THE HIGH COURT

JUDICIAL REVIEW

[2017 No. 728 J.R.]

BETWEEN

MARCIO DUQUE DE SOUZA

ERICA PIRES DA COSTA SOUZA

KAMYLLE DA COSTA SOUZA (A MINOR SUING BY HER FATHER AND NEXT FRIEND MARCIO DUQUE DE SOUZA)

ALYNE DA COSTA SOUZA (A MINOR SUING BY HER FATHER AND NEXT FRIEND MARCIO DUQUE DE SOUZA)

EMANUELLE DA COSTA SOUZA (A MINOR SUING BY HER FATHER AND NEXT FRIEND MARCIO DUQUE DE SOUZA)

APPLICANTS

AND

THE MINISTER FOR JUSTICE AND EQUALITY, THE ATTORNEY GENERAL AND IRELAND

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 12th day of January, 2018

1. The applicants are a family from Brazil. The father arrived in the State as a non-visa required national with a visitor permission that expired on 17th October, 2010. Notwithstanding his illegal presence in the State, he found employment in a meat factory. The wife and the two eldest children, who were born in Brazil, arrived in Ireland, in 2011 again as non-visa required nationals. Their visitor permissions expired on the 31st August, 2011, and they have been illegally present in the State since then. The fifth named applicant, the youngest child, was born in the State on 29th April, 2013. The applicants made representations seeking regularisation of their status in the State, which were unsuccessful. They were notified of a proposal to make deportation orders. Representations were made in response which included referring to the close relationship between the children and maternal grandparents and uncles who are lawfully resident in the State. Notwithstanding these representations, deportation orders were made on 9th August, 2017, and are now challenged in these proceedings. I have received helpful submissions from Mr. Gary O'Halloran B.L. (with Mr. Mark de Blacam S.C. for the applicants) and from Ms. Denise Brett S.C. (with Mr. Tim O'Connor B.L. for the respondents).

The alleged entitlement pursuant to the McMahon report

2. The applicants never made any submission that the Report of the Working Group on Improvements to the Protection Process (the McMahon report) should be applied to them. That failure is fatal to this argument (see *I.S.O.F. v. Minister for Justice, Equality and Law Reform* [2010] IEHC 386 (Cooke J.)). In my view there is no obligation on the Minister to set out criteria for deportation, but even if there is, it was done in the McMahon report (see my judgment in *C.O. v. Minister for Justice and Equality* [2017] IEHC 725 [2017] 11 JIC 2406). It is clear that the Minister has a wide discretion at deportation order stage (see *F.P. v. Minister for Justice, Equality and Law Reform* [2002] 1 I.R. 164, *per* Hardiman J. at 173-174, *A.B. v. Minister for Justice and Equality* [2016] IECA 48 (Ryan P.), *P.O. v. Minister for Justice and Equality* [2015] 3 I.R. 164 [2015] IESC 64) so no illegality arises here. More fundamentally, however, these applicants are not protection applicants. They simply do not get off the starting blocks in terms of qualification for any discretion based on the McMahon report, which is confined to such applicants.

The alleged breach of art. 8 of the ECHR

3. A complaint is made of a breach of art. 8 of the ECHR in relation to the relationship between the minor children and their other Irish resident relatives, their grandparents in particular. However, the Minister clearly considered this issue and sets out the submissions made in that regard. This is not a case similar to *M.A. v. Minister for Justice Equality and Law Reform* [2009] IEHC 245 where the relationship of other family members was not considered and where the Minister addressed the issue of art. 8 without reference to the relationship between the applicants and other family members. It is acknowledged by the Minister that the grandparents and uncles reside in the State. Reference is made to *Ezzouhdi v. France* (Application no. 47160/99, European Court of Human Rights, 13 February 2001) to the effect that a relationship between adult relatives does not necessarily attract the protection of art. 8 without elements of dependency involving more than normal emotional ties. The decision notes that the State has the right to control entry of non-nationals and that for the purposes of art. 8(2) the control of borders is a legitimate aim. That point is referred to by Charleton J. in *Esme v. Minister for Justice and Equality* [2015] IESC 26. The decision also notes that the Minister is not obliged to respect the choice of country of residence of an applicant for the purposes of art. 8 (see *Nunez v. Norway* (Application no. 55597/09, European Court of Human Rights, 28 June 2011)). The Minister also commented on the unanimous acceptance by the Supreme Court in *P.O. v. Minister for Justice and Equality* [2016] IESC 64 at para. 86 of the judgment of Charleton J., of the principle in *Butt v. Norway* (Application no. 47017/09, European Court of Human Rights, 4 December 2012) at para. 34, that children should be identified with the interests of their parents for (substantive) immigration purposes. The Minister considered that the inconvenience experienced by the applicants would not reach the threshold of exceptional circumstances amounting to insurmountable obstacles to the return of the family together to Brazil, and therefore their family life would not be disrupted in an unlawful manner. The analysis noted that the children are of an adaptable age and that there was no separation of the nuclear family involved. It seems to me that the consideration of the art. 8 issue is thorough and certainly well within the discretion afforded to the Minister, who considered the family circumstances, but crucially referred to art. 8(2) to the effect that the legitimate aim of the control of borders outweighs such considerations. Such an approach is certainly open to the Minister and no illegality in this regard has been demonstrated.

Order

4. For the foregoing reasons the order will be that the application be dismissed.