

**THE HIGH COURT
JUDICIAL REVIEW**

2010 3 JR

BETWEEN

**COLLINS B. OLADAPO, OLAWANDE OLADAPO AND WHITNEY OLADAPO, TOLUWANI OLADAPO AND ROSEANNE OLADAPO
(MINORS SUING BY THEIR FATHER AND NEXT FRIEND COLLINS B. OLADAPO)**

APPLICANTS

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENT

JUDGMENT of Mr. Justice Cooke delivered on the 12th day of February, 2010

1. In this case leave is sought to apply for judicial review of a deportation order made against the first named applicant on 8th December, 2009 and in particular, for an order of *certiorari* to quash it.
2. The first named applicant is from Nigeria. The second named applicant is his wife. They were married in Nigeria and lived there together before she left in November, 2001 and came to Ireland. The first named applicant has a daughter who remains in Nigeria although in what circumstances and with what support the Court has not been told. The second named applicant is not that daughter's mother and what role the daughter plays in the family life of these applicants is not mentioned. (The first named applicant is hereinafter referred to as "the applicant"; the second as the "applicant's wife" and the remaining applicants as "the minor applicants".)
3. The third and fourth named applicants are children of the applicant and his wife and were born in Ireland in 2002 and 2003 respectively and are Irish citizens. The third minor applicant was also born in the State to the second named applicant in June, 2008 and it is claimed that the first named applicant is her father although his name does not appear on her birth certificate and no explanation has been given to the Court as to why this should be so.
4. This is not a case in which the applicant is a failed asylum seeker who has been through the procedures of the 1996 Act and been refused a declaration of refugee status. As mentioned, the applicant's wife decided to leave the applicant in Nigeria in November, 2001 when already pregnant with their first child and to come to Ireland. The applicant said that after the birth of that child he came to Ireland and applied for asylum on 15th July, 2002 but withdrew the application in the belief that he would be entitled to remain in the State as the father of an Irish born child.
5. Why the applicant did not succeed in that objective is not clear. He makes the somewhat opaque statement in his affidavit that the IBC scheme in question "was suspended before it was concluded and I was left disadvantaged".
6. He admits that while he was here in July, 2002, his presence thereafter was only intermittent. He travelled to Spain in 2004 although his purpose in so doing is not explained. He also says that he travelled to England and again his reason for so doing is unexplained. He says he was returned to Ireland by the British authorities because, as he puts it, "the documentation under which I travelled was believed to be false". The applicant does not enlighten the Court further as to whether he considers that this belief was or was not well founded.
7. Having thus been expelled from the United Kingdom he says that he immediately returned: "On my return I went to reside in the North of Ireland for a period up to May, 2005 when I returned to Dundalk". Yet again, it has not been thought fit to confide to the Court the reason for this sojourn in the United Kingdom or why it was necessary for him to remove himself from his wife and two year old infant in this jurisdiction.
8. The applicant says that in 2005 he tried to benefit from the IBC 05 scheme but made his application too late and did not qualify. Questioned on this by the Court at the hearing, his counsel admitted that, in any event, the applicant would probably not have complied with the continuance residence conditions of that scheme having regard to his admitted comings and goings from the State. His wife did, however, make a successful application and has resided here with her children since.
9. In 2007 the applicant returned to resume residence and his business in Nigeria. While he was there the Minister issued a proposal letter to deport him sent to his Dundalk address. This was obviously passed on to him because he wrote from Nigeria in April, 2008, asking that no order to deport be made. An order was not made at that point – presumably because, as a result of this information, deportation was then unnecessary.
10. In June, 2008, the applicant's wife gave birth to her third daughter and the Court appears to be invited to infer that the applicant's fathering of that child is explained by the averment that in 2007 "my wife and children visited me from time to time" (in Nigeria that is). No evidence of how or when those applicants travelled to Nigeria has been offered.
11. At any rate the Court is informed that it was the arrival of the applicant's wife's third daughter that prompted the applicant to abandon his re-established spare parts business in Nigeria and to return to Ireland because, as he says: this is "the home of my children and the proper place for me to reside with and care for them". To this end he again entered the State illegally although, once more, how and when is not disclosed.
12. Having thus returned, in December, 2008, Mr. and Mrs. Oladapo paid a visit to the constituency office of the respondent Minister to outline their situation and to seek permission for the applicant to remain in the State. The grounding affidavit in this proceeding

could give the impression that on this occasion the applicants met the Minister and presented a case to him and received assurances. Paragraph 12 reads as follows:

"In December, 2008 together with my wife I called to the constituency office of the Minister for Justice, Equality and Law Reform, Mr. Dermot Aherne, T.D. wherein we outlined my situation and sought permission for me to remain in Ireland. We were referred to the Minister's secretary. We were asked and duly outlined our situation and the nature of our request. There can have been no doubt about my history. We were then referred to an official in the Department of Justice, Equality and Law Reform and we were informed that I would be put back in the system and receive another three option letter."

13. In fact, it is clear from the transcript of the Article 40 inquiry proceeding of 20th February, 2009 mentioned below that the visit to the constituency office was somewhat more cursory. They met a lady secretary who asked for the applicant's reference number for the asylum application. He describes what happened in these terms:

"I was there and then again with my baby, I can remember vividly. She said there was nothing she could do. Whatever I tell her, it doesn't really matter. She – they have a contact in the Minister of Justice. All they need from me is the 69 stroke number."

14. The upshot of the visit, however, was that, as the applicant had been given to understand, he received a letter of 29th January, 2009 which outlined three options open to him as a person illegally in the State including that of making representations to remain temporarily.

15. On 13th February, 2009, representations were made by his solicitor on the applicant's behalf and in response to a further invitation from the Minister on 22nd September, 2009, additional submissions were made on 7th October, 2009. Only the latter representations have been put in evidence.

16. This second invitation followed upon the incident which gave rise to the inquiry into the detention of the applicant under Article 40 of the Constitution with the subsequent appeal to the Supreme Court. On 14th February, 2009 the applicant had been stopped when entering the State from Northern Ireland where he said he had been shopping. He was arrested under s. 13 of the Immigration Act 2004, interviewed and finger-printed and then detained in Cloverhill Prison. On 3rd April, 2009 the Supreme Court, on appeal, held that his detention was unlawful and he was released. The Court held that the applicant's arrest and detention under s. 13 was unlawful because it had been made for the ulterior purpose of later arresting and detaining him pursuant to s. 5 (2) of the Immigration Act 2003.

17. The applicant now seeks leave to challenge the legality of the deportation order and in the grounding affidavit highlights a number of aspects of the reasoning and analysis set out in the file note furnished with the deportation order which the applicant considers unreasonable or unfair:

- The Minister is said to have made a lot of deportation orders around the same time and that the considerations taken into account are therefore purely "pro-forma";
- There is nothing in the file memorandum to remind the Minister that the applicant was the person to whom assurances were given at the meeting in the constituency office;
- The reference to his "flagrant and continual disregard of immigration law" fails to take account of the "pro-active steps" which the applicants had taken to "regularise his position";
- He is severely prejudiced by the inclusion of references to his questioning by the Gardaí and to the fingerprint evidence obtained while he was in unlawful detention, when he has been given no opportunity to comment on this information;
- No regard is had to the fact that he has never claimed social welfare support and the assessment of the economic information is misguided and palpably wrong because his business of exporting spare motor parts to Nigeria is not affected by the recession;
- There has been no analysis of the risks faced by the minor applicants should they be forced to return to Nigeria and the conclusion that his wife and the children lived as a family unit without him for three periods is incorrect.

18. The obligations imposed by law on the Minister when considering the making of a deportation order under s. 3 of the 1999 Act are well known and clearly defined. He must have regard to each of the considerations set out in paras. (a) – (k) of s. 3 (6). These include humanitarian considerations, prospects of employment and the representations made on behalf of the proposed addressee of the order. The Minister also has an obligation to ensure that none of the statutory impediments to deportation are applicable including s. 4 of the Criminal Justice (U.N. Convention Against Torture) Act 2000 and the prohibition on refoulement in s. 5 of the Refugee Act 1996. In this last regard the recent judgments of the Supreme Court have made it clear that in considering any risk of exposure to torture or to inhuman or degrading treatment, the Minister must take a proportionate approach.

19. In spite of the reference in the representations under this heading to "unimaginable disruptions to my family's life" it is clear that neither the s. 5 prohibition on refoulement nor the provisions of the 2000 Act have no relevance to the present case.

20. What is of relevance, obviously, is the effect of a deportation order in circumstances where a spouse and children of the prospective deportee are residing within the jurisdiction, who may have to choose between remaining here without the applicant or returning with him to the country of origin. In those circumstances, the Minister is required by s. 3 of the European Convention on Human Rights Act to exercise the power to deport in a manner compatible with the obligations of the State under that Convention and, particularly with due regard to the obligation of respect for private and family rights of the applicants under Article 8.

21. Finally, given that the minors are Irish citizens who cannot be deported, the judgments of the Supreme Court in the cases of *Dimbo* and *Oguekwe* make it clear that the Minister must take account of the personal rights of the minors and the rights of the applicants as a family under the Constitution. As this Court indicated in its judgment of 13th January, 2010 in *Ofoibuie v. M.J.E.L.R.* (Unreported, 13th January, 2010) these judgments require that the facts and factors relating to the family and other considerations outlined by Denham J. in the non-exhaustive list set out in those judgments, so far as they may be relevant to the individual cases, must be taken into account by the Minister and weighed in a fair and just manner so as to achieve a reasonable and proportionate decision and he must satisfy himself in the course of that exercise that there is a substantial reason for ordering the deportation of

the non-national parent.

22. The representations made in the present case dated 7th October, 2009 take the form of a series of statements, claims or observations by reference to each of the headings at s. 3 (6) (a) – (k) of the 1999 Act.

23. So far as concerns the applicant, his personal history since the departure of his wife from Nigeria is outlined much as has been summarised in the grounding affidavit and in the earlier part of this judgment. So far as relevant to the challenge now made to the deportation order the representations made were as follows.

(d) **Connection with the State.** This refers to the presence of his three children residing here as Irish citizens and to his wife having a right to reside with them under the IBC 05 scheme. Allowing him to remain would be in the best interests of the children.

(e) & (f) **Employment.** The applicant claims to have a university degree in economics and to have had a successful business in spare motor parts in Nigeria which he has sold. He admits he was aware that it was unlawful for him to work or carry on business here and that he has nevertheless been engaged in buying and selling spare parts and equipment for resale in Nigeria. No details are given of the location or extent of this business or how it was operated. The implication is that it was a black market operation because he says "owing to my unresolved legal status I cannot engage in this business legally and pay my taxes".

(h) **Humanitarian considerations.** After apologising for his past illegal entries to the State, the applicant makes the case that his deportation would constitute a disproportionate interference with his family life. He describes the contribution he claims to have made to the upbringing of the children when in Ireland; the improvement in their moral and religious upbringing he observed and his help to them academically. He says that the family has made no claim on social welfare.

24. The Court notes that apart from the representations made under this heading and the expressions elsewhere of his belief that Ireland is the best place in which his children could be reared and his desire to play a part in their lives for that purpose, the representations do not make any specific assertions as to the impact deportation would have on the children or the applicant's wife.

25. The Court also notes that although the representations in question are accompanied by a series of letters of support including one from the applicant's wife, no indication is given as to whether in the event of deportation taking place, the family unit would feel obliged to leave for Nigeria or whether the mother and children would remain. The implication of the mother's letter is that she has a good job with the Health Service Executive as a trained care worker and that she has been the sole breadwinner and is therefore likely to remain with the citizen children. The Court notes, however, that a further letter of support is from a representative named only as "Larry B" of an undertaking called "Consolidated Maritime Ltd" which is said to be engaged in a freight forwarding business to Africa and the Middle East from Co. Cork. This letter of support describes the applicant as "a long time client of our company and we have handled shipment of fairly used vehicles and equipment on his behalf to Lagos, Nigeria on numerous occasions over the years". The applicant is described as honest and reliable and as "settling his accounts with us promptly". Clearly, the assertion that the applicant's wife has been the sole breadwinner and source of support must be viewed in the light of the apparent success of the applicant's export business.

26. It is in the light of those representations, therefore, that it is necessary to consider the reasons given by the Minister for making the deportation order and the claims now made as to why those reasons are defective or inadequate in law.

27. The memorandum of analysis which was signed off by an executive officer of the Department's repatriation unit on 11/11/2009 and finally endorsed by an assistant principal on 1/12/2009 first sets out under the heading "Background" the applicant's apparent history since arrival in Ireland in 2002 and summarises the correspondence received on his behalf and the fact that two sets of representations have been received.

28. The memorandum then addresses each of the statutory considerations required to be taken into account under paras. (a) – (k) of s. 3 (6) of the 1999 Act. Those relevant can be summarised as follows:

(a) **Persons age.** The applicant's age is given as 36 years but the following observation is added:

"However, following the results of a fingerprint check, the applicant's prints were found to match those of a Keith Garvin (D.O.B. 28/4/1973) and one Adewale Oladapo (D.O.B. 07/02/1967). It is therefore not possible to conclusively state the applicant's true date of birth."

(b) **Duration of residence.** His arrival in the State in 2002 is noted as are his claims to have lived in Northern Ireland, to have returned to Nigeria and to have been in Spain between October 2004 and mid 2005. The comment is made:

"In view of this it is not possible to state the exact duration that the applicant has been in the State."

(c) **Family and domestic circumstances.** Here the applicant's marriage and the dates of birth of his children are given including the fact that in his original asylum claim he referred to his daughter Anjolaoluwa in Nigeria. The fact that the three minor applicants are Irish citizens is mentioned as is the fact that the applicant's name does not appear on the birth certificate of the youngest. The claim made in representations that it was the birth in Ireland of the youngest that prompted his return from Nigeria is quoted. The comment is made:

"This would indicate the Mr. Oladapo was out of the State from mid 2007 until some time after the birth of Roseanne in June, 2008."

(d) The applicant's connection to the State is said to lie in his application for asylum and his parentage of three Irish citizen children.

(e) & (f) **Employment record and prospects.** Under these headings reference is made to his economics degree and his having a successful business in motor spare parts in Nigeria before coming to Ireland. It is noted that the applicant was not permitted by law to work in the State but that he had been engaged in buying spare parts and shipping them to Nigeria and generating income from this business. The applicant's representations as to his ability

to set up and carry on a successful business without recourse to social welfare are fully quoted. The memorandum then quotes extensively from sources as to the prospects for recovery in the Irish economy with particular reference to a paper entitled "What do Migrants do in a Recession?". The conclusion is reached that "Mr. Oladapo's chances of obtaining employment or succeeding in his own business enterprises in the current economic climate are poor".

(g) **Character and conduct of the person within and outside the State.** Somewhat surprisingly, under this heading it is stated that "Mr. Oladapo has not come to the adverse attention of the Gardaí during his time in the State." In argument Counsel for the applicant sought to suggest that the absence of reference to the arrest and detention in February 2009 demonstrated the cursory or "pro-forma" nature of the analysis. It is also however, open to the construction that the author recognised that the arrest and detention had been found unlawful and that it would be therefore wrong to prejudice the applicant's position by treating the occasion as one of "adverse attention".

(h) **Humanitarian considerations.** Here the representations and claims made as to deportation being disproportionate interference with the life of the family and the claims as to his involvement in the family and the improvement in the children's behaviour are quoted. The conclusion is:

"Having considered the humanitarian information on file in this case, there is nothing to suggest that Mr. Oladapo should not be returned to Nigeria."

(i) **Representations made.** Under this heading letters of support submitted are listed and then quoted from extensively including in particular the personal statement of the applicant's wife. The memorandum says:

"All representations received on behalf of Mr. Oladapo have been fully examined and considered."

(j) & (k) **Common good and national security and public policy.** Here it is stated that it is in the interest of the common good to uphold the integrity of the asylum and immigration procedures of the State and that considerations of national security and public policy do not have a bearing on the case.

(l) **Section 5 prohibition of refoulement.** Although in the representations as mentioned above, no claim was made as regards exposure to harm if returned to Nigeria, the memorandum refers back to the details given in the asylum questionnaire where it had apparently been claimed that the applicant feared persecution because he and his wife had failed to comply with the family's intention of sacrificing their baby. This claim is then considered by extensive reference to country of origin information and the conclusion reached is that "repatriating Mr. Oladapo to Nigeria is not contrary to s. 5 in this instance". The same conclusion is reached with regard to s. 4 of the Criminal Justice (UN Convention Against Torture) Act 2000.

Article 8 of ECHR

29. In the most extensive part of the memorandum, detailed consideration is then given to the considerations that arose under this heading. It extends to twelve pages and covers the headings:

"Private life; Family Life; Proportionality; Mr. Oladapo's periods of time in the State; Mr. Oladapo's engagement in business without permission of the Minister; Mr. Oladapo's Irish citizen children; The employment prospects in the current economic climate; and finally, Balancing of rights."

30. Under the heading of "**Private life**" it is accepted that deportation does interfere with the right to respect for private life and the description given by the Rev. Hassan Boyle in a support letter of the family's building of a life for themselves in Ireland is quoted. The conclusion is reached, however, that "it is not accepted that the deportation of Mr. Oladapo would have consequences of such gravity as to engage rights under Article 8 (1) and as a result, the decision to deport does not constitute a breach of the right of respect for his private life".

31. **Family Life:** the memorandum describes the membership of the family in Ireland and accepts that deportation of the applicant would interfere with that life as it has been in recent years. However, the memorandum considers that the proposed interference is in accordance with Irish law; pursues a pressing need and a legitimate aim namely to safeguard the economic well-being of the country and maintain control of borders and a regulated system for control, processing and monitoring of non-nationals in the State; and it is considered necessary in a democratic society in pursuit of a pressing social need and proportionate to the legitimate aim being pursued.

32. Under the heading "**Proportionality**" reference is made to the decision of the U.K. Court of Appeal in the case of *R. (Mahmood) v. Home Secretary* and it is noted that deportation of one member of a family would not necessarily infringe Article 8 if there are no "insurmountable obstacles" to the remaining members of the family accompanying the deportee. No representation was made as to the existence of any such obstacle in this case and given that the applicant and his wife had a life together in Nigeria prior to 2002 and are Nigerian citizens, it is unlikely that such case could be made.

33. The memorandum then examines the history of the applicant's periods of time in the State since 2002 and an analysis is made by reference to the information given in the representations and in correspondence. The comment is made:

"Having searched the relevant departmental records I can find no record of entry visas having been approved for Mr. Collins B. Oladapo by the Irish authorities. It is therefore clear that Mr. Oladapo illegally re-entered the State on a number of occasions and in doing so displayed a flagrant and continual disregard for Irish Immigration law and the Irish Immigration system".

The memorandum then refers to the arrest and fingerprinting in February 2009 and the fact that the check by the gardaí disclosed a connection with a U.S.A. passport. The memorandum says:

"When this information was put to Mr. Oladapo by a member of the AGS he replied that it was in his past and would not discuss it any further. It is clear from this that Mr. Oladapo was unable to provide a satisfactory explanation for the information which had come to light as a result of his fingerprint check."

Business venture

34. It is noted that the applicant did not have permission to enter into employment or operate a business in the State and the comment is made:

"If it is the case that Mr. Oladapo is or was operating a business in this jurisdiction, he is doing so, or has done so, without the permission of the Minister. This was a further display of Mr. Oladapo's disregard for Irish immigration law."

35. There then follows a lengthy consideration of the position of the Irish citizen children. The applicant's claim that he has parental responsibilities to his daughters which necessitate his presence in the State is noted. It is pointed out, however, that the Minister is not obliged as a matter of law to respect the choice of residence which the applicants may have made. The applicant's wife is a Nigerian national and the children would be entitled to Nigerian citizenship should the family return there. Particular note is taken of the fact that the applicant had spent considerable periods of time separated from his wife and family until his most recent return to Ireland. It is pointed out that when he wrote from Nigeria to object to the deportation order in 2008, he did not indicate that he wished to return to reside in Ireland but merely that he wanted to preserve his ability to obtain visit visas to come to see the family. Part of a letter of support from Seamus Kirk, T.D., is quoted where it refers to the applicant visiting his family regularly "but on short term visa basis only". Relevant departmental records do not disclose any such visa having been issued to the applicant thus casting serious doubts on the applicant's claim in that regard.

36. The analysis thus leads the writer to the observation that on three separate occasions the applicant's wife and the minor applicants have lived as a family unit in the State without the applicant thus making it reasonable to assume that they would be able to continue to do so if he were deported.

37. The links of the minor children to the State are then considered and having regard to their respective ages of seven, six, and one year, it is considered that they are all of adaptable ages should they wish to relocate to Nigeria even if the two older children have established some links in the community. These links are then considered with particular reference to the claims and descriptions given in the letters of support. Taking into consideration those personal circumstances and in particular the ages of the children, the writer concludes:

"There is nothing to suggest that there are any insurmountable obstacles to the family being able to establish family life in Nigeria."

It adds:

"In the light of the above it is submitted that, although Mr. Oladapo's three children are Irish citizens, there is no reason why Ms. Oladapo and these three children cannot be expected to reside in Nigeria with their husband and father as a family unit, were Mr. Oladapo to be returned to Nigeria."

38. In the section headed "**Balancing of Rights**" the memorandum weighs the interests of the children in having the presence, care and company of their parents against the ability of the family to establish a life in Nigeria given that they are all eligible for citizenship of that country. It is pointed out that the parents themselves made a choice to separate their family unit in 2001 and to live separately on various occasions in the intervening years. It is noted that the applicant was easily able to re-establish himself in Nigeria and engage in business there when he returned there of his own volition. His ability to do so would, if necessary, ease the transition back into Nigerian society of his wife and the children. There is then a conclusion in these terms:

"Mr. Collins B. Oladapo has been given an individual assessment and due process in all respects. Having weighed and considered all of the factors outlined above in relation to the family ... as well as factors relating to the rights of the State, and in particular the fact that there is no less restrictive process available which would achieve the legitimate aims of the State to safeguard the economic wellbeing of the country and to maintain control of its borders and operate a regulated system for control, processing and monitoring of non-national persons in the State. It is in the interest of the common good to uphold the integrity of the asylum and immigration procedures of the State. The State has the right to control the entry, presence and exit of foreign nationals, subject to the Constitution and international agreements. These are substantial reasons associated with the common good which require the deportation of Collins B. Oladapo."

39. There then follows a further detailed analysis and consideration extending over three pages of the memorandum in relation to the constitutional rights of the Irish born citizen children. Again their particular circumstances, age, positions in education to date and the links they have established in the community are gone over with particular reference to the information given in letters of support from third persons who have dealings with them including the principal of the school attended by the two eldest. Once again, the relationship of the parents to the children during their years in the State is considered. It is acknowledged that the three children, as citizens, cannot be deported and have a right to be reared and educated with due regard to their welfare and the right to the care and company of their parents.

40. There is then a final section of analysis under the heading "**Balancing of Rights**" in which the right of the children to reside in the State and their best interests in having the care and company of their parents are considered and weighed in the light of the other factors affecting the family including the applicant's prospects of employment or carrying on business in the current climate and his history of entering and leaving the State illegally. The conclusion is then reached:

"Having weighed up these rights, on balance, it is submitted that if the Minister makes a deportation order in respect of Collins B. Oladapo, there is no less restrictive process available which would achieve the legitimate aims of the State to safeguard the economic wellbeing of the country and to maintain control of its own borders and operate a regulated system for control, processing and monitoring of non-national persons in the State. This therefore exists as a substantial reason associated with the common good which requires the deportation of Mr. Collins B. Oladapo."

The memorandum ends with a recommendation that the deportation order be made.

41. It will be immediately apparent from the above brief summary of a very extensive memorandum that, contrary to the central thrust of the submissions made in support of this application for leave, a detailed, even meticulous, consideration has been given to all of the matters put before the Minister on behalf of the applicant by way of representations as to why he ought not to be deported. In many respects the contents of the representations and the information given in the supporting letters have been quoted word for word in the analysis and addressed or commented upon by way of answer. The Court is fully satisfied that no stateable argument is raised as to the existence of any defect or inadequacy in the reasons given for the making of this order under any of the headings of the grounds proposed to be raised for the judicial review of the order.

Grounds A and B

In these grounds it is asserted that the applicant's wife and children have a right to reside with him in the State and that the Minister is not entitled to deport him for the reasons stated in the absence of a full and detailed consideration of the applicant's personal and family rights. These grounds fly in the face of the detailed individual analysis and evaluation of all of the facts and factors relevant to the personal and family rights of the applicants set out in the memorandum.

Ground C

The Minister failed, it is pleaded, properly to consider the circumstances but contented himself with pro-forma extracts about Nigeria and Irish law. This is manifestly not so. So far as relevant to the evaluation and balancing of the personal and family rights of the applicants the analysis is fact-specific and entirely concerned with their personal situation and circumstances.

Ground D

It is alleged that no grave and substantial reason or pressing reason associated with public policy or the common good has been given and the reasons stated do not "pass strict scrutiny and are invalid". As already indicated in the summary of the memorandum above, the grave, substantial and pressing reasons are explicitly identified and explained in it on several occasions and under several headings.

Ground E

It is said that the economic reasons detailed as the basis for deporting the applicant have no application to his case: the applicant's business is largely outside the jurisdiction and unaffected by the economic downturn here. The arguments raised here ignore the fact that such business as the applicant claims to have carried on has been conducted wholly illegally. No serious attempt has been made by the applicant to explain how, where and to what extent the business has been carried on or to demonstrate to the Minister by reference to the nature of the business, its market, costings, turnover or other figures, precisely why it is claimed an export business of the kind could be profitably carried on if it was conducted legally. In any event, the fact that employment record and employment prospects fall to be considered as statutory headings of s. 3 (6), does not mean that a deportation order is invalid because the judgment made in that regard is disputed. It is clear that in this case the overriding consideration for the Minister was the intermittent involvement of the applicant in the life of his wife and children since 2002 and the undisputed history of repeated disregard for immigration laws on his part not only in the State but in the United Kingdom and possibly in Spain.

Ground F

The respondent failed, it is argued, to obtain the views of the applicant's wife and children as to their fears in the event of deportation requiring them to follow the applicant to Nigeria. So far as concerns the applicant's wife this assertion is untrue. Her views on the deportation of the applicant, to the extent that she wished to give them, were set out in her personal handwritten statement amongst the letters accompanying the representations of 7th October, 2009. So far as concerns the children, the Minister considered the facts known to him and the matters and information put to him in the representations and supporting letters. That is what the law requires him to do.

Grounds G and H

These allege breach of Article 8 of the E.C.H.R. and inadequacy of the consideration of the applicant's claim. It is said that the Minister "relied on supposition, innuendo and hearsay not put to the applicants for comment and rebuttal". As already outlined above, detailed consideration has been given to all facts and factors relevant to the respect for private and family life under Article 8. The consideration given to the representations made was not merely adequate but comprehensive and detailed. The reference to comment and rebuttal is misconceived. The applicant was making a claim for leave to remain. The claim was rejected for grave and substantial reasons related to the undisputed history of the applicant's own situation. Although reference is made to the doubts created by the fingerprint information and the authenticity of identity documents carried by the applicant, the reasons given for the decision to make the deportation order are clearly sound and unassailable independently of those matters. It follows that, contrary to the suggestion made in ground I, the decision is not dependent upon any "unconstitutionally obtained material".

In any event, this complaint is based on a false premise. It seeks to apply to the applicant's plea for leave to remain, the principle of criminal proceedings to the effect that proof of guilt of an offence ought not to be based on evidence illegally obtained. It ignores the fundamental fact that the representations are made on behalf of a person illegally present in the State with a view to having the Minister exercise a discretion to permit him to remain temporarily on humanitarian grounds. The Minister is not required to prove any case as to why the supplicant is not entitled to be in the State. The applicant for such relief owes a duty of truthfulness, honesty and candour in all aspects of the case made to the Minister. It is an undisputed fact that when the applicant entered the State illegally on 14th February 2009 the resulting checks produced information which associated him with a USA passport in a name which was not his and which he refused to discuss or explain. It lies with the applicant to make his case for leave to remain: he cannot claim to be wrongly prejudiced by a fact that he is unwilling to explain while at the same time asserting that he has made "pro-active steps to regularise" his position. He cannot in effect, compel the Minister to make a decision on the exercise of that discretion on a basis which ignores a relevant and undisputed fact arising out of the applicant's recent personal history and which the applicant refuses to explain.

Ground J

Here it is argued that the decision is devoid of information concerning the "pro active steps" made by the applicant to legitimate his presence in the State and silent upon the assurances given by the Minister at his constituency office. The Court is satisfied that no factual basis for this assertion is made out and it appears to be contradicted by the applicant's own testimony in the course of the Article 40 inquiry.

Ground K

It is sought to claim that the applicant withdrew from the first I.B.C. scheme on the basis of assurances given by the Minister. No such claim has been made out in evidence in this application. Indeed, it would appear significant that no mention of any claim to that effect was included in the representations made in October 2009.

42. For all of these reasons the Court is satisfied that no stateable case is made out that there has been any error on the part of the Minister in discharging the obligations imposed by law as to the matters to be taken into account and the manner in which they are to

be weighed in the consideration given on the making of this deportation order. The reasons given are clearly cogent and founded in undisputed facts relating to the applicant's personal history, conduct and family circumstances. The precise circumstances of the members of the family including the minor applicants and their respective constitutional and Convention rights have been looked at and are accurately described and analysed. The reasons identified as grave and substantial are clearly such as the Minister was entitled to so regard. The result achieved by the decision is clearly reasonable, proportionate and balanced having regard to the particular circumstances of the applicant's wife and the minor children, their entitlement to Nigerian citizenship, the ages of the children and their positions in education and having regard particularly to the intermittent involvement of the applicant in that family unit in the years since 2002.

43. The application for leave is accordingly rejected.