Neutral Citation Number: [2007] IEHC 236

THE HIGH COURT

JUDICIAL REVIEW

Order 84, Rule 20
[2006 No. 334 J.R.]

BETWEEN

Z.Z., G.Z., S.Z. (A MINOR SUING NEXT FRIEND AND FATHER Z.Z.)
AND
N.Z. (A MINOR SUING BY HIS FATHER AND NEXT FRIEND Z.Z.)

APPLICANTS

AND
THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM
AND
THE REFUGEE APPLICATIONS COMMISSIONER

RESPONDENT

Judgment of Mr. Justice Brian McGovern delivered the 26th day of June, 2007.

1. This is an application for leave to apply for judicial review by way of an order of *certiorari* quashing deportation orders made in respect of the applicants on the 27th January, 2006 and an order of *certiorari* quashing the recommendations of the second named respondent that the applicants be refused asylum. The applicants also seek further ancillary relief including an order of mandamus compelling the respondents to consider the applicants' applications for asylum and orders of prohibition and injunction restraining the deportation of the applicants.

2. The applicants arrived in the State with their parents on the 12th September, 2002. They were aged ten and five years respectively at the time of their arrival in the State.

3. The parents of the applicants claim that as ethnic Serbs they were being persecuted in Croatia which is their home land. Their applications were unsuccessful before both the Refugee Appeals Commissioner ("the RAC") and before the Refugee Appeals Tribunal ("the RAT"). Following the RAT's decision the Minister wrote to the father of the applicants and separately to the mother and the applicants stating that he had decided to refuse them a declaration of refugee status and that he intended making deportation orders in respect of them. The Minister ultimately made a deportation order and they received notice of the making of the order on the 23rd February, 2006. The applicants claim that they did not receive the deportation order prior to the 3rd March, 2006. The time for making an application to challenge the deportation order expired on the 8th March, 2006 and the proceedings were not issued until the 16th March, 2006.

4. Delay.

It seems to me that the delay in this case was quite short and in the circumstances that are outlined by the applicants I hold that there is good and sufficient reason for extending the period within which this application can be made.

5. Substantive Issue.

Essentially this challenge arises out of an alleged failure on the part of the respondents to consider the applications for asylum made by the minor applicants on their own behalf separately from their parents.

6. On the 13th September, 2002 the applicants applied for asylum. This was the day following their arrival is the State. I have seen a document which is signed by the mother of the applicants. In this she confirms her wish to include her children (the applicants) in her asylum application. It is accepted by counsel for the applicants that their mother signed this document. In the light of that document it is difficult to understand why the applicants are challenging the decision of the second named respondent for failing to consider their applications for asylum on their own behalf and separately from that of her parents.

7. The applicants rely on the decision given in the case of *Nwole v. The Minister for Justice, Equality and Law Reform* [2004] 1 I.E.H.C. 408. In that case Finlay Geoghegan J. allowed leave to challenge deportation orders on the basis that the applications of the children concerned had not been considered separately on their terms apart from their mother's claim. However it is useful to note that at the substantive hearing Peart J. refused the relief sought. He stated that the children in that application were aged twelve years down to four years and that without any application made on their behalf on arrival they would enjoy no status in this State and would have no entitlement to remain. He decided in relation to the supremacy of a parent's right and duty to act in a child's best interest that there could be no doubt that the children had that opportunity through a representative who in that case was their mother. He said that she must be regarded as the best possible person to speak on their behalf. He was satisfied that there was nothing in the Convention on the Rights of the Child which requires a State to provide, in all cases of minors accompanied by parent or parents, that a separate application must be made out in respect of each accompanied child and that a separate determination must be made in respect of each where no grounds existed separate from those in respect of the parent or parents.

8. He stated:-

> "It follows in my view that where no such separate grounds of application have been identified by the parent in respect of any child in his/her company, that the Minister has no obligation to consider each child separately from his consideration of the parent's application, since there is in effect nothing separate to consider. No right of the child is infringed in this way, and it would defy common sense, and would ignore the two-way process involved in these applications, if for some theoretical reason devoid of any practical purpose, the Minister was obliged to require a separate form to be completed in respect of each child, involving thereafter a separate questionnaire, a separate interview, and a separate consideration, in circumstances where consideration has already been given to the identical grounds of application made out by the mother."

9. The decision of Peart J. in the Nwole case was adopted by MacMenamin J. in *Dada v. The Minister for Justice, Equality and Law Reform* (Unreported, High Court, 31st January, 2006) and by Feeney J. in *Salu v. The Minister for Justice, Equality and Law Reform* (Unreported, High Court, 19th December, 2006).

10. I agree with the views expressed by Peart J. in the *Nwole* case. But in the case I am dealing with here the position is even clearer because the mother of the applicants specifically requested that her children be included in her asylum application.

11. It is quite clear from a review of the papers that the concerns of the parents of the applicants were canvassed both before the RAC and the RAT. Their concern about the children being bullied and/or discriminated against in school because of their Serbian ethnicity was clearly before the RAC and RAT when the applications of the parents of the applicants were being considered.

12. The applicant's position has been governed by the decision made in the application for asylum brought by their parents and the decision made in those applications applies to them. The parents have not sought a review of the decision refusing their asylum application or the Minister's deportation order. In my view there is no reason why the applicants should have been treated separately from their parents and accordingly I refuse leave to apply for judicial review in respect of the decision of the second named respondent.

13. The first named respondent has made a deportation order in respect of the applicants and their parents and this on the basis of the failed application for asylum. No argument has been advanced which persuades me that the first named respondent acted unlawfully in making the deportation order and I hold that he was not obliged, in the circumstances of this case, to consider the applicants separately from their parents and, in particular, separately from their mother who had specifically requested that they be included in her application for asylum. In the circumstances I refuse leave to apply for judicial review against the first named respondent.