Neutral Citation [2016] IEHC 644

THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 761 J.R.]

BETWEEN

TYREED ONIFADE

APPLICANT

AND

MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 14th day of November, 2016

1. The applicant arrived in the State from Nigeria, *via* the UK, on 21st April, 2014.

2. He entered the State clandestinely without permission by travelling from Belfast to Dublin. Shortly after his arrival he met a Ms. Glarington Agbofodoh. They married in December, 2014. The applicant's wife had become an Irish citizen in 2013.

3. On 25th June, 2015, the applicant's previous solicitors made an application for permission to remain in the State on the basis of his marriage to an Irish national. The Nigerian passport submitted as part of that application was damaged. When the application was refused on 12th January, 2016, reliance was placed on the question of the passport, as well as the applicant's wife's income level and the applicant's actions in coming to the State and remaining here without permission. The refusal was affirmed on appeal by the respondent on 13th April, 2016.

4. On 16th May, 2016, the applicant received a proposal to deport letter. He attended the office of his previous solicitors, but it appears that no reply to the proposal to deport letter was sent.

5. On 13th July, 2016, the applicant instructed his current solicitors. They contacted the previous solicitors, requesting his file, but it is suggested that he had not settled his account with those solicitors and therefore, predictably, the file was not forthcoming.

6. On 15th July, 2016, the applicant's solicitors wrote to the respondent stating that they were now acting for the applicant, that they had requested the file and that they understood that the previous solicitors had reopened the application for permission to remain. The respondent acknowledged that letter on 20th July, 2016, stating that there was no permission to remain, application pending. The present solicitors did not, in fact, make any submissions under s. 3 of the Immigration Act 1999.

7. The respondent made a deportation order on 15th August, 2016, which the applicant now seeks leave to challenge.

8. The present challenge is brought out of time, but I assume (without deciding) for present purposes that time would be extended.

9. An interim injunction had been granted until 10th October, 2016, but appears to have expired on that date.

10. The substantial grounds test applies by virtue of s. 5 of the Illegal Immigrants (Trafficking) Act 2000, and I have had regard to the law in relation to that test including *McNamara v. An Bord Pleanála* [1995] 2 I.L.R.M. 125 as approved in *In re Illegal Immigrants (Trafficking) Bill 1999* [2000] 2 I.R. 360 at 395.

Are there arguable grounds to contend that the making of the deportation order was unfair where new solicitors had not received the file?

11. Mr. Anthony Hanrahan B.L.'s first point for the applicant, in a very able submission, is that the making of the deportation order in the circumstances was unfair.

12. Section 3(4)(a) of the 1999 Act allows a period of fifteen working days for submissions. The applicant had already had, and did not avail of, that opportunity. Given that the time period for a response to the proposal to deport letter had run out when the applicant's current solicitors became involved, the onus was on the applicant, through his solicitors, to act with urgency, and to make representations even in the absence of the file. However, he failed to do so. The applicant needed to move much more immediately. There was nothing stopping him making at least interim representations.

13. There was no onus on the Minister to await the making of submissions at whatever leisurely pace the applicant considered appropriate. There is no duty on the Minister to seek out representations (*F.O. v. Minister for Justice & Equality (No. 2)* [2013] IEHC 236 (unreported, High Court, MacEochaidh J., 21st March 2013)), and the circumstances in which the Minister is "put on enquiry" by particular material furnished are necessarily limited to situations where enough information is actually given to the Minister to put her on the inquiry in question (see para. 15 of that decision citing *O.E. v. Minister for Justice, Equality and Law Reform* [2008] 3 I.R. 760). Indeed the Minister dealt very fairly with the new solicitors by positively correcting their misapprehension that the permission application had been reactivated. This point lacks substantial grounds.

Are there substantial grounds to contend that the Minister failed to consider private and family rights?

14. The applicant's second point is that the Minister failed to consider, or adequately consider, Article 41 of the Constitution or art. 8 of the ECHR. In the absence of submissions in response to the proposal to deport, he cannot complain under this heading.

15. In any event, there are no substantial grounds for contending that "compelling justification" is required to deport the applicant having regard to the fact that he was never lawfully in the State.

Order

16. For the foregoing reasons I will order as follows:

(i) that the application for leave to apply for judicial review be dismissed;

(ii) that the matter be listed in the event of any application for leave to appeal, which, if made, should be on notice to the respondent;

(iii) that the applicant be required to serve the CSSO with a copy of this judgment within seven days;

(iv) that for the avoidance of doubt if and insofar as the interim injunction granted herein is in force it will stand discharged.