Neutral Citation Number: [2009] IEHC 108

THE HIGH COURT

JUDICIAL REVIEW

2008 1014 JR

BETWEEN

I.V., C.V., G.V. (A MINOR SUING BY HER FATHER

AND NEXT FRIEND C.V.) AND

G.V. (A MINOR, SUING BY HER FATHER AND

NEXT FRIEND C.V.)

APPLICANTS

AND

THE MINISTER JUSTICE, EQUALITY AND LAW REFORM,

THE ATTORNEY GENERAL AND IRELAND

RESPONDENTS

AND

THE HUMAN RIGHTS COMMISSION

NOTICE PARTY

JUDGMENT of Mr. Justice McCarthy delivered the 5th day of March, 2009.

1. This is an application for leave to seek judicial review commenced by originating notice of motion of the 1st September, 2008 and grounded upon an affidavit of the first named applicant ("Mrs. V.") of 28th August, 2008. There is a Statement of Grounds of a date which I cannot read but which appears to be 2nd September, 2008. Mrs. V. and her children (the third and fourth named applicants) seek inter alia relief by way of declaration that deportation orders made in respect of them dated 23rd July, 2008 and notified to them not earlier than the 25th August, 2008 are void; in the Statement of Grounds furnished to me relief by way of certiorari in relation to the orders is not sought.

2. The facts of the matter are not seriously in dispute. It appears that all four applicants entered the jurisdiction on 6th February, 2003 and were, on landing, granted permission to remain in the State until the 5th March, 2003. It appears that after the applicant's arrival in the jurisdiction, Mrs. V. and her husband (the second named applicant) worked for a firm known as Barty O'Brien Limited, contract cleaners, at Naas General Hospital but, contrary to the first and second named applicants' understanding, no permits were obtained for them permitting them to work in the State from the Minister for Enterprise, Trade and Employment such that all four applicants were unlawfully in the State from 5th March, 2003. In any event, on 30th March, 2006, as deposed to in Mrs. V.'s affidavit, "the applicants herein" were notified by the Minister of his intention to make deportation orders.

3. On perusal of the letter it is most comprehensive, plainly directed to the status of Mrs. V. (and her children, at least indirectly) as a person or persons who had been afforded leave to enter and remain in the State until the 5th March, 2003 but who had, in those circumstances, failed to leave the State on or after that date. The letter made explicit reference to the fact that Mrs. V. had "engaged in employment without a current work permit and without the permission of the Minister for Enterprise, Trade and Employment". Accordingly it is manifest from that letter that the Minister contemplated a deportation order or orders without reference to any suggestion that Mrs. V. and her children (the latter, of course via her agency) were failed asylum seekers.

4. It is contended on behalf of the first, third and fourth named applicants that the deportation orders are flawed as having been made on the basis that the parties to the present application were failed asylum seekers because of the contents of the Minister's letter under cover of which the relevant deportation orders were served. Obviously in order to decide the basis upon which the decision and subsequent deportation orders was or were made by the Minister, one has regard to all documents, including, of course, the submissions made (with any supporting material) to the Minister, the review of the request for what is commonly known as humanitarian leave to remain, as reduced to writing, (i.e. reports to the Minister) correspondence with the applicant's or any of them and the deportation orders themselves.

5. Letters were sent to the Minister in response to that of 30th March, on 20th April, 2006 and the 22nd August, 2007. The first of these, in terms of Mrs. V.'s status, explicitly set out the nature inter alia of her connection with the State. The second letter supplements the first and under cover of each certain documents, mainly what I might term letters of support or references, were furnished to the Minister in support of the application. Thus far confusion there was not. If one looks at the reports of Mr. Foley it is perfectly plain that what was before the Minister was an application for humanitarian leave to remain in circumstances where the applicants at that stage of the proceedings had overstayed their permission and there was no question of any suggestion that they might have been failed asylum seekers. In as much as the Minister's decision was based upon the material to which I have referred, there can be no doubt but that the Minister was not in any sense in error as to the factual situation. It is, I suppose, possible that notwithstanding the material before him and indeed, perversely and in the face of it, the Minister decided the matter on the basis that Mrs. V. and her children were failed asylum seekers. It seems to me that there is no reason to suppose that this might be the case save, potentially, by reference to the letter from the Minister dated the 21st August, 2008 informing Mrs. V. and her children of the fact of the deportation orders of 23rd July.

6. The relevant portion of the letter is as follows:-

> *"The reasons for the Minister's decision are that you are persons whose application for a declaration as a refugee has been refused. Having had regard to the factors set out in s. 3(6) of the Immigration Act, 1999, (as amended), and including the representations received on your behalf, the Minister is satisfied that the interest of public policy and the common good in maintaining the integrity of the asylum and immigration systems outweigh such features in your case, as might tend to support your being granted leave to remain in this State."*

It seems to me that there is no reason to suppose, having regard to the contents of the material before the Minister, including the handwritten notes thereon by Eileen Power and Michael O'Flynn who endorsed the views of Mr. Foley and hence the advice to the Minister, the letter, so far as it refers to asylum, is anything other than a mere erroneous statement as to the reasons for deportation. Whether or not the applicant's are entitled to reasons for the refusal of leave to remain, to afford this court an opportunity to consider whether or not the Minister's actions are lawful, or for any other reason, a perusal of the totality of the material leaves no one in any doubt as to the basis on which the Minister considered the matter, nor, indeed, that it might in any way adversely have affected the applicants if he had been in error. I do not think, accordingly, that a judicial review can or should be granted on this ground; far more would be required to show that the Minister acted on an erroneously factual basis before the applicant, on this ground, could reach the threshold required for leave to seek judicial review.

7. I think that it would be appropriate now to turn to the issue of the standard which is required for the purpose of obtaining judicial review of the decision of a Minister exercising his power to make the deportation orders, having conducted an inquisitorial process of the present kind. I have considered this issue on a number of previous occasions and rejected the proposition that any standard other than that laid down by the Supreme Court in O'Keeffe v. An Bord Pleanála, [1993] 2 I.R. 39 is applicable and I do not propose to depart from my own previous decisions: of course, the test sought to be advanced as an alternative is that known as the "anxious scrutiny" test. I have so rejected the latter in B.J.N. v. Minister for Justice, Equality and Law Reform and Others, (Unreported, High Court, Charleton J., 18th January, 2008), Mujiberehman Kamil v. Refugee Appeals Tribunal and Another, (Unreported, High Court, 22nd August, 2008), Mwiza v. Refugee Appeals Tribunal and Another, (Unreported, High Court, 22nd October, 2008), Karma Kongue v. Refugee Appeals Tribunal and Others, (Unreported, High Court, 29th October 2008), Bucimi v. Refugee Appeals Tribunal and Others, (Unreported, High Court, October, 2008), and Rerhai v. Refugee Appeals Tribunal and Others, (Unreported, High Court, McCarthy J., 28th November, 2008). I do not propose, accordingly, to engage further with the proposition here since I have done so adequately in the previous decisions.

8. Counsel on behalf of the applicants has referred to Kouaype v. Minister for Justice, Equality and Law Reform, (Unreported, High Court, Clarke J., 9th November, 2005) where it was held that the Minister is entitled to rely upon decisions arrived at in the course of an asylum application for the purpose of satisfying the obligation arising from s. 3 of the Refugee Act 1999 in relation to the prohibition on refoulement. It is submitted that in the present case the refoulement issue arises in "wholly different circumstances" and in particular it is pointed out that humanitarian leave to remain in the present context, and the prohibition on refoulement, do not arise as a result of a process of adjudication or enquiry commencing with that of the Refugee Applications Commissioner and progressing to a decision of the Refugee Appeals Tribunal, where the Minister would have before him, and would be entitled to rely upon, a considerable body of evidence or analysis placing him in a more advantageous position to consider the exercise of his discretion or the application of the principle of non refoulement, but, rather, it is the first and only hearing or consideration to be afforded to an application to remain in the jurisdiction.

9. It is submitted that, in some sense, accordingly, a different approach to the scrutiny of the applicants' application is required and that there is a duty upon the Minister to go further or conduct a more extensive enquiry then that which might arise in the case of a failed asylum seeker. No authority is quoted for this proposition either in the context of what I might term the highly developed and very extensive jurisprudence in respect of immigration or refugee matters or in accordance with the principles of judicial review. Generally there are many examples of decisions by administrative authorities (including Ministers) in the context of administrative action where the sole decision making power is vested in the Minister without prior enquiry by other or different authorities or, appeals, save, of course the remedy of judicial review of administrative action. It is quite plain that in Kouaype the difficulty in issue was the user by the Minister of materials derived from previous steps in what I might term the asylum process and it is now sought to turn that proposition around, so to speak, and say that the absence of such material changes the obligations of the Minister. The only relevance, or so it seems to me, of the absence of prior steps depriving, so to speak, the Minister of the benefit of conclusions reached before, or any material submitted, is that the material before him may be more limited: this is not to say, of course, that it might necessarily be inadequate in any case to found a rational decision. There is a clear obligation on a person with no right to be in State who is seeking, as matter of grace, to be permitted to remain in it, to bring before the Minister all material considered relevant by such a person (some of which might rationally trigger further enquiry by the Minister) because he can know nothing of the background or circumstances of the applicant and none of the principles pertaining to the grant of asylum or the treatment of refugees whether by reason of the State's international obligations or otherwise are applicable here, save, at least for the present purpose, the principle of non refoulement. The Minister cannot guess the factors which are relevant and will have limited means of inquiry, only.

10. I see no rational basis for the advancement of the proposition that a person with no right to be in State who has not failed to obtain a declaration of refugee status (because he never claimed it) is in some sense in a superior position when the Minister is considering the application for leave to remain, to a person who has failed in that regard. If anything more substantial questions might arise in the latter cases, having regard to the State's international obligations as to the treatment of persons claiming asylum and the fact that in many instances, apart from the principle of refoulement, questions will have been arisen (albeit adjudicated upon in a way unfavourable to an applicant) about the rights and duties of the State in that context and, indeed, there might have been a body of evidence (albeit evidence rejected) tending to show some element of risk of persecution or making out some ground upon which that status ought to be conferred. To put the matter in another way, a person who has never sought asylum and is here for economic reasons only is someone offered limited protection only by virtue of the international obligations of the State under domestic law. One need hardly refer to the statement of Costello J. in Pok Sun Shum v. Ireland, [1986] I.L.R.M. 593 that the "State …must have very wide powers in the interest of the common good to control aliens, their entry into the State, their departure and their activities within the State".

11. It is submitted that the Minister acted in breach of the provisions of s. 3(6) of the Immigration Act, 1999 and in particular erred in law in not giving due and proper consideration to relevant evidence and in particular "fresh information contained in the representations submitted by letter dated 12th May, 2008" was not assessed. This I do not understand because at p. 2 of Mr. Foley's report dated the 9th July, 2008 explicit reference is made by him to the fact that (further) representations were received by the Department on 20th May, 2008 from Sean Mulvihill and Company Solicitors on behalf of the applicant setting out reasons as to why they should be allowed to remain temporarily in the State. These representations are exhibit "E" in Mrs. V.'s affidavit. Furthermore, it is hard to see how the Minister knew of the circumstances of Mrs. V. and her children save by reference to the application for leave

to remain and the documentary material supporting it, although there is reference to representations made prior to the determination by the Minister to make deportation orders subsequently the subject of successful proceedings for judicial review. Needless to say there cannot be any objection to reliance upon that material, per se. Whether or not there was such reliance (and I do not think one could read in either of Mr. Foley's reports as indicating that there necessarily was) all of the representations are hugely repetitive. I do not see, accordingly, how it could be said that the material before the Minister, being based almost exclusively on what was said by the applicant, could give rise to a situation where he failed to consider relevant matters.

12. Submissions are also made to the effect that the Minister's decision was in breach of the provisions of Article 8 of the European Convention on human rights and fundamental freedoms which is as follows:-

> *"(1) Everyone has the right to respect his private and family life, his home and his correspondence.*
>
> *(2) There shall be no interference by a public authority with the exercise of this right accept such as is in accordance with the law and the is necessary in a democratic society in the interest of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others."*

13. In particular it is alleged that the decisions to deport and the orders accordingly were not proportionate to the legitimate aim of protecting the integrity of the asylum and immigration system and (a related point) that the consideration given by the Minister to the rights of the applicants under Article 8(2) was inadequate. It is perfectly plain from the reports that comprehensive information is set out as to the family and domestic circumstances of the applicants and Mrs. V.'s sister and her children as her next door neighbour's was before the Minister. Under the heading "Consideration under Article 8 of the European Convention on Human Rights (ECHR)" there is a comprehensive engagement with the facts as presented to the Minister by reference to all aspects of the applicant's circumstances, including, under the heading "family life" and a reference to the fact of the residence of Mrs. V.'s sister in the State with her two daughters. I do not believe that it was necessary, incidentally, to engage in repetition about the domestic circumstances of the latter. There is no evidence to suggest that the apparent consideration evidenced in writing did not occur, in a meaningful way; one is not entitled to isolate that heading and that consideration from all of the other materials when all matters were plainly considered together.

14. Very properly it appears that Mr. Foley said that the decision to deport Mrs. V. and her children "may constitute an interference with their right to respect for private life, within the meaning of Article 8(1) of the ECHR"; he briefly refers to the ambit of that right and goes on to conclude that interference with the right will not have consequences of "such gravity as potentially to engage the operation of Article 8". He also addresses the fact there was no "credible argument" under the later heading "of family life" as to why Mrs. V., her husband and children could not reside together as a family unit in Brazil, where they were born and "returning the whole family unit to Brazil will maintain the immediate family unit": Mr. Foley went further in his submission to the Minister in as much as he considered the relationship between Mrs. V. and Mrs. A.R. and accepted that a decision to deport would constitute an interference in "her right to respect for her family life", under Article 8(1) of the ECHR, although, frankly, I am not at all sure that it does under the case law of the ECHR. This is in accord with a suggestion that private or family life may extend to persons beyond the so-called "nuclear family". I accept that this is a reference to Mrs. V.'s rights rather than those of her sister. The position, accordingly was that the report was to the effect that there was no breach of immediate private or family life (i.e. the relationship between husband and wife and the two children) by virtue of deportation but that there was interference with the private or family life of Mrs. V. so far as her relationship with her sister was concerned. This was addressed in terms of the limitations upon those rights elaborated in Article 8(2) and a rational conclusion reached; this was to the advantage of the applicants. There is an ample authority to the effect that, in general, the family in this content is the nuclear family.

15. Was the consideration undoubtedly given so inadequate as to constitute a failure to have regard to relevant factors (as the Minister was undoubtedly required to do) or was there an error to law of such substance as to divest the Minister of jurisdiction? In the first instance it is clear that explicit consideration was given to each element of Article 8(2) of the Convention by reference to the limited circumstances in which interference with someone's private or family life might be permissible. It seems to me that one could not doubt but that the applicants or any of them or Mrs. V.'s sister and nieces could return safely to Brazil: asylum was not claimed as, presumably, the proposition was unstateable that they would not receive State protection or would be compelled to live next to the family of those involved in the murder of the first applicant's brother-in-law. The proposition must accordingly be, that the applicants and Mrs. A.R. and their children could only enjoy family life in this jurisdiction, which is of course not the case or, at least, any conclusion of the Minister to the that effect would have been perverse. It seems hard, no matter how much one parses and analyses the reports before the Minister, to see what deficiency there was or what error in principle arose in terms of the rights of the applicants or any them under the European Convention. I cannot see how the rights of Mrs. A.R. can be asserted in this action. In my view, none of the applicants have locus standi to do so and I know of no reason why the ordinary rules pertaining to locus standi do not apply in cases of this kind.

16. It was submitted by Mr. Haughton that no opportunity was given to Mr. Mulivihill., by whom he was instructed, and on behalf of the applicants to counteract the conclusion that:-

> *"Mrs. I.A.R.V. and her family would be able to relocate internally in Brazil to escape any potential persecution from the family of the man who killed Mrs. I.A.R. husband."*

17. It was submitted that no opportunity was given to address specifically the threat which it is alleged follows from the proximity in which Mrs. V.'s family lived to those concerned in the death of her brother-in-law. It is submitted that the opportunity was further denied to counteract the country of origin information. Mr. Haughton conceded that in the ordinary course of events he could not advance this proposition if the matter was entered upon and a determination, unchallenged, was made on the point by the Commissioner or the Tribunal in asylum cases. He says that this is different because the issue was not capable of being ventilated until the matter came before the Minister. He further submitted that:-

> *"Where the essential allegation of risk of harm is made . . . it needs to be scrutinised by the Minister or his officials much more closely, and if they come up with . . . an answer to the point that is made, upon which they intend to place reliance in placing matters before the Minister, then it is incumbent upon them to give the applicants or their solicitors an opportunity to rebut it.*
>
> *. . ."*

18. An issue which arises here by virtue of the fact that under the heading "prohibition of refoulemont" in the second report placed before the Minister regard was had to country of origin information originating, apparently, in the United States Department of State

and a website maintained by the U.N. High Commission for Refugees. This was because of the first applicant's allegation that she and her family would be endangered if they were returned to their country of origin as the relatives of her brother-in-law's murderer lived close to her previous residence in Brazil. Of course, having left Brazil a considerable number of years ago, one finds it hard to believe in such circumstances, she would return to that area, if repatriated. That aside, however, this issue rightly gave rise to a consideration of freedom of movement and respect generally for human rights. In this connection the former was of special significance. I think that any decision maker would be entitled to conclude as a matter of common sense that there was no basis for refusing leave to remain just because in a country with the size of and with the population of Brazil, a person who was potentially fearful of others would have to reside in the same area. It seems to me that even if, as a generality, there was an obligation in accordance with the ordinarily applicable principles of administrative law to afford notice to an applicant of, say, materials such as country of origin information upon which reliance might be placed by the decision maker, that could not extend to consultation of material merely confirming what was obvious anyway – and added little of substance thereto.

19. The country of origin information dwelt not merely on freedom of movement but the fact that there were domestic and international human rights groups which were active and that in general federal officials were responsive to the views of such groups; going further, apparently, the Government sought aid and co-operation from non-government organisations in addressing human rights problems but with the limited (and irrelevant) exception that human rights monitors were threatened and harassed occasionally by state police forces; the country of origin information further indicates that most states had police ombudsmen although there were some questions about their independence or effectiveness and, further, referred to the human rights commissions of parliament. There was no need for the Minister to consider these other aspects of human rights protections in Brazil because of his capacity as a matter of common sense to reach the view, beyond a reasonable doubt, that there was no reason why Mrs. V. and her children could not live at a different place, and a sufficient distance for safety away from her brother in law's murderer's family. The complaint must be therefore that by virtue of the fact that other aspects of human rights protection or issues pertaining to human rights were addressed by reference to country of origin information to the benefit of Mrs. V. and her children, and when the Minister was under absolutely no obligation to do so (because issues such as persecution, by state agencies or the like, or want of protection for human rights by state agencies or the like had never arisen) the decision was bad because she was told nothing about it.

20. It seems to me that the consideration given in the larger sense to which I have referred to country of origin information could not have been a decisive factor in the Minister's mind, on perusal of the recommendations: the decisive factor was obviously the capacity for freedom of movement, a topic with which I have already dealt. I consider that if there was any case for the assertion that notice ought to have been given to the applicants or any of them of the fact that the country of origin information was to be considered in relation to what I might term the broader picture (beyond freedom of internal movement), any breach of that obligation is not of such substance as to give rise to a basis for impugning the order; any error was severable because it could have no substantial effect. Further, ample other different material existed on which the decision was based.

21. I do not for one moment ignore the decisions in Idiakheua v. Minister for Justice, Equality and Law Reform, (Unreported, High Court, Clarke J., 10th May, 2005) where he points out that inquisitorial bodies are under an obligation to bring to the attention of any person whose rights may be affected by a decision any matter of substance or importance which that inquisitorial body may regard as having the potential to affect its judgment or Clarke J.'s subsequent decision in Moyosola v. Refugee Applications Commission [2005] IEHC 218 where Clarke J. said that the only issue was as to whether the applicant had satisfied the court that there were substantial grounds for any of the propositions relied upon, I am satisfied that the above represents an appropriate principle by reference to which the procedures of inquisitorial bodies should be judged so as determine whether such bodies have complied with the principles of constitutional justice in cases where an obligation to act in accordance with those principles apply."

22. Such is the general rule only (not, I believe, isolated by the approach and takes in the circumstances of this case) and there are a number of authorities where its application is elaborated. In E.A.W. v. Refugee Appeals Tribunal, [2008] IEHC Hedigan J. was called upon to address an allegation of unfairness in the conduct of an oral hearing by the Refugee Appeals Tribunal on the basis that the question of internal relocation in the country of origin of the applicant refugee (the Sudan) was raised. It appears that a document known as an "Operational Guidance Note" was at the centre of the argument arising in this connection as to the application of fair procedures. Hedigan J. considered that the tribunal members reference to that document did not form a core or central part of the decision; rather, it was "in the nature of an additional remark" and it was apparently the case that the tribunal members decision to reject the appeal was based on the conclusion that no subjective fear of persecution had been established. That finding was, in turn, grounded in the tribunal's rejection of the applicant's personal credibility. That being the case, there was no need to assess whether or not the option of internal relocation would be available to the applicant;

> *"Thus the tribunal members remark with respect to the (document) does not form part of his final decision and has no impact on the fairness, reasonableness or rationality of the conclusion that was ultimately reached."*

23. Subsequently, in O.S. v. Refugee Appeals Tribunal [2008] IEHC 342 it appears that the Tribunal member relied on materials which he had acquired at a conference in London without disclosing this information to the applicants. These apparently related to the question of the applicant's nationality and he had not availed of an opportunity to make written submissions on this point. The applicants contention of a violation of procedural fairness was rejected by Hedigan J. in the following terms:-

> *"There is, in my view, no basis for the contention that because a Tribunal Member draws on knowledge acquired at a conference, the applicant has a right to see materials relating to that conference. There can be no objection to a decision maker relying on knowledge acquired in the course of their experience and training. This must particularly be so in circumstances where the applicant was thereafter afforded an opportunity to make written submissions on the subject. It would be irrational if decision makers were precluded from relying on objective information with which they gain familiarity through their work. The applicant's submissions in this regard were argued vigorously … not withstanding [counsel's] eloquence on this point, I remain unconvinced. I consider the point to have no merit."*

In the light of the decision of Hedigan J., I think that I must have regard to the fact that an opportunity to make written submissions was afforded prior to the decision and that the solicitors acting for the applicant were extremely experienced in relation to cases of this kind. No one could have been in any way surprised by the contents of the country of origin information, the user of which is impugned.

24. In the context of severance and the bearing which the country of origin information had or might have had on the decision, I think it might be helpful to refer to a number of decisions of some of my colleagues. In particular, I think Kikumbi v. Refugee Applications Commissioner [2007] IEHC 11 (per Herbert J.) is of assistance. There, Herbert J. said the following:-

> *"... the fact that the Authorised Officer partly misinterpreted the country of origin information available … does not invalidate her conclusion that it was questionable that the second named applicant and her family moved to Fataki from*

Bunia, because that conclusion was also based upon this other entirely separate and severable consideration, which was not demonstrated to be also incorrect. In these circumstances I find that the mistake of fact on the part of the Authorised Officer was not material to or of significant importance to her conclusion so as to invalidate that conclusion."

Herbert J. was dealing with the question of severability and the fact of the existence, beyond the impugned matter, of matter properly allowing the impugned conclusion to be made: it seems to me, as a matter of principle, a similar approach can and should be adopted when considering omissions to afford notice of uncontroversial material actually or likely to be in contemplation by the decision makers which on the issue (residence near the first applicant's brother, in-laws, murderer's family) was merely in accordance with common sense. It is right that I should also refer to Peart J.'s decision in Imafu v. Refugee Appeals Tribunal (Unreported, High Court, 9th December, 2005) where he said:-

"The Court must have regard to the decision in the round, to the real capacity of the alleged error to have affected the correctness of the process by which the decision was reached, and also to the discretionary nature of judicial review. In respect of the latter, it seems to follow that even where the Court may be satisfied that there was some error in the process, it can refuse relief where it is also satisfied that such error as did occur did not go to the heart of the decision, such as would render the decision unlawful."

I am not here concerned, of course, with the exercise of the court's discretion to refuse judicial review since that would be a matter for any substantive hearing on the points now raised. It would seem that if one takes a decision in the round there is no basis for saying that there was a real capacity for what I might shortly term the impugned material to have affected the correctness of the process. I think it is also important to stress the comments of Peart J. in Tabbi v. Refugee Appeals Tribunal (Unreported, High Court, 27th July, 2007) where he also referred to that:-

"It is not desirable that a decision be parsed and analysed word for word in order to discern some possible infelicity in the choice of words and phrases used, and to hold that a finding of credibility adverse to the applicable is invalid unless the matters relied upon have been clearly misunderstood or misstated by the decision-maker. The whole of the decision must be read and considered in order to reach a view as to whether or not when the decision is read in its entirety and considered as a whole, there is a reasonable basis for the decision-maker reaching that conclusion."

I know that Peart J. was considering a different issue when he made those observations yet the proposition is of general application.

25. I turn now to the alleged a failure on the part of the Minister to sufficiently consider educational issues pertaining to the third and fourth named applicants. The reference to this in these proceedings reminds me of nothing so much as that practice deprecated in criminal cases in the Court of Criminal Appeal and commonly known as "trawling the transcript" (for errors). It is perfectly plain that the representations with respect to school must have formed part of the Minister's consideration since they were before him, the extent of the history of the family in the State was heavily stressed and reference was made to the fact that the children were settled and, indeed, were described as model pupils. It seems impossible to conceive of circumstances where the totality of their background, laced as the representations and decisions are with reference thereto, were not fully considered in all aspects.

26. Finally, it seems to me that there is no obligation on the part of the Minister to engage with persons and to give detailed reasons to persons who have no right to be in the State. This is the position when leave to remain on humanitarian grounds are rejected with respect to a person passed through the asylum process. In Baby (O) v The Minister for Justice [2002] 2 I.R. 183, as is well known, Keane C.J. stated (with respect to a failed asylum seeker) that:-

"I am satisfied that there is no obligation on the first respondent to enter into correspondence with a person in the position of the second applicant setting out detailed reasons as to why refoulement does not arise. The first respondent's obligation was to consider the representations made on her behalf and notify her of the decision: that was done and, accordingly, this ground was not made out."

I accept, of course, that is not the issue precisely in point here but I think it is fair to say that the core point is the want of an obligation of the Minister in giving reasons in cases of failed asylum seekers. I do not see why cases of persons whom, on a different basis, have no right to be in the State should fall into a different category and I am not prepared, as indicated above, to hold or find that there is any substantial basis for asserting some higher Ministerial duty in a case of the present kind.

27. I therefore conclude that there are no substantial grounds which would justify a grant of leave in this case.