Neutral Citation Number: [2011] IEHC 443

THE HIGH COURT

2011 806 JR

IN THE MATTER OF THE IMMIGRATION ACT 1999 AND ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000 AND STATUTORY INSTRUMENT NO. 518 2006

BETWEEN /

P.J., O.A.O.J. (A MINOR), O.O.M.J. (A MINOR) AND O.C.P.J. (A MINOR) ALL SUING THROUGH THEIR MOTHER AND FRIEND P.J.

APPLICANTS

AND

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENT

JUDGMENT of Mr. Justice Gerard Hogan delivered on the 19th day of October, 2011

1. In these proceedings the applicants seek leave pursuant to s. 5(2) of the Illegal Immigrants (Trafficking) Act 2000 ("the 2000 Act") to challenge the validity of a deportation order made by the Minister on 18th August, 2011. The proceedings were commenced on 5th September, 2011, and the first return date for the motion was 3rd October, 2011. The respondents agreed to give an undertaking not to deport until 3rd October, 2011, but declined to give any undertaking beyond that date.

2. The applicants then initially sought an interlocutory injunction restraining their deportation pending the outcome of the present judicial review proceedings. Matters have now moved to the point where the only real issue presently before the court is whether the applicants are entitled to an interlocutory injunction pending the determination of the leave of the application and, if so, whether the standard Campus Oil principles (*Campus Oil Ltd. v. Minister for Energy (No.2)* [1983] I.R. 86) which govern the grant of an interlocutory injunction (fair question to be tried, adequacy of damages and balance of convenience) apply to a case of this nature.

3. The only reason why the present case might present a special circumstance taking the case outside of the ordinary *Campus Oil* principles is because of the inter-action between Ord. 84 and s. 5 of the 2000 Act. Of course, s. 5(1) of the 2000 Act provides that a challenge to the validity of a deportation decision cannot be brought otherwise than "than by way of an application for judicial review under Ord. 84 of the Rules of the Superior Courts".

4. So far as applications under Ord. 84 are concerned, if it be the case that applicants for certiorari are entitled more or less as of right to a stay (which I will treat for present purposes as the equivalent of an injunction) following the grant of leave and absent special circumstances, then it cannot be right in principle that they are deprived of that entitlement simply because their application for leave has yet to be heard and determined by the Court. Unlike the situation which obtains in the case of conventional applications for leave under Ord. 84 where there is no (or, at least, almost no) hiatus between the commencement of proceedings and the application for leave itself, in practice the delays in immigration cases between the commencement of proceedings and the determination of the leave application are usually measured in months, if not years.

5. What is critical, therefore, is to determine whether the standard *Campus Oil* principles apply to the grant of a stay following the grant of leave to apply for judicial review in cases where certiorari has been sought. If the answer to that question is in the affirmative, then the *Campus Oil* principles apply to the present (pre-leave) application. If, on the other hand, the question is in the negative, so that applicants for certiorari obtain a stay more or less as of right or by reason of a quasi-entitlement absent special circumstances, then the special rules must be applied by analogy to the pre-leave cases as well. This present case turns, therefore, on that very question.

6. Before turning to a consideration of this question, it is appropriate to say something about the facts of the case. The first applicant (whom I shall describe as "the mother") is a Nigerian national who arrived here in December, 2004. During her stay here she met and had a relationship with a man as a result of which she had the second, third and fourth applicants ("the children"). The children were born here, but they are not Irish citizens. Two of the children have serious intellectual difficulties. One of them, OAOJ, has been diagnosed as being on the autistic spectrum and the other, OOMJ, has serious speech and language problems. Judged by the supporting document exhibited in the affidavit, it is only fair to record that the mother has striven valiantly, along with the social services, to provide the very best care and attention for these two children.

7. So far as OAOJ is concerned, his condition has been summarised thus by Grace Connor, a family support co-ordinator in a letter of July, 2010:-

> "[OAOJ] was diagnosed with autistic spectrum disorder in the presence of a mild intellectual disability. Such a child with this diagnosis reacts very badly to changes in routine, structure or when presented with new environments. [OAOJ] condition is complicated by a diagnosed severe speech and language delay. He reacts very seriously to new situations and they cause him distress, upset and emotional trauma."

8. As far as the country of origin information is concerned, the material suggests that the facilities available in Nigeria for the treatment of children with such disabilities is, at best, haphazard. The examination of file memorandum prepared for the Minister quoted, *inter al*ia, from a Norwegian country of origin information report issued in August 2008, which is in the following terms:-

> "According to Professor Abengowe, the facilities available for all sorts of learning disabilities (autism and Down's Syndrome were mentioned) were extremely limited in Nigeria, even in private healthcare institutions in Abuja, Lagos. In some cases, someone working in the University clinic might take a special interest, but she/he would have few resources available to somebody with a child. 'Poor people simply deal with their situations themselves, where some of the well-to-do would possibly send them abroad for treatment'."

9. The Norwegian authors went on to say that missionaries can sometimes offer help and there are some homes for the children. They continued, however, by quoting again from Professor Abengowe:-

> "Compared to the size of population, however, it is a drop in the ocean. It is not unheard of that these children are abandoned by their parents but, fortunately, people are generally accommodating towards people with mental disabilities."

10. The authors of the Norwegian report also referred to the comments of Dr. Amber Awogu (Abuja clinics) who stated that:-

> "These kinds of afflictions are not a priority in a Third World country which is struggling to provide basic healthcare to its population."

11. This extract from the country of origin information presents a picture of a State with little real facilities for children with such disabilities. It is, of course, true to say that treatment for children presenting with autism is available in Nigeria in the sense that there are undoubtedly children requiring such care for which such has been provided. But these instances would seem to be very much the exception - or, as the Norwegian country of information report put it, a drop in the ocean - in the context of a health care system which struggles to ensure that its teeming population has access to basic health care.

12. The authors of the file memorandum went on to state:-

> "The information states that physically and emotionally challenged children have access to scholarship in some States as well as free medical care. In addition, missionaries can sometimes help and there are some homes for children with autism. According to country of origin information, treatment for the applicant's condition is available in Nigeria."

13. These comments were uttered in the context of a response to an argument based on Article 3 ECHR. One cannot help thinking that these comments give a hopelessly optimistic picture of the treatment available in Nigeria for children presenting on the autistic spectrum. It would, I think, have been more accurate to state that while a tiny minority of the children requiring such treatment can access such treatment in Nigeria, so far as the vast majority of children with autism is concerned, such treatment is in practice unavailable or, at best, largely unavailable.

14. Nevertheless, the authors of the file memorandum had previously stated in the context of humanitarian arguments (as required by s. 3 of the Immigration Act 1999) that:-

> "Having considered the humanitarian information on file in this case, there is nothing to suggest that [O.A.O.J] should not be returned to Nigeria."

15. This might be thought to be a surprising statement. It is impossible to deny the existence of profound humanitarian considerations in the present case, yet, on at least one view of the file memorandum, it appears to be suggested that the humanitarian considerations are not weighty ones. Of course, even if this latter consideration were to be accepted, this would not at all mean that the applicants could not be deported, since considerations pertaining to the common good might nonetheless require their deportation.

16. At all events, following the rejection of the asylum application, the process culminated in the making of deportation orders on 18th August, 2011. It is these orders which are under challenge in the present proceedings. We may now proceed to examine the question of whether the applicants are entitled to a stay of proceedings pending the application for leave pursuant to s. 5 of the 2000 Act and, as we shall now see, this requires an examination of the provisions of Ord. 84, r.20(7).

Order 84, r. 20(7)

17. Order 84, r. 20(7) is in the following terms:-

> "Where leave to apply for judicial review is granted then-
>
> (a) if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;
>
> (b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by plenary summons."

18. It will be seen immediately that Ord. 84, r. 20(7)(b) provides that that where relief other than *certiorari* or prohibition is sought, then the Court's powers to grant interim relief are assimilated to that which applies in the case of applications for interlocutory injunctions. There is no doubt at all but that such applications are governed by the standard *Campus Oil* principles. The real question here is whether these principles also apply to cases where (as here) certiorari has been sought.

19. Before examining that question it is necessary first to consider whether Ord. 84, r. 20(7)(a) at all applies to applications to quash administrative decisions such as deportation orders.

The meaning of the phrase "stay of the proceedings"

20. The first question here is whether the phrase "stay of the proceedings" in Ord. 84, r. 20(7)(a) includes an administrative decision such as a deportation order made by the Minister. Of course, the natural meaning of the word "proceedings" would seem to refer to judicial proceedings, such as proceedings which might be pending in the Circuit Court or the District Court. It might also naturally include other forms of proceedings, such as a hearing before an administrative tribunal. On this view, therefore, it be thought to be somewhat artificial to extend the meaning of the words so as to include an administrative decision made by a Minister.

21. The wording of Ord. 84, r. 20(7)(a) was borrowed more or less verbatim from the former Ord. 53, r. 10(a) of the English Rules of the Supreme Court. (Of course, in England, Ord. 53 has been since replaced by the Civil Procedure Rule 54.10). The meaning of the phrase "stay of proceedings" was examined in a series of decisions of the English Court of Appeal and, for that matter, the Privy Council. In the first of these cases, *R. v. Secretary of State for Education and Science, ex p. Avon C.C.* [1991] 1 Q.B. 558, the Court of Appeal held that the phrase "the proceedings" in RSC Ord. 53, r. 3(10)(a) should be construed widely and that, so construed, it embraced not only judicial proceedings, but also administrative decisions "and the process of arriving at such decisions": see [1991] 1 Q.B. 558,562, per Glidewell L.J.

22. The Privy Council took a different view of the matter in *Minister of Foreign Affairs, Trade and Industry v. Vehicle and Supplies Ltd*. [1991] 1 W.L.R. 550. This was a Jamaican case involving provisions of the Jamaican civil procedure rules which were almost identical to in terms to Ord. 53, r. 10(a). Lord Oliver made it clear that the phrase "stay of proceedings" extended only to matters pending in lower courts and administrative tribunals. It did not extend to purely executive decisions such as a ministerial order.

23. The conflict between the two authorities was later examined by the English Court of Appeal in *R.(H.) v. Ashworth Hospital Authority* [2003] 1 W.L.R. 127. Of course, by this stage Ord. 53 had been replaced by the (somewhat differently worded) CPR, but

the phrase "stay of proceedings" was still used in the new version of these rules. As Dyson L.J. ([2003] 1 W.L.R. 127 at 138-139) observed:-

> "The purpose of a stay in a judicial review is clear. It is to suspend the "proceedings" that are under challenge pending the determination of the challenge. It preserves the status quo. This will aid the judicial review process and make it more effective. It will ensure, so far as possible, that, if a party is ultimately successful in his challenge, he will not be denied the full benefit of his success. In *Avon,* Glidewell LJ said that the phrase "stay of proceedings" must be given a wide interpretation so as apply to administrative decisions. In my view, it should also be given a wide interpretation so as to enhance the effectiveness of the judicial review jurisdiction. A narrow interpretation, such as that which appealed to the Privy Council in *Vehicle and Supplies* would appear to deny jurisdiction even in [an appropriate case]. That would indeed be regrettable, and, if correct, would expose a serious shortcoming in the armoury of powers available to the court when granting permission to apply for judicial review."

24. For my part, I find the reasoning in Avon County Council more compelling than that contained in *Vehicle and Supplies*. It is true that the language contained in r. 20(7)(a) might suggest that it referred only to pending judicial or quasi-judicial proceedings, as distinct from administrative decisions. Nevertheless, given that Ord. 84, r. 20(7)(a) is essentially a remedial, procedural provision designed to protect the rights of litigants, it seems appropriate that it should be interpreted as "widely and liberally as can fairly be done": see, e.g., *Bank of Ireland v. Purcell* [1989] I.R. 327, 333, per Walsh J. As Dyson L.J. pointed out in *Ashwort Hospital Authority*, any other conclusion would severely impact on the court's power to grant interim relief to maintain the status quo pending the outcome of the judicial review application. This in turn would have implications for the courts' ability to secure an effective remedy as required by Article 40.3.2 of the Constitution (and, for that matter, Article 13 ECHR) and the citizen's constitutional right of access to the courts: see generally the authorities discussed in my own judgment on this topic in *Efe v. Minister for Justice, Equality and Law Reform* [2011] IEHC 214, [2011] 1 I.L.R.M. 411.

25. It follows, therefore, that I am of the view that the phrase "stay of proceedings" should be interpreted by reference to its basic underlying purpose, namely, to ensure that the High Court can make an order with suspensive effect in respect of both administrative as well as judicial decisions. This in turn means that a purely administrative decision such as a deportation order is capable of being stayed by an order made under Ord. 84, r. 20(7)(a).

Whether the Campus Oil principles apply to the grant of a stay under Order 84, r. 20(7)(a)?

26. The next question is whether the grant of a stay under Ord. 84, r. 20(7)(a) should be governed by standard *Campus Oil* principles. This is a matter on which there appears to be a division of judicial opinion.

27. Here it is urged, essentially for the reasons set out by Geoghegan J. in *Adebayo v. Garda Commissioner* [2006] 2 I.R. 298 that the applicant is entitled to an automatic stay on the operation of the deportation order pending the determination of the leave application. In that case Geoghegan J. expressed the view that the effect of the structure of s. 5 of the 2000 Act was such that if an applicant commenced judicial review proceedings within the 14 days period, then he or she was automatically entitled to a stay on the operation of the deportation order pending the determination of the application for leave ([2006] 2 I.R. 298 at 315):-

> "In summary, therefore, I take the view that no deportation may be implemented during the currency of the fourteen day period and that if, in fact, an application for leave is brought within that period no deportation order may be implemented until the court determines the application for leave and only then if the court does not order otherwise upon the granting of leave. Having regard to the very nature of this legislation and its intent it would seem likely that a court properly exercising its discretion would normally grant the stay or the injunction as the case might be if leave was being given."

28. In my own judgment in *LA v. Minister for Justice, Equality and Law Reform*, High Court, 21st December, 2011, I observed of this decision:-

> "Like Cooke J. in *A v. Minister for Justice, Equality and Law Reform* [2010] IEHC 297, I do not find the exact *ratio* of this judgment [in *Adebayo*] easy to ascertain. McGuinness J. agreed with Geoghegan J., while Fennelly J. dissented on this point. Both Denham and Hardiman JJ. expressly reserved their position in respect of this issue. It cannot be said, therefore, that this view - i.e., an automatic stay pending the determination of leave application - commanded the support of a majority of the Court. Moreover, while the judgments are detailed and comprehensive, Geoghegan J. himself acknowledged that this question ultimately "did not strictly arise" given that the appeal in that case was ultimately disposed of on other grounds. In view of this and given that his views on the topic were expressed by him to be "tentative", his comments must be regarded as more in the way of *obiter dicta."*

29. In *A (a minor) v. Minister for Justice, Equality and Law Reform* [2010] IEHC 297 Cooke J. held that the standard *Campus Oil* principles applied in such circumstances:-

> "(e) When the application for leave to seek judicial review commenced with the 14 day period comes before the Court or upon an earlier application on the part of the Minister to have the proceeding dismissed as unfounded, any continuing restraint upon the implementation of the deportation order is dependent upon the applicant establishing an entitlement to an interlocutory injunction to restrain deportation. This follows from Order 84, r. 20 (7) of the Rules of the Superior Courts which provides that where an order of *certiorari* is sought the grant of leave only operates as a stay where "the Court so directs":
>
> (f) The grant of an injunction remains a matter for the discretion of the Court according to the established principles and, bearing in mind the duty to make the application in good faith and with full, honest disclosure of all relevant information…."

30. By contrast, I took a somewhat different view of the matter in my judgment in *LA:-*

> "11. Starting at the beginning of this process, it is, I think, necessarily implicit in the scheme of the 2000 Act that the Minister is precluded from giving effect to a deportation order during the currency of the initial 14 day period. This point was made by both Geoghegan J. in Adebayo and by Cooke J. in A. and I respectfully agree with their analysis.
>
> 12. Next, where (as here) the proceedings are brought within time, then it similarly follows that the Minister must equally be precluded from giving effect to the deportation order pending the first return date on the motion applying for leave. It could scarcely have been the intention of the Oireachtas that an applicant could be deported before she had an effective opportunity to exercise her constitutional right of access to the courts.

> 13. This then leaves the situation of the present case where the first return date has passed, but the application for leave has yet to be heard. Here we must recall that, as we have just seen, an applicant who obtains leave will - certainly in practice - secure an automatic stay by virtue of O. 84, r. 20(7)(a). It would seem anomalous that an applicant facing deportation who seeks interlocutory relief should have to meet a higher standard when seeking such relief simply by virtue of the adventitious fact that the application for leave as yet to be heard. Unless, therefore, it was plain that an applicant would not get leave, it seems to me that he or she should not be disadvantaged by reason of the fact that the application for leave has yet to be heard.
>
> 14. If this is correct, then it follows that the Minister must be regarded as being impliedly precluded by the structure of the 2000 Act from giving effect to a deportation order pending the outcome of the application for leave where - as here - an applicant has commenced proceedings within time, save in those cases where it is plain that the application for leave is doomed to fail."

31. Of course, if the words of Ord. 84, r. 20(7)(a) are looked at in isolation, then it seems clear that the grant of a stay is dependent on the court actually exercising its discretion in that behalf. While the language of r. 20(7)(a) is deceptive ("…the grant [of leave] shall operate as a stay of the proceedings"), it is easy to overlook - as I myself did in my judgment in *LA* - that these words are proceeded by the words "and the Court so directs."

32. At the same time, r. 20(7)(a) must be read in conjunction with r. 20(7)(b). This latter sub-rule provides, as we have already seen, that:

> "if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action brought by plenary summons."

33. It is clear from r. 20(7)(b) that in those cases where an injunction or declaration is sought, the Court is empowered to grant such interim or interlocutory relief as might have been granted had the proceedings begun by plenary summons. This leads to the inevitable conclusion that the Superior Court Rules Committee envisaged that in such cases the Court would be applying standard *Campus Oil* criteria to determine whether to grant the interlocutory relief sought.

34. We may next proceed to compare r. 20(7)(a) and r. 20(7)(b). Here the Rules Committee distinguished between those cases where certiorari and prohibition were sought on the one hand and cases involving declaration and prohibition on the other. It could scarcely have been the intention of the Committee that exactly the same principles would apply to both r. 20(7)(a) and r. 20(7)(b). If that were so that the *Campus Oil* principles applied equally to both cases, then the elaborate structure created by the sharp differentiation between r. 20(7)(a) and r. 20(7)(b) would have been quite otiose. There would have been no need for such separate sub-rules and the distinction thereby drawn between the cases of where certiorari and prohibition were sought on the one hand and those where a declaration and injunction were sought on the other would seem quite superfluous.

35. In such circumstances, the Court must strive to ascribe a separate and distinct meaning to r. 20(7)(a) as distinct from r. 20(7)(b). Any other conclusion would not only do considerable violence to the structure and lay-out of sub-rule 7, but it would also infringe the presumption against surplusage: see, e.g., *The State (Goertz) v. Minister for Justice* [1948] I.R. 45, 59-60, per Black J. That case concerned the meaning of the words "ordinarily resident" contained in s. 5(5) of the Aliens Act 1935. Black J. held that the word "ordinarily" must be given some "effective meaning" and, hence, that the word qualified the concept of residence. By the same token therefore, if the words in r. 20(7)(a) are to be given an effective meaning in this sense, it suggests that r. 20(7)(a) must mean something different from r. 20(7)(b).

36. Proceeding from this premise, therefore, it follows that r. 20(7)(a) cannot simply reflect the standard *Campus Oil* principles, even though this would be the natural meaning of those words if they were to stand alone and were to be construed in isolation from r. 20(7)(b). By contrasting r. 20(7)(b) with r. 20(7)(a), one is accordingly driven to the conclusion that, absent special circumstances, the grant of leave would operate as a stay in those cases where certiorari or prohibition was sought. That certainly reflects the practice has it has evolved over the last twenty five years since the present version of Ord. 84 came into operation in October, 1986.

37. I am fortified in this conclusion in view of the fact it reflects the sentiments expressed by Geoghegan J. in *Adebayo v. Garda Commissioner* [2006] 2 I.R. 298:-

> "In summary, therefore, I take the view that no deportation may be implemented during the currency of the fourteen day period and that *if in fact an application for leave is brought within that period, no deportation order may be implemented until the court determines the application for leave and only then if the court does not order otherwise upon the granting of leave.* Having regard to the very nature of this legislation and its intent it would seem likely that a court properly exercising its discretion would normally grant the stay or the injunction as the case might be if leave was being given." (italics supplied)

38. It is true that, as I pointed out in *LA,* these comments must be regarded as obiter. Nor cannot it be said that these comments were endorsed by a clear majority of the Supreme Court. At the same time, it seems clear that Geoghegan J. took the view that the Minister could not give effect to a deportation order pending the determination of the leave application.

39. Summing up, therefore, at this juncture I am of the view that the stay jurisdiction contained in r. 20(7)(a) cannot be regarded as reflecting Campus Oil principles, since if that were so it would collapse the clear distinction between r.20(7)(a) and r. 20(7)(b) which had been so carefully put in place by the Rules Committee. While the language and intent of the drafters might have been clearer, following an examination of the structure of the totality of sub-rule 7, I am driven to the conclusion that the best interpretation of r.20(7)(a) is that it requires the court to grant a stay following the grant of leave, absent special circumstances to the contrary.

40. In essence, therefore, I have arrived at the same conclusion as I did in *LA,* albeit by a slightly different process of reasoning. Given the differences of judicial opinion as manifested in *Adebayo, A. and LA,* one may express the hope that the Supreme Court will shortly pronounce definitively on these difficult questions.

41. If, however, my own analysis is correct, then it follows that an applicant should not be placed at a litigious disadvantage simply because the application for leave has yet to be heard. It follows in turn that the applicant is entitled to a stay pending the outcome of the leave application, absent special circumstances. One of those special circumstances might be where the proceedings are doomed to fail or where there was no reasonable prospect that leave would be granted.

Can it be said that the present proceedings are unsustainable?

42. I turn now to the question of whether the proceedings are so obviously doomed to fail. It is clear, of course, from a series of decisions of this Court that the mere fact that the medical and health care resources in the applicant's country of origin are significantly worse than the standards which are available here will not in itself justify judicial intervention, absent quite special circumstances: see generally *Agbonlahor v. Minister for Justice, Equality and Law Reform* [2007] IEHC 166, [2007] 4 I.R. 309 and two recent judgments of mine, *MEO v. Minister for Justice, Equality and Law Reform*, High Court, 20th September, 2011, and *JMT v. Minister for Justice, Equality and Law Reform*, High Court, 7th October, 2011. It follows, therefore, that the fact that the two children with significant intellectual impairment would be deported to a country which is unlikely to be able to meet the needs of these children does not in itself engage any constitutional rights or ECHR rights.

43. At the same time, it is plain that the file assessment of the specific statutory considerations set out in s.3 of the 1999 Act must be full and fair. As Clark J. put it in her judgment in *Alli v. Minister for Justice, Equality and Law Reform* [2009] IEHC 595, [2010] 4 I.R. 45, 63:-

> "Such a deportation will be lawful once the Minister has considered all relevant factors and has identified a substantial reason for the deportation. It is not the law that the Minister can only deport the father of a citizen child in exceptional circumstances. The law is that notwithstanding the very important status of citizenship, the Minister can deport such a father in pursuit of an orderly and fair restrictive immigration policy in the common good provided that a full and fair assessment of the particular child and particular family situation has been balanced against the State's interests and the decision is not disproportionate in the circumstances."

44. While it is true that no question of citizenship or the rights of families under Article 41 arises in the present case, the basic principle articulated by Clarke J. in *Alli* nonetheless holds true. Section 3(6)(h) of the 1999 Act provides that:-

> "In determining whether to make a deportation order in relation to a person, the Minister shall have regard to -.....
>
> (h) humanitarian considerations."

45. This statutory requirement pre-supposes that all relevant considerations - including humanitarian considerations - will be fairly examined prior to the making of a deportation order. The applicants will doubtless contend at the leave hearing that this did not occur in the present case and I cannot say at this juncture that this case is therefore unsustainable in law or that the applicants have no realistic prospect of surpassing the substantial grounds test on this very point.

Conclusions

46. In summary, therefore, I have concluded that in view of the fact that the applicant's application for leave has to be determined and given that it cannot be said at this juncture that the application is unsustainable, the applicants should not be disadvantaged by reason of the fact that their leave application has yet to be determined. Since I am of the view that the applicants would be entitled - in the absence of special circumstances - to a stay of the deportation order pursuant to Ord. 84, r. 20(7)(a) were leave to apply for *certiorari* quashing the deportation order to be granted pursuant to s. 5(2) of the 2000 Act, I will accordingly grant such a stay pending the outcome of that application for leave.