Neutral Citation [2016] IEHC 424

THE HIGH COURT

JUDICIAL REVIEW

[2015 No. 379 JR]

BETWEEN

C. N. K.

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr. Justice Colm MacEochaidh delivered on the 25th day of July, 2016

1. This is an application for leave to seek judicial review of the Minister's decision refusing to revoke the deportation order of the 8th November, 2011. It is required to be made in accordance with the provisions of s. 5 of the Illegal Immigrants (Trafficking) Act 2000 (as amended). Substantial grounds as to illegality of the decision must be made out to attract a grant of leave.

2. The "examination of file" supporting the original deportation order is exhibited by the applicant. It records that the applicant applied for asylum in Ireland on the 7th July, 2004, under the name C.K.N. giving a date of birth of the 18th March, 1976. The EURODAC fingerprint database revealed that he had sought asylum in France on the 13th November, 2003, under the name K. N. with a date of birth of the 18th March, 1976. He also sought asylum in the United Kingdom on the 16th February, 2011, under the name C. N. with a date of the birth of the 9th November, 1982. The applicant was removed to Ireland from the United Kingdom in March 2011. He was then apprehended in Belfast on the 18th June, 2011. The officials were not in a position to say how long the applicant had been in the State having regard to the movements outside the State of which they were aware. It was recorded that the applicant was single with no known family connections in the State; his only connection with the State was via his application for asylum. No representations were received from or on behalf of the applicant. The prohibition of refoulement application in s. 5 of the Refugee Act 1996 was addressed having regard to the content of his asylum application in view of the fact that he made no representations regarding the proposal to be deported. The decision records that during the course of the assessment of his asylum application he decided that he would transfer to France. He failed to cooperate with this effort and absconded.

3. The French authorities extended the time within which to affect transfer to France but that expired on the 9th June, 2006. Ireland then proceeded with his asylum application. The applicant failed to attend for interview and his application was deemed to be withdrawn. O.R.A.C. made a recommendation that he should not be declared a refugee. Correspondence addressed to him containing information about these developments was returned to O.R.A.C. marked "unclaimed." He was informed of the proposal to make a deportation order and invited to make representations but did not do so.

4. A take-back request was received from the United Kingdom, and he was duly transferred from the United Kingdom on the 30th March, 2011, in accordance with Dublin II Regulation.

5. The applicant subsequently moved from Ireland to the United Kingdom and as a result Ireland received a second take-back request on the 22nd June, 2011. Again Ireland agreed to take the applicant back.

6. Notwithstanding the fact that no representations had been made in relation to the proposal to deport, country of origin information was sourced and the security and political situation of the country was described. Information concerning the position of failed asylum seekers returning to the Democratic Republic of Congo was included in the recommendation. A U.N.H.C.R. report was the source of a finding that a Congolese human rights organisation with an office at the airport was closely monitoring the position of failed returning asylum seekers and the N.G.O. was reported as saying:-

> "…they are not aware of any of these persons detained and/or tortured upon return. They reported that some of the failed asylum-seekers had to pay some money to the police."

7. The officials concluded that repatriating the applicant to DR Congo is not contrary to s. 5 of the Refugee Act 1996. The Minister duly made the order on the 8th November, 2011.

Application for Revocation

8. Burns Kelly Corrigan solicitors made application on the 1st May, 2015, for revocation of the deportation order. The application notes the applicant's interest in applying to re-enter the asylum process under s. 17(7) of the Refugee Act and also to apply for subsidiary protection. The letter notes that the applicant did not make submissions on the proposal to deport because he was not in the State at the time. The principle case advanced on behalf of the applicant was that he faced a risk as a failed asylum seeker if returned to the Democratic Republic of Congo.

The Minister's Decision

9. The Minister's official summarises the case made in favour of revocation and expressly refers to the report entitled "Unsafe Return Refoulement of Congolese Asylum Seekers" dated 24th November, 2011, by Ms. Catherine Ramos. The official's text addressing this issue is as follows:-

> "It is noted that the applicant's solicitors have stated that the deportation order signed in respect of him should be revoked as they state that the applicant is at risk of harm if returned to DR Congo as he will be a failed asylum seeker. Extensive country of origin information has been submitted on the applicant's behalf, which has been read and considered.

Reference was made to the alleged unsafe return of failed asylum seekers to DR Congo, citing a report entitled "Unsafe Return Refoulement of Congolese Asylum Seekers", dated 24th November, 2011 and compiled by Ms. Catherine Ramos, a trustee of a charity called Justice First which can be found at the following link: Unsafe Return Refoulement of Congolese Asylum Seekers. A Report compiled by Catherine Ramos (24/11/2011) http://justicefirst.org.uk/wp-content/uploads/UNSAFE-RETURN-DECEMBER-5TH-2011.pdf

However, the UK Home Office state, in a document entitled "Democratic Republic of Congo (DRC) Policy Bulletin 2/2014" (which can be found at: United Kingdom: Home Office, Democratic Republic of Congo (DRC): Country Policy Bulletin, 22 October 2014, DRC Policy Bulletin 2/2014, available at: http://www.refworld.org/docid/544a19fe4.html) that:

> "The report was based on investigations undertaken by Ms. Ramos, including visits to Kinshasa, of the experiences of 14 enforced and three voluntary Congolese returnees in the period 2006 to 2011. It alleges that enforced and voluntary returnees to DRC are routinely detained, raped, tortured and generally seriously victimised on the grounds that they have, in seeking asylum, betrayed their country."

The Home Office goes on to state:

The "Unsafe Return [1]" report was considered and its recommendations addressed in the DRC Country Policy Bulletin 1/2012 published November 2012 (CPB 1/2012). The bulletin concluded that the report, when considered in the totality of country information, did not demonstrate that FAS per se were at risk of ill treatment on return to the DRC and therefore did not support the report's recommendation that the Home Office needed to revise its policy on returns to the DRC.

The Policy Bulletin notes that 'On 8 October 2013 Justice First published a follow up report to "Unsafe Return [1]", entitled: "Unsafe Return 2 Report". On its web site Justice First describe this report as "The 'Unsafe Return 2' updates the original report by Catherine Ramos, which documents the post return experience of 17 Congolese men and women who were forcibly removed to DR Congo from the UK between 2006-2011. Eleven of these were clients of Justice First."

…

The Policy Bulletin states that:

'The Home Office has considered the Unsafe Return 2 report and concluded that it provides no new evidence. It has the same flaws as the original Unsafe Return report, as found by the High Courts of England and Wales (7.3.1).

The author has no experience or training in the subject areas which she is commenting on and has approached the issue from an emotive basis, with no attention to due reporting techniques. The author has accepted the stories from applicants/returnees, their families and lawyers without validating the evidence to support their allegations. She does not accept the findings in the country guidance case for the DRC of *BK (Democratic Republic of Congo) v. Secretary of State for the Home Department* [2008] EWCA Civ. 1322 (03 December, 2008) that 'In all but one case those whose asylum claims have been traced – disclose that they were persons whose credibility about past treatment was rejected by adjudicators", [First Tier judge of the Immigration and Asylum Chamber] (paragraph 381) and 'They [failed asylum seekers] have a vested interest in claiming that they were mistreated on return" (paragraph 383).'

The following Country of Origin information from the same source is also pertinent:

Return of failed asylum seekers (FAS)

3.1. The consultations on returns with Intergovernmental consultations on migration, asylum and refugees (IGC) member states, undertaken in April 2012, August 2013 and December 2013, confirm that other countries in Europe and elsewhere continue to undertake returns to the DRC. These countries stated that they have no evidence that returnees are mistreated solely on the grounds that they are returnees, or because of where they have travelled from. However returnees might be questioned and there may be a short period of detention as part of normal immigration controls. See also s. 6.1, Data from other asylum intake states

3.2. The information from IGC states also noted that on arrival returnees to the DRC, as with other travellers, might be subject to harassment, including attempts at extortion, but there is no evidence of any serious mistreatment. Extortion is covered in the CPB 1/2012 and is recognised to exist for travellers to the DRC; however attempted extortion in general does not constitute persecution.

3.3. The information provided by Belgium through the IGC and to the DRC Fact Finding Mission of June 2012 is especially important as this is the former colonial power for DRC, with continuing strong links to the country. The Belgium immigration authorities have returned significant numbers of Congolese FAS, have had allegations of mistreatment of returns, which have been investigated and no substance to the claims have been found.

3.4. In *R. v. SSHD ex p P(DRC) and R. v. SSHD ex p R(DRC),* commenting upon the information provided by the IGC, the court found (see s. 7 of this bulleting-case of R&P) '… the UKBA was also entitled to give significant weight to the extensive experience of returns to the DRC reported by the United Nations and the 11 States participating in the Intergovernmental Consultation on Migration, Asylum and Refugees …" (paragraph 41 of the judgment).

3.5. The Observer published an article on 15 February 2014 which alleged that there was a 'top-secret document' circulating among 'senior police and security chiefs in the Democratic Republic of Congo advising security chiefs officials to track down and arrest opponents of the government … and suggests torture could be used with "discretion."' The top-secret document reportedly places emphasis '… on targeting political activists living in the UK and other parts of Europe who are forcibly removed to the Congolese capital, Kinshasa.' However, the above mentioned document has not been released or made available to the Home Office.

3.6. ***Conclusion: The DRC CG case of BK (see 2.2) is still relevant and failed asylum seekers per se are not at risk***

> ***on return to the DRC. There is no substantial evidence that FAS returns from the UK have been ill-treated on return.*** (emphasis added). (See also s. 10, for statistics on returns to the DRC). [emphasis in original]
>
> 3.7. The Observer has produced no evidence to substantiate the claims made in its article of February 2014 and therefore no weight can be given to this. The DRC OGN recognises that certain categories of DRC national might be eligible for protection in the UK, including some political activists, and each application for protection will be considered on its individual merits.

It is noted that that the aforementioned Unsafe Return report states, for example, that "Decisions since 2006 refusing protection to Congolese asylum seekers have been flawed, and consequently, have resulted in people being unjustly removed back to inhuman and degrading treatment" however I am inclined to accept the conclusion of the following recent judgment *BM and Others (returnees – criminal and non-criminal) (CG)*, [2015] 00293 (IAC), United Kingdom: http://www.refworld.org/docid/556dd2734.html, based on the fact that the Court weighted and balanced all relevant country of origin information, including the Unsafe Return Reports (1 and 2), and concluded the following:

VIII. COUNTRY GUIDANCE

88. Giving effect to the analysis, findings and conclusions above, by this decision we provided the following country guidance in respect of DRC nationals returning from the United Kingdom to their country of origin.

> (i) Those who have been convicted of offences in the United Kingdom are not at real risk of being persecuted for a Refugee Convention reason or serious harm or treatment proscribed by Article 3 ECHR.
>
> (ii) ***Those who have unsuccessfully claimed asylum in the United Kingdom are not at real risk of persecution for a Refugee Convention reason or serious harm or treatment proscribed by Article 3 ECHR.*** (emphasis added) [emphasis in original]
>
> (iii) Persons who have a significant and visible profile within APARECO (UK) are at real risk of persecution for a Convention reasons or serious harm or treatment proscribed by Article 3 ECHR by virtue of falling within one of the risk categories indentified by the Upper Tribunal in MM (UDPS Members – Risk on Return) Democratic Republic of Congo CG [2007] UKAIT 00023. Those belonging to this category include persons who are, or are perceived to be, leaders, office bearers and spokespersons. As a general rule, mere rank and file members are unlikely to fall within this category. However, each case will be fact sensitive, with particular attention directed to the likely knowledge and perceptions of DRC state agents.
>
> (iv) The DRC authorities have an interest in certain types of convicted or suspected offenders, namely those who have unexecuted prison sentences in DRC or in respect of whom there are unexecuted arrest warrants or who supposedly committed an office, such as document fraud, when deporting DRC. Such persons are at risk of imprisonment for lengthy periods and, hence, treatment proscribed by Article 3 ECHR.
>
> Pages 59 to 64 of the above decision showed the cohort of information considered in the formulation of the Upper Tribunal Decision. Consequently, and based on the aforementioned Country of Origin information and case law, I am of the opinion that the assertion that Mr. N. is at risk of harm due to his status as a failed asylum seeker, if returned to DR Congo, is without foundation and would not warrant the revocation of the deportation order signed in respect of him."

Procedural History

10. By order of the 15th July, 2015, this court ordered that the application be heard on notice and on a telescoped basis. On the 12th October, 2015, further to an application made by the respondent, the matter continued as an *ex parte* application for leave which matter was eventually heard by this court on the 30th day of November, 2015.

The Pleadings in this Case

11. The statement required to ground the application for judicial review seeks an order of *certiorari* quashing the refusal of a revocation of deportation order and injunctive relief. The first ground in support of those reliefs is as follows:-

> "The impugned decision was arrived at in breach of the principle of *audi alteram partem* and/or the Applicant's right to be heard. The application to revoke was made by solicitor's letter dated the 1st May, 2015. Significant information which did not exist at the date of the application was utilised and relied upon in rejecting the applicant's application. In particular and without prejudice to the foregoing reliance was placed upon a judgment of the UK Upper Tribunal first published on the 2nd June, 2015. The applicant's application appears to have been rejected almost entirely on the basis of this new UK case law in circumstances were the applicant had submitted significant and relevant domestic case law, (both Supreme Court and High Court) which appears to have been effectively disregarded in favour of the UK case. If the decision maker proposes to rely on new information such as this to such an extent the applicant is entitled to be told of this in advance."

12. The applicant informed the court that:-

> "This ground is very similar to ground 1 in P.B.N….(IEHC [2015]124) the wording of which is set out at paragraph 98 of the P.B.N. leave judgement. Relief on this ground was refused by the High Court at paragraph 102. The Applicant in this case wishes to formally apply for the relief on Ground 1 and assumes same will be refused following P.B.N."

I agree with the applicant that the ground is very similar in the two cases.

13. The ground was rejected by Barr J. in *P.B.N.* by reference to a decision of Cooke J. in *E.A.I. v. Minister for Justice* [2009] IEHC 334 where Cooke J said:-

> "8. No conditions or criteria are stipulated in the section for the exercise of the Minister's power. Clearly however, it follows from first principles that the Minister must consider fairly the reasons put forward by an applicant for the request to revoke and he must also satisfy himself that no new circumstances are shown to have arisen since the making of the deportation order which would bring into play any of the statutory impediments to the execution of a deportation order at that point such as, for example, a change of conditions in the country of origin which would attract the application of the prohibition against refoulement in section 5 of the 1996 Act.

9. The Minister is not however obliged to embark on any new investigation or to engage in any debate with the applicant or even to provide any extensive statement of reasons for a refusal to revoke. Once it is clear to the Court that the Minister has considered the representations made to him and has otherwise exercised his power to decide under section 3(11) in accordance with all applicable law, the Minister's decision is not amenable to judicial review by this Court."

14. Barr J. said, at para. 102 of *P.B.N.*:-

> "…it is clear on the authorities cited by the respondent that the Minister is not obliged to engage in correspondence with the applicant once his submissions have been submitted to the Minister."

On that basis Barr J. refused to grant leave to seek judicial review. The dicta of Barr J. have the same import as those of MacMenamin J. in *C.R.A. v. Minister for Justice* [2007] 3 I.R. 603, [2007] IEHC 19 where he said at para. 82:-

> 82 Section 3 is not an interactive process. The requirements of natural justice and the statutory requirements are satisfied once the prospective deportee has been afforded an opportunity to make submissions and these submissions have been considered by the Minister, particularly in the consideration of whether the principle of non-refoulement under s. 5 of the Act of 1996 has been satisfied."

15. Guidance on the scope of review of deportation revocation decisions is to be found in *Kangethe v. Minister for Justice Equality & Law Reform* [2010] IEHC 351 where Cooke J. said:-

> "It is well settled law that the grounds upon which a decision refusing revocation under s. 3 (11) may be challenged are limited. In his judgment of 9th November, 2005, in *Kouaype v. MJELR* [2005] IEHC 380, Clarke J. identified the limited grounds upon which a decision to make the deportation order may be open to challenge:
>
> (a) Failure to consider whether the prohibition on refoulement applied;
>
> (b) That the Minister could not reasonably come to the view on which the decision to deport was based;
>
> (c) Failure to allow the asylum seeker to make representations by way of humanitarian considerations; and
>
> (d) Failure to consider those representations.
>
> It follows that the circumstances in which a challenge can be made to a subsequent decision to refuse to revoke a deportation order are at least as limited. Such an application necessarily proceeds upon the basis that the deportation order is valid.
>
> 5. This Court described the approach that should be taken in its ex tempore judgment of the 17th December, 2009, in the case of *M.A. v. MJELR* where the Court said:
>
> 'When an application to revoke is made to the Minister under s. 3 of the Act the Minister has, in effect, two duties. He is required to consider carefully and fairly the reasons that are put forward for revocation and he must also verify that since the deportation order was made no change of circumstance had occurred either so far as concerns the applicant or the situation in the country of origin which could bring into play any of the statutory prohibitions on the return of a failed asylum seeker to the country of origin. Otherwise … in dealing with an application to revoke the Minister is not obliged to embark on any new investigation or inquiry nor is he obliged to enter into any exchange of observations in replies or into any debate with the applicant or the applicant's legal representatives or even perhaps to supply any extensive narrative statement of his reasons for the refusal once it is clear to the Court that the Minister has properly discharged those two functions a decision to refuse to revoke a valid order of deportation will not be interfered with by judicial review.'"

Cooke J. concluded that:-

> "The only issue that can arise in respect of a decision to refuse revocation under s. 3 (11) is whether in the light of the changed circumstances advanced in the application to revoke, the Minister has erred in law or made some material mistake of fact in his decision to refuse revocation. That can only be so if, in the light of the reasons given for the refusal, it is demonstrated that the implementation of the deportation has now become illegal by reason of the changed circumstances."

16. The applicant has submitted that the decision of Finlay Geoghegan J. in *Olatunji v. Refugee Appeals Tribunal* [2006] IEHC 113 supports Ground 1. There, the Judge said:-

> "I was referred to the decision of Clarke J. in *Idiakheua v. Minister for Justice, Equality and Law Reform and R.A.T.* (Unreported, High Court, Clarke J., 10th May, 2005) in which he considered the requirement on a member of the R.A.T. to put matters of concern and/or perceived discrepancy to an applicant and give them an opportunity of dealing with same. In that decision, he stated at pp. 9-10:
>
> "If a matter is likely to be important to the determination of the RAT then that matter must be fairly put to the applicant so that the applicant will have an opportunity to answer it. If that means the matter being put by the Tribunal itself then an obligation so to do rests upon the Tribunal.
>
> ...
>
> This remains the case whether the issue is one concerning facts given in evidence by the applicant, questions concerning country of origin information which might be addressed either by the applicant or by the applicant's advisors or, indeed legal issues which might be likely only to be addressed by the applicant's advisors.
>
> In setting out the above I would wish to make clear that the obligation to fairly draw the attention of the applicant

> or the applicant's advisors to issues which may be of concern to the Tribunal arises only in respect of matters which are of substance and significance in relation to the Tribunal's determination."
>
> I would respectfully agree with the above."

17. Finlay Geoghegan J. then went on to say that:-

> "…the Tribunal Member was under an obligation to put to the applicant the relevant matters which appeared to the Tribunal Member to support such a conclusion and give the applicant an opportunity of commenting or dealing with same."

18. The R.A.T., as noted by Finlay Geoghegan J., is under a statutory obligation to furnish information in its possession to an appellant. I am not of the view that the functions of the R.A.T. and the functions of the Minister under s. 3(11) of the Immigration Act are comparable and thus the reasoning in *Olatunji* is inapplicable in this case.

19. I agree with the reasoning of Barr J. in *P.B.N.* and with the dicta of MacMenamin and Cooke J.J. (see above) to the effect that the Minister is not required to debate issues with a person seeking revocation. That law is well settled and I note that the decision of Barr J. refusing leave on this ground was not appealed. The Minister's duty is to consider the case made for revocation and to explain why it is refused, if that is the decision. Failure to permit an applicant to comment on material intended to be used in the s. 3(11) decision is not a reviewable error. (Obviously due process rules would not permit the Minister to contradict an applicant's personal facts or narrative based on material not available to the applicant. Rejecting an applicant's narrative based on self contradiction or internal inconsistency does not require that the matter be put to the applicant for comment.) As anticipated by the applicant, I am following the decision of Barr J. in *P.B.N.* and I refuse relief on the first ground advanced by the applicant in this case.

20. The second ground advanced is as follows:-

> "Without prejudice to the generality of the previous ground there was no rationale basis upon which it could have been rationally concluded that the applicant's life or freedom would not be threatened were he to be expelled from the State and returned to the DRC. Such a conclusion did not flow from the premises upon which it was purportedly based. There was no consideration giving to the information and documentation furnished with the application. The alternative information utilised by the respondent was used selectively against the interests of the applicant. No consideration was given to the "Unsafe Returns" document submitted which relates to the treatment of failed asylum seekers from Europe in DR Congo. The matters raised by the applicant in his application to revoke were not properly addressed."

21. The respondent had an abundance of material which was used to conclude that the alleged threat to failed asylum seekers on being returned home was not made out. Some of the material used to so conclude was supplied by the applicant. The pleading is ambiguous. If it means that there was no factual basis on which the Minister could have thus concluded, that is unsustainable as the report reveals the source of its conclusions. If it means that the conclusion was irrational, no associated plea of fact supports this bare legal plea. A bare legal plea that a decision is irrational without more would not constitute a substantial ground for contending that a decision is irrational.

22. As to the allegation that "the conclusion did not flow from the premises upon which it was based," the basis upon which the case for revocation is rejected is clearly set out in the decision. There was a rational basis for the decision. The decision maker agreed with the approach adopted by the Upper Tribunal in the U.K. when rejecting an identical argument to that advanced by the applicant in this case. The conclusion (that failed asylum seekers were not at risk on return) flowed logically from the premise (that the Ramos reports were unreliable and that better information on the fate of failed asylum seekers was available).

23. The alternative information utilised by the respondent was not used selectively against the interests of the applicant and no examples of this were cited. Consideration was given to the unsafe returns document. The matters raised by the applicant in the application to revoke were properly addressed.

24. I reject the contention that Ground 2 as pleaded and argued constitutes a substantial ground that the decision is unlawful. (I disagree with the submission of the applicant that the ground advanced at No. 2 in this case is sufficiently similar to the ground dealt with between paras. 103 and 108 of the judgment of Barr J. in *PBN (DR Congo) v. Minister for Justice and Equality (supra)* to justify following that decision on this point).

25. The third ground was that:-

> "Insofar as it is the policy of the first Respondent to rely on caselaw from another jurisdiction in preference to or in spite of relevant domestic caselaw or pending domestic cases then that policy should have been disclosed to the Applicant from the outset."

There was no evidence in the papers that any such policy had been pursued. It is unsupported by any evidence or submission. The domestic case law referred to by the applicant's solicitors did not address whether failed asylum seekers would be harmed on return and there was no question of preferring foreign case law over Irish case law. This ground is not made out to the standard required.

26. The fourth ground advanced in these proceedings is as follows:-

> "The first respondent cannot be considered to be impartial in view of his other responsibilities relating to immigration and asylum matters and the fact that he has already decided that the applicant is not a refugee. In these circumstances, the refusal to revoke the deportation order is tainted by objective bias and thereby invalid."

27. Substantial grounds are not made out in respect of this matter because the respondent did not make a declaration that the applicant was not a refugee following an assessment of the merits of such application. The application for asylum was deemed to be withdrawn and a recommendation that he should not be declared a refugee was therefore made in accordance with the provisions of s. 13(2) of the Refugee Act. In circumstances where there was no substantive consideration of the refugee application because it was deemed to have been withdrawn it cannot be said that the Minister, or the Minister's officials, engaged in a merits based application of the application for asylum. No possible bias could have arisen in this case.

28. The fifth ground was withdrawn.

29. The sixth ground is as follows:-

> "The affirmation of the deportation order was not in accordance with law in that the process was not foreseeable or accessible. In the absence of published principles or guidelines or policies being made available to an applicant the decision is arbitrary and thus unlawful."

30. There are clear decisions of the superior courts on what is required to be shown by an applicant seeking revocation of a deportation order and the applicant is represented by solicitor and counsel who are well versed in this area of the law. The applicant does not make complaint that he was hampered in anyway in the preparation of the application for revocation of the deportation order. Contrarily, it is apparent from the extremely lengthy application for revocation prepared by his lawyers that the applicant and his advisers were fully aware of how to proceed with and make the case in favour of an application for revocation of a deportation order. No correspondence prior to the making of the revocation application makes complaint about difficulty in framing the application because of the alleged absence of principles and policies. No request was made that principles and policies be supplied. The decision to refuse to revoke addresses each point raised by the applicant in favour of revocation. It is impossible to detect arbitrariness in the decision. Substantial grounds are not made out in this sixth ground.

31. The seventh ground is as follows:-

> "The prior consideration of 'non-refoulement' or the applicant's rights pursuant to the Criminal Justice (UN Convention against Torture) Act 2000 in a previous consideration does not relieve the first respondent from her duty to consider these issues afresh, particularly in the light of the representations made."

The application for revocation was based on the alleged existence of a risk to the applicant not previoulsy considered by the Minister. The existence of that risk was rejected. On rejection of the revocation application, the *status quo ante* with respect to s.5 of the Refugee Act applied. If the applicant was of the view that further considertaion of s.5 was triggered this should have been stated in the revocation application. This ground must fail for not reaching the threshold of substantial grounds as required by law.

32. The eighth ground is as follows:-

> "The weight placed upon the UKBA report as compared to that placed upon the information furnished by the applicant was irrational. The UKBA is no more independent than the organisation responsible for the compilation of the information furnished by the applicant."

33. The UKBA report is mentioned once, in passing, by the Minister's officials. This ground is factually misconceived. Substantial grounds in relation thereto have not been made out.

34. The ninth ground advanced is as follows:-

> "No regard was had to the fact that Article 3 is absolute in nature and permits of no exceptions. Article 4 of the Charter of Fundamental Rights of the European Union is similar in this regard. It appears that the first respondent considered the risks on a 'reasonable likelihood' basis which is incorrect in law. A higher standard of proof must apply than that which might be applicable to the rights, for example family or private life rights which are not absolute in nature. Such higher standard was not applied thus rendering the decision invalid."

35. The basis upon which this is advanced in the written submissions is that leave was granted in the *P.B.N.* judgment of Barr J. on an identical ground and, therefore, it should be followed in this case. It would appear that the ground has in fact been borrowered from the *P.B.N.* litigation and it seems to have no rational connection with the decision making process in this case. The Charter of Fundamental Rights of the European Union has no application to the matters in respect of which a decision was being taken by the Minister as no element of European Union law was at issue. The question of whether a deportation order should be made is exclusively a matter of domestic law. Substantial grounds have not been made out in respect of this ground. It would appear that grounds eight and nine have been borrowered from the *P.B.N.* case and are inappropriately sought to be slotted into these proceedings.

36. Leave to seek judicial review in this case is refused.