THE HIGH COURT

JUDICIAL REVIEW

BETWEEN

LILIBETH BERTAN

APPLICANT

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 applicant is a national of the Philippines, and is a married woman with three children. The rest of the family live in the Philippines. She arrived in Ireland on a work permit on 3rd February, 2005. Her permission to remain in Ireland expired on 28th May, 2010. After a period of illegal residence of almost two years she was granted a further permission on 2nd April, 2012, which was extended until 28th May, 2014, and she has resided illegally since that date. The applicant has never applied for international protection and she has worked as a carer for elderly persons most of the time that she has been in the State, and in addition has been a cleaner for a limited period of time.

2. On 7th October, 2015, she was informed of a proposal to make a deportation order and was invited to make representations to the Minister setting out reasons why a deportation order should not be made. Representations of a relatively succinct nature were made in a three-page letter from her solicitors. The applicant was notified on 26th June, 2017 that a deportation order had been made in respect of her on 16th June, 2017. She now applies for *certiorari* of that deportation order. I have heard submissions from Mr. Colm O'Dwyer S.C. (with Mr. Garry O'Halloran B.L.) for the applicant, and from Mr. Daniel Donnelly B.L. for the respondents.

Should the matter be adjourned pending the outcome of the Supreme Court appeal in *D.E.*?

3. Given the volume of cases in the asylum list and the number of cases at various stages in the High Court, the Court of Appeal, the Supreme Court or Luxembourg, it is not always possible to adjourn cases where there is any overlap with other proceedings. A holding list has been created within the asylum list so that particular cases can be parked pending an appeal or a reference, where it is appropriate to do so. An application to put a case into the holding list prior to the fixing of a date is the appropriate mechanism to have this issue considered. If a date is fixed for any particular case it must then generally be regarded as too late for a party to seek in submissions, or even worse on the day of a hearing, to have the matter adjourned. Mr. O'Dwyer's application to adjourn the matter pending the outcome of *D.E. v. Minister for Justice and Equality* [2017] IESCDET 85 is thus too late, but more fundamentally *D.E.* is only going to deal with the question of whether leave should have been granted on that issue. The questions on which leave to appeal has been given do not relate to either (a) if there is an obligation to set out broad policies or criteria regarding deportations, whether that has been satisfied on facts such as those here, or (b) whether an applicant in the circumstances of this particular applicant, on these facts, comes within the alleged scheme of permissions to remain. I emphasise that it is of some procedural significance that the Supreme Court is only dealing with whether I should have granted leave in *D.E.*, not whether the applicant in *D.E.* must succeed. It seems to me that the basis to adjourn this matter pending the outcome in *D.E.* has not been made out. Even if the applicant in *D.E.* wins the appeal, that does not necessarily create an entitlement for this applicant to succeed on the merits. At one stage, Mr. O'Dwyer suggested in submissions that the Supreme Court decision might establish a right to be in the State if one is here for five years and has not committed any offences. That, it seems to me, is an outlandish interpretation of legal rights and certainly well beyond anything set out in the Supreme Court determination.

Is the Minister entitled to operate a "*secret scheme*" or alternatively is he required to publish criteria for deportations?

4. It seems to me this point does not arise on the facts. There is no secret scheme being operated (see the affidavit of James Boyle). Separately, there is no obligation to set out criteria for deportation, but if I am wrong about that, criteria have been published in the form of the Report of the Working Group on Improvements to the Protection Process (the McMahon report): see my discussion of this issue in *C.O. (Nigeria) v. Minister for Justice and Equality* [2017] IEHC 725 [2017] 11 JIC 2406. The McMahon report and the Minister's approach to it make clear that the approach being taken applies only to protection applicants. This applicant is not a protection applicant, so could never have qualified for permission under this heading.

Did the Minister act rationally in considering the employment prospects of the applicant?

5. In *S.T.E. v. Minister for Justice and Equality (No. 1)* [2016] IEHC 379 [2016] 10 JIC 1401 there was a combined failure to acknowledge the qualifications of the applicant and an overly pessimistic assessment of the economic situation. Here neither element applies. The Minister accepts that there is an improving economy and rising employment figures but says that there is no evidence that this applicant has any specialist skills which are deficient in the State. That seems to me to be a reasonable conclusion; certainly one well within the discretion of the Minister. The fact that the applicant allowed herself to enter into informal employment arrangements and thus cannot get an employer's reference or tax documentation hardly helps her position. Further, the fact that she was unable to obtain employment for the last number of years is also relevant and is noted in the Minister's decision.

6. It seems to me that Mr. Donnelly is correct when he submits, with his usual conspicuous ability to get aphoristically to the pith of the matter, that "*the respondent is under no obligation to grant a non national a permission which would entitle her to work without a work permit because she cannot obtain employment that does qualify for the grant of a work permit. If he were required to do so, it would play havoc with any attempt to implement a consistent and logical immigration system*" (para. 18 of respondent's written submissions).

Does the effect of deportation on the applicant's children fall within the scope of art. 8 of the ECHR?

7. What is fatal to this submission is the fact that the s. 3 submissions actually made by this applicant did not say anything about the children's art. 8 rights as a reason not to deport the applicant. The existence of the children was given as background information in an earlier submission in 2011 which indicated that at that time (that is over six years ago) the applicant was working to allow the children to attend education and thus have better opportunities. No case was made in the s. 3 submissions that deportation would be adverse to the educational rights of the children under art. 8. Insofar as the submission referred to art. 8, that submission is referable to the applicant herself and not the children. Furthermore, on the facts, the applicant has not worked since 2014, so any

hypothetical stream of money to pay for the children's education simply does not exist. The children are of course in the Philippines. The argument that to deport this applicant from Ireland would breach their art. 8 rights seems to me to be unsustainable. As it has been put elsewhere, "*the jaws of Article 8 have already been opened wide enough*" (the phrase is used by Rosalind English in a case report on the One Crown Office Row website cited in *Genovese v. Malta* (Application No. 53124/09, European Court of Human Rights, 11 October, 2011) *per* Judge Valenzia (dissenting) at para. 13; see also *Rodis v. Minister for Justice and Equality* [2016] IEHC 360 [2016] 6 JIC 2405 at para. 23). More fundamentally there is no right for an illegal immigrant to stay in Ireland in order to work to pay for children's education (see by analogy *K.R.A. v. Minister for Justice and Equality* [2016] IEHC 289 [2016] 5 JIC 1214) [IECA 284.

Order

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