

THE HIGH COURT

[2011 No. 795 J.R.]

BETWEEN

C.O.O (NIGERIA) AND

G.F.O (A MINOR SUING BY HER MOTHER AND NEXT FRIEND C.O.O)

M.A.F.O (A MINOR SUING BY HIS MOTHER AND NEXT FRIEND C.O.O)

M.F.O (A MINOR SUING BY HIS MOTHER AND NEXT FRIEND C.O.O)

APPLICANTS

AND

THE MINISTER FOR JUSTICE AND EQUALITY, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Mr. Justice Robert Eagar delivered on the 21st day of May, 2015

1. On the 3rd March, 2015 this Court gave judgment on an application for an order of *certiorari* by way of judicial review quashing the deportation order directed to the fourth named applicant dated the 5th August, 2011. The respondents now apply under s. 5(3)(a) of the Illegal Immigrants Trafficking Act 2000 (hereinafter referred to as "the Act of 2000") for a certificate for leave to appeal to the Court of Appeal on the basis that the judgment involves "a point of law of exceptional public importance" and that "it is desirable in the public interest that such an appeal be taken". The criteria to be applied by this Court in ruling on the application for a certificate under s. 5(3)(a) of the Act of 2000 are not in dispute.

2. Following from the decisions of Cooke J. in *I.R. v. The Minister for Justice Equality and Law Reform & Refugee Appeals Tribunal* [2009] IEHC 510 and the decision of Clarke J. in *Arklow Holidays v. An Bord Pleanala* [2007] 4 I.R. 112 I say the following principles appear to apply:-

- 1) The case must raise a point of law of exceptional public importance.
- 2) The area of law involved must be uncertain such that it is in the common good that uncertainty be resolved for the benefit of future cases.
- 3) That it is desirable in the public interest that an appeal should be taken to the Court of Appeal
- 4) The uncertainty as to the point of law must be genuine and not merely a difficulty in predicting the outcome of the appellant's arguments.
- 5) The point of law must arise out of the court's decision and not merely out of some discussion at the hearing.
- 6) The requirements of exceptional public importance and the desirability of an appeal in the public interest are cumulative requirements.
- 7) The importance of the point must be public in nature and must therefore transcend well beyond the individual facts and the parties of a given case.
- 8) The requirement that the court be satisfied that it is desirable in the public interest that an appeal should be taken to the Court of Appeal is a separate and independent requirement from the requirement that the point of law is one of exceptional importance. On that basis even if it can be argued that the law in a particular area is uncertain the court may not on the basis of time or costs consider that it is appropriate case to certify the case to the Court of Appeal.

3. Counsel on both sides have prepared written submissions and made oral submissions to the Court. The proposed wording of counsel for the respondent is:-

"Whether or not in determining whether or not to exercise the power to make deportation orders conferred by s. 3 (1) of the Immigration Act 1999 the Minister for Justice and Equality may consider the situation of a child born in this State in conjunction with the position of its parent throughout the format of a single memorandum and/or submission intended to address the issues set out in s. 3(6) of the said Act in respect of the parent and child."

4. The position of this Court is its decision was that it was not sufficient for the Minister for Justice and Equality (hereinafter referred to as "the Minister") to consider the situation of a child born in Ireland (although not an Irish citizen) in conjunction with that of his mother and that the duty on the Minister should have been to examine the position of the fourth named applicant separately.

5. The respondents submit that this finding will have serious repercussions for the manner in which the Minister must address the very frequent situation of families of non-nationals who are proposed subjects of deportation and submits that the judgment of the Court appeared to be the first occasion when the Court has held that the Minister is not entitled to examine the situation of more than one member of a family in a single memorandum. Counsel also points to a case of *Dos Santos v. Minister for Justice and Equality* (Unreported, High Court, MacEochaidh J., 30th May 2013) in which MacEochaidh J. granted leave to argue that the analysis in the memorandum did not address the consequences for each of the children should they be required to leave the State. McDermott J. subsequently refused judicial review in his judgment of the 19th November 2014 and in a summation of the factors upheld the decision of the Minister but did not address the issue of the position in conjunction with that of the mother in a single document and this judgment is now listed before the Court of Appeal.

6. In the course of the Court's judgment in this matter it is noted that the two other minor children were examined separately by the Minister. Consideration was given by this Court to the then pending decision of the Supreme Court in a case of *Re Referendum Act &*

Re Jordan & Jordan v. Minister for Children and Youth Affairs & Ors. On the basis that the Supreme Court has upheld the referendum it appears to me that the situation in this case will now be subsumed into amendments which the Minister will have to make to the consideration of infant applicants in these cases.

7. I do not believe that this case raises a point of law of exceptional public importance. I also believe that it is not desirable in the public interest that an appeal should be taken to the Court of Appeal. Further the Court will not on the basis of time or costs consider it appropriate to certify the case for the Court of Appeal having regard to the immediate changes which will take place following the receipt by the returning officer of the endorsed provisional certificate of the result of the referendum on the Thirty First Amendment of the Constitution (Children Bill) which was held on the 10th November, 2012.