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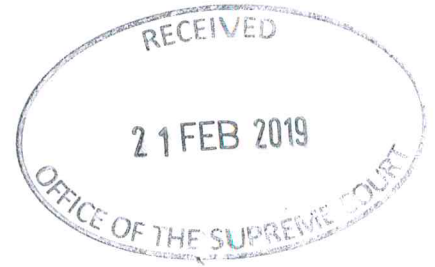
O. 58, r. 15

SUPREME COURT

Record No: [   ]

Application for Leave to Appeal

Part I

The information contained in this part will be published. It is the applicant's responsibility to also provide electronically to the Office a redacted version of this part if it contains information the publication of which is prohibited by any enactment or rule of law or order of the Court

1. **Date of Filing:** 21.2.2019

2. **Title of the Proceedings:**

VIKRAM SHARMA RUGHOONAUTH AND RISHMA RUGHOONAUTH

Applicants

v

THE MINISTER FOR JUSTICE AND EQUALITY

Respondent

3. **Name of Applicants:** Vikram Sharma Rughoonauth and Rishma Rughoonauth.

   What was the applicants' role in the original case: Applicants.

4. **Decision of Court of Appeal (where applicable):**

   Record No: 2017/310

   Date of Order: 14th December, 2018   *Perfection Date:* 31st January, 2019

   Date of Judgment: 5th December, 2018 (unapproved)

Names of Judges: Peart J., McGovern J., Baker J.

5. Decision of the High Court:

Record No: 2016/668JR

Date of Order: 1ˢᵗ June, 2017

Perfection Date: 23ʳᵈ June, 2017

Date of Judgment: Judgements of 14ᵗʰ November, 2016 and 24ᵗʰ April, 2017

Names of Judge(s): Humphreys J.

Where this application seeks leave to appeal directly from an Order of the High Court has an appeal also been filed in the Court of Appeal in respect of that Order? n/a

6. Extension of Time: Yes ☐ No ☒

If an application is being made to extend time for the bringing of this application, please set out concisely the grounds upon which it is contended time should be extended. n/a

7. Matter of general public importance:

If it is contended that an appeal should be permitted on the basis of matter(s) of general public importance please set out precisely and concisely, in numbered paragraphs, the matter(s) alleged to be matter(s) of general public importance justifying appeal to the Supreme Court.

This section should contain no more than 500 words and the word count should appear at the end of the text.

1. This case and that of *Omrawo v Minister for Justice* 2017/392 were essentially test cases concerning whether persons whose lawful basis for residence in the State was a student visa, and who thereafter overstayed unlawfully in the State, were "settled migrants" in the State so as to be entitled to a consideration of the effect of their deportation on their Article 8 ECHR rights. There were conflicting High Court judgements. O'Regan J. in *Omrawoo* held such a consideration or balancing exercise was necessary. Humphreys J. in this *Rughoonauth* case held Article 8 ECHR was not engaged. Both judges certified their judgments as raising points of law of exceptional public importance to facilitate an appeal.

2. This issue raised is closely related to, though not determined by, the judgement of this Court in *Luximon & Balchand v Minister for Justice and Equality* [2018] 2 ILRM 153. The essential difference is that in the within proceedings the Minister was involved in the process of the deportation as opposed to considering applications from them to vary/renew permissions to be in the State. This Court held (at paragraph 86): *"Insofar as ECHR issues arise, what is in issue, and what is only determined here, is simply that for these respondents' Article 8 rights were at least engaged, and that there should have been a consideration of such rights in the s.4(7) decisions."*

3. The Applicants contend that if the rights are engaged for students who apply for a change of permission they must also be engaged at the deportation stage.

4. The deciding to deporting the Applicants the Minister found Article 8 not engaged on account of the fact that the Applicants had only ever been students in the State. The Applicants were in the State since 2008, lawfully resident as students for four years & five month.

5. In the Determination granting leave to appeal in *Luximon* this Court held at paragraph 19: "*A substantial number of cases in the immigration list are said to depend on the outcome of this case. Moreover, a substantial number of persons within the State are said to be effected by the potential outcome of this case. This, in itself, renders it a matter of general public importance.*" The same considerations apply in this case. There are a substantial number of similar cases pending before the High Court and a substantial number of persons will be affected by the decision of the Court of Appeal. Some costs were awarded to the Applicant by the Court of Appeal.

6. To deny the need to substantively consider Article 8 rights is to equate the situation of the Applicants with persons who were never lawfully in the State. The Court of Appeal nevertheless considered their student status as precarious; see paragraph 58, and as putting them in a worse position than an asylum seeker; see paragraph 59. This affects all persons with a student-based residency. This was not addressed in the High Court judgments.

Word count – 495

8.   Interests of Justice:

If it is contended that an appeal should be permitted on the basis of the interests of justice, please set out precisely and concisely, in numbered paragraphs, the matters relied upon.

This section should contain no more than 300 words and the word count should appear at the end of the text.

1. It is in the interests of justice that there is a coherent line of jurisprudence in the State concerning the interpretation of national and ECHR law. It is respectfully submitted that the decision of the Court of Appeal is unclear and difficult to reconcile with the judgement of this Honourable Court in Luximon.

2. The Court of Appeal has held that outside of "an exceptional case" Article 8 will not be engaged when it comes to the deportation of persons who have resided in the State as students. This seems to depart from rationale of this Court in Luximon where (at paragraph 84) the Court held: "The respondents were not simply "visitors", or short-term entrants to the State, or persons who had no entitlement to be here at all. These cases are very different from those other categories of persons."

3. Court of Appeal (see paragraph 57) distinguished Luximon by finding it concerned a

decision to not consider private life at all at the relevant stage, as opposed to a decision to consider Article 8 and decide that it was not engaged, thereby concluding no need to consider such rights. However in Luximon this Court held at paragraph 86 (as quoted above) the respondents' Article 8 rights were at least engaged, and that there should have been a consideration of such rights in the s.4(7) decisions. It seems that there are irreconcilable differences in the jurisprudence of the two Courts or that the meaning the consideration of Article 8 rights be clarified. It is in the interest of justice that same be addressed.

4. The Court of Appeal did not analyse the case through the "settled migrant" prism, notwithstanding that the High Court decisions, and the submissions of the parties, had done so.

Word count – 293.

9. Exceptional Circumstances: Article 34.5.4:

Where it is sought to apply for leave to appeal direct from a decision of the High Court, please set out precisely and concisely, in numbered paragraphs, the exceptional circumstances upon which it is contended that such a course is necessary. n/a

10. Grounds of Appeal

Please set out in the Appendix attached hereto the grounds of appeal that would be relied upon if leave to appeal were to be granted.

11. Priority Hearing: Yes ☒   No ☐

If the applicant seeks a priority hearing please set out concisely the grounds upon which such priority is sought.

This section should contain no more than 100 words and the word count should appear at the end of the text.

The Respondent's initial proposal to deport the Applicants was made in January 2013 and they have since lived in limbo. Numerous other applicants have similar cases which stand adjourned before the High Court.

Word count – 33.

12. Reference to CJEU:

If it is contended that it is necessary to refer matters to the Court of Justice of the European Union please identify the matter and set out the question or questions which it is alleged it is necessary to refer. n/a