry may have the effect of preventing a married couple from cohabiting since Ireland is the only country where that can, as a matter of law or fact, occur and is, moreover, the home of one of the parties. There may be many reasons why a couple may not be able to cohabit, or do so as, or where, they may like, and that may be a consequence of the marriage they have made. The parties remain married and it does not fail to respect that institution or protect it if cohabitation is made more difficult, or even impossible, by a decision of the State for a good reason...
74. Nevertheless, in the context of immigration, when it is asserted on credible evidence that the consequence of a decision is that the exercise of a citizen’s right to reside in Ireland will mean not just inability to cohabit in Ireland with a spouse to whom that person is validly married and where, moreover, it may be extremely burdensome to reside together anywhere else, it would fail to have regard to and respect for the institution of Marriage not to take those facts into account and give

them substantial weight. This may, firstly, involve a more intensive consideration of the facts and evidence. The length and durability of the relationship may also be a factor since it tends to remove the possibility that the marriage is one directed in whole or in part to achieving an immigration benefit, and at the same time reduces the risk that any permission will establish a route to circumvent immigration control. There may come a point where the evidence of medical or other conditions establishes that it is impossible to cohabit anywhere but Ireland, that the marriage is an enduring relationship, and that the non-citizen spouse poses no other risk, and where it can be said that failure to revoke the deportation order would fail to vindicate the right to marry and establish a family life. Such cases will be rare. A refusal to revoke a deportation order, and after appropriate consideration of the facts and circumstances, is not invalid merely because it affects the spouses' desire to cohabit in Ireland and it would be more difficult and burdensome to live together in another country."

29. The Supreme Court set out the manner in which the Respondent must approach a decision regarding immigration or deportation which will have implications for marital life at paragraph 75 of the judgment:-

"In making a decision on an application for revocation of a validly made deportation order on the grounds of subsequent marriage the Minister is not, in my view, required to do so on the basis that Article 41 protects an inalienable, imprescriptible, or indefeasible right to cohabitation of a married couple which is entitled to the highest level of protection available in a democratic society. Rather Article 41 protects a zone of family life and matters. Decisions on immigration and deportation are not matters within the authority of the Family. The Minister is, however, required to have regard in any such case to:

- (a) The right of an Irish citizen to reside in Ireland;
- (b) The right of an Irish citizen to marry and found a family;
- (c) The obligation on the State to guard with special care the institution of Marriage;
- (d) The fact that cohabitation – the capacity to live together – is a natural incident of marriage and the Family and that deportation will prevent cohabitation in Ireland and may make it difficult, burdensome, or even impossible anywhere else for so long as the deportation order remains in place."

Adding however, at paragraph 76:-

"It follows that a decision will not necessarily breach any rights if it did not anticipate this precise formulation or use the same language.... [I]t is not necessary to address the issue of Constitutional and E.C.H.R. rights in any particular sequence."

30. The Supreme Court stated at paragraph 69 that the fundamental question which must be addressed by a Court when reviewing a decision by the Respondent is whether:-



“The ministerial decision can be said to have failed to recognise the relationship, or to respect the institution of Marriage because of its treatment of the couple concerned.”

**Application of Gorry v. Minister for Justice to Respondent’s Decision**

31. The Applicant asserts that the refusal of the visa is unreasonable and/or disproportionate in light of the Applicant’s right to enjoy family life as protected by Article 41 of the Constitution and Article 8 of the ECHR.
32. *Gorry v. Minister for Justice* clearly establishes that while Article 41 of the Constitution recognises a right to have and develop a family life for a married couple, this is not necessarily a right to have and develop a family life within the State or a right to develop a family life in a preferred manner. There are competing State interests which, depending on the facts of an individual case, may result in the refusal of permission to co-habit in the State, after a balancing exercise is conducted with respect to the interests at play.
33. In the instant case, significant State interests were engaged arising from the Applicant’s financial position. As identified by the Respondent, it was probable, in light of the Applicant’s precarious financial circumstances extending from 2008 when he became entitled to work in the State, that the Applicant and Ms. S would become a burden on the State finances and impact public resources such as welfare, housing and health. These were real and significant concerns affecting the financial and public resource interests of the State, separate altogether from the State’s interest in maintaining the integrity of the immigration system.
34. With respect to the Applicant’s personnel circumstances, it was an accepted fact that the Applicant had travelled to Iraq on three occasions from 2009, staying on the last occasion for six months. Accordingly, it was possible for the Applicant to travel to Iraq to continue to maintain and develop a relationship which had been entered into on the basis of separation without any expectation that Ms. S would be permitted to enter Ireland. With respect to the financial cost of being able to engage in such travel, the Applicant’s earnings had always been minimal since 2008, yet he managed to travel on three occasions. With respect to the security situation, no evidence had been placed before the Respondent to the effect that this had worsened in Iraq since his last visit there when he stayed for six months. Furthermore, contrary to what was asserted by Counsel for the Applicant, the Respondent did consider the security situation from the perspective of Ms. S, but held that insufficient evidence had been placed before her to establish the concerns alleged.
35. The Applicant asserts that the instant case is on all fours with *Ford v. Minister for Justice and Equality* [2015] IEHC 720. That simply is not the case. The factual scenario in *Ford* included two Irish citizen school going children whose father resided in this jurisdiction. It was implausible that those children would move to Nigeria.

36. The Respondent had regard to the nature of the relationship between the Applicant and Ms. S and found that there was insufficient evidence to show the extent to which family life, communication and contact had been sustained between them. The Applicant submitted that this was an inappropriate consideration for the Respondent to engage in: that the fact of marriage must be accepted by the Respondent.
37. The Court does not agree that this was an inappropriate consideration for the Respondent. *Gorry v. Minister for Justice* clearly envisages that marital relationships can differ. Paragraph 74 of the judgment provides that in circumstances where the evidence establishes that it may be extremely burdensome for a married couple to reside together elsewhere, it is necessary for the Respondent to have regard to that fact and give it substantial weight. In the balancing exercise which must be conducted with respect to the competing interests at play, an intensive consideration of the underlying facts and evidence may be required which includes examining the nature of the marital relationship. O'Donnell J. specifically refers to the length and durability of the relationship as factors to be taken into account.
38. In the course of her lengthy and detailed deliberations, the Respondent implicitly had regard to the fact that the Applicant was a citizen of Ireland; that he had a right to reside in Ireland; that he had a right to marry and develop a family life; and that cohabitation was a natural incident of marriage and the family. She furthermore had regard to the fact that not permitting Ms. S to enter this jurisdiction had a significance for the couple and the development of their family life. However, she also had regard to the very significant State interests at play, namely the engagement of State resources and the expenditure of public funds together with maintaining the integrity of the immigration process. In balancing the State interests as against the personal interests of the Applicant, the fact remained that the Applicant had been in a position to travel to Iraq on three occasions regardless of the security situation and his financial position. Having had regard to all of these issues, whilst also noting the nature of the relationship between the Applicant and Ms. S, the Respondent determined that the public interest favored refusing the visa. In doing so, the Respondent did not fail to recognize the relationship between the Applicant and Ms. S or fail to respect the institution of marriage.
39. In relation to the Article 8 consideration conducted by the Respondent, she patently considered these rights separately whilst having regard to relevant ECHR jurisprudence. While a very similar analysis was conducted to the Article 41 analysis, this was clearly because the same factual scenario was applicable. The Applicant does not point to a specific error in this analysis particular to the consideration of Article 8 rights.
40. The Applicant makes an unsustainable argument that because the decision in the instant case was made before the decision in *Gorry v. Minister for Justice*, it cannot be valid, as it was not guided by it. What must instead be analysed is whether the decision at issue complies with the law set out in *Gorry*, regardless of the fact that it was decided before that judgment.

41. The decision of the Respondent with respect to Article 41 and Article 8 rights was a decision which was open to the Respondent to make. It is not unreasonable or disproportionate and it does not breach the Applicant's Article 41 constitutional rights or Article 8 ECHR rights.

**Financial Criteria Policy**

42. The Applicant complains that the strict application of the financial criteria set down by the Respondent in her policy document relating to non-EEA family reunification visas and/or the decision not to consider the Applicant's case as "most exceptional" on humanitarian grounds, was unreasonable and disproportionate and/or was a fixed policy.
43. In the first instance, the Respondent is entitled to adopt a policy regarding the exercise of her discretion to issue a visa to non-EEA family members. The policy itself is not challenged in these proceedings.
44. As noted by the Respondent, the Applicant was not in the position of being close to being able to fulfill the financial criteria. Rather, he was so far from being in that position that his application was described by the Respondent as "*almost amounting to a complete derogation*" from the financial requirements.
45. The grounds on which the Applicant complains that the Respondent's decision, in this regard, is unreasonable or disproportionate is that as his only source of income was his disability allowance, receipt of which still permitted him to be a sponsor, then the financial requirements of the policy should not apply to him as he could not fulfill them.
46. The difficulty with this argument is that the Applicant was in a difficult financial position before he was injured at work. He had been permitted to work within the State since 2008 yet had only engaged in stints of employment over that period and would not have met the financial criteria during that time. The Applicant submits that the Respondent should not have considered his earlier earnings: that the only relevant earnings were those for the three years prior to the application. That is an incorrect and unfair argument to make against the Respondent. In a situation where the Applicant is seeking a derogation from the financial criteria of the scheme because of his disability and has requested the Respondent to exercise her discretion to exempt him from this requirement, it is entirely appropriate that the Respondent have regard to a wider analysis of the Applicant's financial situation so as to properly consider whether humanitarian grounds existed to apply an exemption.
47. The Respondent determined not to apply the exemption provided for in paragraph 1.12, as the exemption was meant to cater for "the most exceptional" of cases. The Applicant quibbles with the Respondent's interpretation of paragraph 1.12 arguing that the correct interpretation is simply that exceptional cases are to be catered for under this paragraph.
48. When paragraph 1.12 is considered as a whole, it is clear that it is intended to relate to cases of a very exceptional nature. The words "exceptional set of circumstances" are qualified by the reference to rare cases. Accordingly, the Respondent's interpretation of

her discretion to provide an exemption from the policy arising in only the “most exceptional of cases” is not incorrect.

49. With respect to the instant case, whilst the Applicant’s disability is the current cause of him being unable to fulfill the financial criteria, it remains the case that his earnings for an extended period would not have permitted him to meet the financial criteria either. Accordingly, the Respondent’s decision that this was not an exceptional case was not an unreasonable or disproportionate decision to make. Neither was it an application of a fixed policy by the Respondent who clearly considered the individual facts regarding the Applicant’s finances from a global perspective.
50. The determination to require the financial criteria to be met was open to the Respondent to make having regard to the specific facts of this case. The Respondent is entitled to set a policy with respect to the exercise of her executive discretion. It is in the interests of the State that sponsors who bring family members to this State should be in a financial position to ensure that the family members do not cause a burden on the State. In the instant case, it was probable that the State’s interest would not have been impacted had the financial criteria requirements not been upheld. The decision of the Respondent is not unreasonable or disproportionate in this regard.
51. With respect to the security situation in Iraq and the assertion that the Respondent should have determined that this established exceptional circumstances, the Respondent had earlier determined that it was open to the Applicant to travel to Iraq in light of his earlier visits there. The determination by the Respondent that the security situation did not raise exceptional circumstances was a determination open to the Respondent to make and was not unreasonable or disproportionate or the application of a fixed policy by the Respondent.

**Conclusion**

52. The Applicant has failed to establish any of the grounds of challenge to the Respondent’s decision. Accordingly, the Court will refuse the relief sought and make an order for the Respondent’s costs as against the Applicant.