Neutral Citation No: [2018] NIQB 100	*Ref:* **McC10839**
*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:* **22/12/2018**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY IOAN ANTON
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

-v-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

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McCLOSKEY J

"A" = the Applicant

"R" = the Secretary of State for the Home Department

[1] The transaction of this case was, unavoidably, affected by significant time and human constraints. The hearing proceeded within three hours of receipt of the request for an urgent listing. Both parties were represented by counsel.

[2] 'A' is a citizen of the EU, a Romanian. He is a convicted offender, having been convicted on 15 March 2018 at Dungannon Crown Court of conspiring to cause an explosion, punished by 12 months' imprisonment followed by 12 months' release on licence. His licence period began on 24 October 2018. He is the subject of an EEA Regulations 'public policy' deportation order dated 17 October 2018, challenged in other uncompleted proceedings recently commenced in this court. Having been in immigration detention, 'R' granted 'A' conditional bail, effective from 07 November 2018.

[3] 'A' is married. His spouse has dual Irish/Romanian nationality. She lives with their two young children, both Irish nationals, in Balbriggan, Co Dublin, Republic of Ireland ("ROI"). 'A' resides in Aughnacloy, Co Tyrone, where he operates a car wash business. His conditions of bail require him to live at a specified address there. One of the other conditions states:

> "You are not permitted to travel outwith [**sic**] the United

Kingdom without the prior authorisation of the Secretary of State, including the Republic of Ireland."

'A' challenges 'R's refusal to vary his bail conditions so as to permit him to depart the United Kingdom ("UK") to live with his family in the ROI during the Christmas & New Year period, as specified in his solicitors' letters to 'R'.

[4] Immigration bail is now largely governed by a new comprehensive statutory regime, contained in Schedule 10 to the Immigration Act 2016. This was commenced with effect from 15 January 2018, per SI 2018/2041. The main provisions of significance in the present context are paragraphs 1(1) and (2), 8(d), 3 and 6. Of these, the key provision is paragraph 1(8)(d):

> "A grant of immigration bail to a person ends when –
>
> …
>
> (d) the person is removed from or otherwise leaves the United Kingdom."

[5] I dismiss A's challenge for the following assortment of interrelated reasons:

I. 'A' will, plainly, "leave" the UK if he enters the ROI.

II. 'R's statutory power to grant bail and, by extension, to vary bail conditions, is exercisable only where the subject is a person "being detained" or "liable to detention" under any of the provisions listed in paragraph 1(1). This illuminates the rationale of paragraph 1(8)(d). 'A' will not be such a person if he leaves the UK. The fact of a so-called "frictionless" border does not alter this analysis. The Sovereign's writ does not run beyond this land border.

III. 'A's central contention is confounded by the clear meaning of paragraph 1(8)(d) which, notably, is expressed in unqualified terms. In particular, there is no "subject to paragraphs 3 and 6" or comparable qualifying clause. Nor do paragraphs 3 or 6 qualify paragraph 1(8)(d).

IV. Paragraphs 3 and 6 of Schedule 10 are subservient to paragraph 1. They are to be viewed as its out-workings. They are impotent to confer a power which is not contained in paragraph 1.

V. Equally, paragraphs 3 and 6 cannot confer a power which is at variance with paragraph 1.

VI. Compliance with bail conditions could not be supervised or enforced outside the UK. Such conditions would in effect be rendered meaningless and impotent. The subject would be unconstrained. The entire ethos of granting bail would be extinguished.

VII. 'A's' free movement rights are restricted by EU law itself. There is no identifiable EU law incompatibility in the impugned decision. Recourse to Articles 20 and 21 TFEU and Articles 7 and 45 of the Lisbon Charter is of no avail. 'A' has the choice of travelling to ROI and reuniting with his family there. Equally his family members can choose to do the converse. Should 'A' choose to travel thus, this will engage certain other provisions of EU law (*infra*).

[6] In sum, I consider it impossible to distil from Schedule 10 a power to grant bail which will survive, or facilitate, the subject's departure from the UK. Thus if 'A' puts his family reunification plans into operation, he will become a deported person, having voluntarily departed the UK when subject to a presumptively lawful deportation order (via the *omnia praesumuntur* principle). I am unable to identify any principle of statutory interpretation militating against the above analysis and conclusions.

[7] *Per curiam*, should he effect his planned departure, A's status of EU citizen will confer no right to re-enter the UK exercising Treaty rights. He will have the status of a deported EU citizen whose freedom of movement rights are expressly curtailed by the relevant measure of EU law, namely the Citizens Directive: see the expulsion provisions of Articles 27 – 33, mirrored in the transposing domestic instrument, the EEA Regulations. He will require permission to re-enter the UK and, absent same, if he re-enters will be liable to be arrested, detained and prosecuted as an illegal entrant. He would thus find himself in his pre-November 2018 circumstances afresh, applying for bail while his other judicial review challenge remains undetermined and, predictably, invoking 'R's' non-removal policy (EIG Chapter 60, from recollection). If he lodges an appeal against the deportation order, he will have no right to remain in, or re-enter, the UK pending its determination: per Article 31(4). He will, rather, be dependent upon the exercise of executive discretion. His only <u>right</u> under EU law will be one of personal attendance at the appeal hearing, coupled of course with all conventional fair hearing rights.

[8] While 'A' invokes Article 8 ECHR among his grounds, there is no claim for a declaration that any specified provision of Schedule 10 is incompatible therewith.

[9] It follows that the bail condition reproduced in [3] above is of no legal effect. It adds nothing to the residence condition and the power which it purports to confer on 'R' is non-existent, nowhere to be found in the statutory regime.

[10] While some of the reasons advanced by 'R' in support of the impugned decision, in particular the erroneous reliance on a supposedly extant appeal against the deportation order (there is none) are misconceived, the legality of the refusal decision is unaffected thereby.

[11] Finally, it is clear that 'A's proposed sojourn in ROI could be effected only if his licence conditions are varied. There is no indication that this has been done by the relevant statutory agency, PBNI.

Conclusion

[12] I shall treat the hearing as of the "rolled up" variety. Given my analysis and clear conclusions relating to the statutory regime, a refusal of leave would normally be indicated. However, bearing in mind appeal rights, the time and day of the week (10pm, Friday), the imminent and time - limited facility which 'A' is seeking to secure via this challenge and the prevailing season, I consider it appropriate to grant leave to apply for judicial review and dismiss the substantive application.

[13] The parties' representatives will provide an agreed draft order, containing provision for costs and any ancillary matters, by 4 January 2019.