THE HIGH COURT

IN THE MATTER OF SECTION 21(5) OF THE REFUGEE ACT 1996

Record No. 2011/23 J.R.

Between:/

PATRICK ADEBISI OLUSEGUN ADEGBUYI

APPELLANT

-AND-

THE MINISTER FOR JUSTICE AND LAW REFORM

RESPONDENT

JUDGMENT OF MS JUSTICE M. CLARK, delivered on the 1st day of November 2012.

1. This is an appeal under s. 21(5) of the Refugee Act 1996 which was heard on the 1st and 21st May 2012. Mr Anthony Hanrahan B.L. appeared for the appellant and Ms Sinead McGrath B.L. appeared for the respondent Minister. The appellant is a national of Nigeria who was granted refugee status in July 2007. The appeal relates to the decision of the Minister dated 9th December 2010 to revoke the appellant's refugee status, relying on the grounds set out in ss. 21(a), (d) and (e) of the Refugee Act 1996.

Procedural Background

2. The proceedings were initially issued as a judicial review but at a later stage the parties agreed that an appeal was the statutory remedy provided. However, the appropriate procedural steps for statutory appeals as provided for in Order 84C of the Rules of the Superior Courts (RSC) have not been followed in this case nor, it appears, in any reported appeals under s. 21(5) to date. No directions were sought on the return date of the notice of motion and no issues were identified for discovery, submissions, further affidavits or otherwise. An explanation may lie in the fact that the procedures are not yet familiar as there have so far been relatively few revocation appeals. The only known decisions on revocation appeals are those of de Valera J. in *Lukoki v. The Minister for Justice, Equality and Law Reform* (Unreported, ex tempore, High Court, 6th March 2008); Cooke J. in *Gashi v. The Minister* [2010] IEHC 436 (1st December 2010) and *Abramov v. The Minister* [2010] IEHC 458 (17th December 2010); and O'Keeffe J. in *Morris Ali v. The Minister* [2012] IEHC 149 (1st March 2012).

3. Mr. Adegbuyi's appeal was conducted on affidavit because he is in Nigeria and since the revocation he has no entitlement to re-enter the State. The primary affidavits were sworn by Mr. Adegbuyi's solicitors in January 2011 and March 2011. Just before the hearing of the appeal in April2012 the appellant swore an affidavit in Nigeria which together with an email from him was exhibited to a supplementary affidavit sworn and filed by the appellant's solicitor. No oral evidence was called on behalf of the appellant and no affidavit was filed by Mr. Adegbuyi's wife or any family member in relation to the appeal. The respondent called two witnesses, Mr Gerard Tucker of the Immigration Services Section of the Minister's Department and Mr Denis Byrne of the Ministerial Decisions Unit of the same Department. They were cross examined by the appellant's counsel.

Scope of the Court's Appellate Jurisdiction

4. It is common case that in exercising its appellate function, the Court is not restricted by the principles applicable to judicial review. The distinction is frequently drawn that on appeal, the Court is not reviewing whether the decision is lawful or unlawful, as it does when exercising its review jurisdiction; rather, it is concerned with determining whether the decision is right or wrong. In other words, the Court assesses the correctness of the decision under appeal, as distinct from its legality. That much is clear. However in the course of the appeal it emerged that the Court was required to contend with the following two mutually exclusive issues regarding the scope of its appellate jurisdiction under s. 21(5):

> *(1) May the Court consider information which was not before the Minister when he made his decision? and*
>
> *(2) May the Court confirm the Minister's decision for reasons other than those given by the Minister?*

5. Section 21 of the Refugee Act 1996 provides some assistance in determining those issues. The grounds on which refugee status may be revoked are set out ins. 21(1) (a) to (h). These sub-sections of the Refugee Act must be read together with the relevant provisions of Directive 2004/83/EC ("the Qualification Directive"). Sub-sections (3) and (4) of s. 21 of the Refugee Act 1996 make provision for the notification of intention to revoke and the requirement that the person is given an opportunity to make representations. Section 21(5) provides for a right of appeal from the Minister's revocation decision in the following terms:-

> *"A person concerned may appeal to the High Court against a decision of the Minister under this section and that Court may, as it thinks proper, on the hearing of the appeal, confirm the decision of the Minister or direct the Minister to withdraw the revocation of the declaration. " (Emphasis added).*

6. As is clear from s. 21(5), the appeal is a full appeal and not confined to a point of law only. Having heard the appeal, the Court either affirms the Minister's decision to revoke or directs the Minister to withdraw it. The Court arrives at its decision "as it thinks proper". There is no restriction as to the evidence which may be heard by the Court or the matters which may be considered. The issues to be raised on appeal, the documents relied upon and the witnesses to be called are all preliminary issues to be dealt with by way of directions under Order 84C RSC. The wording of s. 21(5) makes it clear that the Court is not empowered to direct the Minister to reconsider his decision, as in judicial review.

7. The construction of s. 21(5) and the Court's appellate jurisdiction were extensively considered by Cooke J. in *Gashi* (cited above). In that case, the appellant had been granted refugee status on the basis of his asserted Albanian nationality. Information received from the UK Border Agency indicated that Mr. Gashi had previously claimed asylum in that State as a Kosovar, which led the Minister to revoke his declaration of refugee status. The appellant in that case adopted a somewhat inconsistent approach to the appeal in

seeking that the Court would exercise its judicial review function and quash the decision due to perceived flaws in the process by which the decision was made, but also seeking that the Court would consider information which was not before the Minister at the relevant time (relating to his nationality and his interaction with the UK Border Agency), which the Court could not do in judicial review proceedings. This approach caused Cooke J. to comment that the appellant was "*torn between the Scylla of pure judicial review and the Charybdis of a full de novo appeal hearing*". Cooke J. arrived at the following view:-

> *"13. There is no doubt ... that this proceeding is not confined by the judicial review rules as it is a statutory appeal in which the Court can "as it thinks proper" either confirm the respondent's decision to revoke or direct that he withdraw it. The court is not, therefore, limited to judging the legality of the process by which the decision was made by reference only to the information before the respondent at the time. It can decide on the basis of the evidence now available whether the respondent was correct in finding that the original declaration had been given on the basis of information "which was false or misleading in a material particular" in accordance with paragraph (h) of s. 21(5) of the 1996 Act.*
>
> *14. The Court can thus have regard to the appellant's explanation of what he claims to have told the UK Border Agency at the time, together with any other evidence he might now wish to adduce to prove, once again, that he is a native of Kosovo and that the information given in 2001 was not false or misleading at all. The Court is satisfied that such an approach is open to it under s. 21(5), notwithstanding the failure to make representations under sub-section (3) of the section at the time."*

8. Thus, the first vexing question as to whether this Court may receive evidence which was not before the Minister was answered in the affirmative. by Cooke J. The jurisdiction of the High Court to admit new evidence when hearing statutory appeals has been examined on many occasions (see e.g. *Dodd v. Minister for Fisheries* [1934] I.R. 291; *Dunne & Others v. Minister for Fisheries and Forestry* [1984] I.R. 230; *Balkan Tours Ltd v. Minister for Communications* [1988] I.L.R.M. 101; *Orange Communications Ltd v. Director of Telecommunications Regulation & Another* (No. 1) [2000] 4 I.R. 136 and (No. 2) [2000] 4 I.R. 159; *Glancre Teo v. Cafferkey* [2004] 3 I.R. 401; *Ulster Bank Investment Funds-Limited v. Financial Services Ombudsman* [2006] IEHC 323; *Murray v. Trustees and Administrators of the Irish Airlines* (General *employees) (Superannuation Scheme)* [2007] I.L.R.M. 196). What emerges from those decisions is that the admissibility of new evidence in each case depends on the wording of the relevant statute. However, it can be said that there is general trend towards the discretionary admission of new evidence in the interests of justice unless the appeal is restricted to a point oflaw or to a re-hearing of the same facts. Considering the wide and unfettered terms ofs. 21(5) and the decision in *Gashi*, the Court is satisfied that the correct approach is to consider the revocation appeal on all of the information put before the Court. The Court is not confined to the information which was before the Minister.

9. The respondent urged the Court to find that in addition or as an alternative to the grounds relied on by the Minister (i.e. ss. 21(1)(a), (d) and (e) ofthe Refugee Act 1996), it is open to the Court to affirm the Minister's decision on the ground set out at s. 21(1)(h) ofthe Act, i.e. that the appellant furnished false or misleading information to the asylum authorities which was material to the grant of refugee status. The appellant on the other hand contested the right of the Court to affirm the revocation on any other grounds than those outlined by the Minister. However, no authority was cited to support this view. Considering that this is an appeal the Court cannot see any reason why it should not substitute its own reasons for those found by the Minister. This interpretation is in accordance with the terms of s. 21(5) and the interpretation attributed thereto in *Gashi and Abramov*, cited above. Essentially, the statute permits the Court to "*confirm the decision of the Minister*" and the Court is at large as to the reasons it may give for so doing.

10. The approach the Court will take is to assess whether the applicant's refugee status should be revoked having regard to all the information before it or whether in the light of that information the Court should direct the Minister to withdraw the revocation order. This approach requires a full consideration of the background facts which gave rise first to the grant of refugee status to Mr Adegbuyi and then those which led to the revocation of that status. Particular emphasis will be placed on dates whose relevance will become apparent in due course.

Background to the Grant of Refugee Status

11. Mr Adegbuyi's wife came to Ireland from Nigeria in 2003 and applied for asylum on the basis that she was suffering persecution at the hands of her in-laws. In March 2004 she gave birth to their daughter P who is an Irish citizen by reason of her birth in the State. The appellant is named as the baby's father on her birth certificate and his address is given as LASU staff quarters, Badagry, Lagos. On 26th July 2005, some sixteen months after P's birth, the appellant's wife was granted temporary permission to remain in Ireland under the IBC/05 scheme due to her parentage of an Irish citizen child.

12. On 5th January 2007 the appellant applied for refugee status in Ireland. He told the Refugee Applications Commissioner that he had left Nigeria on 4th January 2007 and travelled overnight by plane to Dublin via France. His Nigerian address provided in his asylum questionnaire was the same as was listed on his daughter's birth certificate. He furnished the Commissioner with a Nigerian passport, which will hereafter be referred to as "***the ORAC passport***". This passport was stamped as having been issued in Lagos in March 2005 and was due to expire in March 2010. Quite unusually, it contained no stamps or visas.[1] Mr. Adegbuyi said he had engaged a trafficker to get him to Ireland. The trafficker provided him with a false passport and all his travel documents were retained by this agent. He had therefore not used his own passport. He said he never had a visa to enter any other country and he had never applied for an Irish visa or work permit. He said that aside from the passport furnished, he held two previous passports; one issued in Nigeria in 1972 valid until 1984 and the second issued in Bucharest in 1982, valid until 1987. He did not disclose any other passport.

13. The appellant told the Commissioner that he was employed as a lecturer of mechanical engineering at Lagos State University (LASU). His fear of persecution was stated to arise from the fact that a colleague, Professor O.A., was being prosecuted in the Nigerian criminal courts for forging a document which had alleged that Mr. Adegbuyi had lied in relation to the status of his educational qualifications. In parallel with the criminal action, the appellant had commenced civil defamation proceedings against the Professor and against the *Council for Regulation of Engineering in Nigeria* (COREN), of which the Professor was Registrar. As a result of the court proceedings and his refusal to withdraw his complaints, threats were made to his life, hoodlums tried to shoot him dead and his sister was beaten up at his home. The timeline given by the Mr. Adegbuyi is important. He told the Commissioner that in early December 2006 he gave evidence in court in relation to his civil claim. Then, shortly before Christmas, threats were made to his life by COREN's legal adviser. He reported the threats to the police but was told that nothing could be done as there was no evidence to link the threat with his complaint and he was simply advised not to meet the Professor or his legal team without his solicitor. A week and a few days after the threats were made (i.e. around Christmas 2006), three men shot at him on his way home from work but the bullet missed him. Armed campus marshals arrived on the scene and found the shell. They asked him to make a statement and said they would investigate but he heard no more from them. He did not know if they were still investigating the incident when he left Nigeria and he did not seek information on the progress of the investigation as it is typical of the Nigerian system that they say they are investigating but nothing happens. He was again threatened with consequences if he did not withdraw his case. On the 16th

December 2006 he sent an SMS to the Vice President of COREN indicating that any discussion of the civil action should be dealt with by his solicitor. (He later showed the text to the investigating officer at ORAC). Subsequent to him sending the SMS, on an unspecified Friday, armed hoodlums came to his house while he was at a club and they beat up his sister. LASU security saw the attackers but they couldn't do anything as they were not armed. They reported the incident to the police who came the next day and took statements from the appellant and from his sister and then demanded money to investigate further. The appellant did not report them to their superiors as the police would have denied it and then he would have been in trouble with them, too. He would not be safe anywhere in Nigeria as "*if they want to get, they will get you ... ... they will always trace you*." He also claimed that the lawsuit against COREN could not be discontinued and he had given a mandate to his lawyers to see it through to the end. If he returned to Nigeria he would expose himself to being killed. He had already been threatened and attacked. He would need to be a fool to go back there and get himself killed. As he feared being killed he left the State on 4th January 2007.

14. The Refugee Applications Commissioner found that Mr Adegbuyi did not have a well-founded fear of persecution for any ofthe reasons outlined in s. 2 of the Refugee Act 1996 although he found that Mr Adegbuyi's narrative relating to the ineffectiveness of state protection in Nigeria was consistent with country of origin information (COI). The Commissioner made no express findings on his personal credibility.

15. Mr Adegbuyi appealed to the Refugee Appeals Tribunal and an oral hearing took place on 2nd April2007. In his very brief analysis of the appeal dated 19th April 2007, the Tribunal Member did not address the existence of a Convention nexus, the availability or effectiveness of state protection or internal relocation, and he did not consult any country of origin information. He found that the appellant presented as credible and accepted that he would be subjected to harassment by fellow academics if he returned to Nigeria. He was satisfied that the appellant had made a genuine effort to substantiate his story and on that basis, he overturned Commissioner's negative recommendation. The Minister, as he is required to do in such circumstances, granted Mr Adegbuyi a declaration of refugee status on 11th July 2007 and he was notified of his entitlement to apply for a refugee travel document. The following day he applied for the travel document and personally collected the travel document issued to him on or about 17th July 2007 at the offices of the GNIB at Burgh Quay. That document clearly states on its face that it was valid for travel to all countries except Nigeria.

Travel during and after the asylum process

16. Several matters came to the Minister's attention in late 2007 and in 2008 which caused him to commence revocation procedures. The least significant incident was that on 12th March 2007, before his oral appeal hearing had taken place, Mr. Adegbuyi was stopped on a bus travelling to Belfast. He first said he was going shopping in Newry but when a ticket to Belfast was found on him, he changed his story and said he was visiting a friend there. He was informed that he could not leave the jurisdiction while he was an asylum seeker. A Garda report was prepared and furnished to the Commissioner in May 2007 after the Tribunal had decided on his appeal.[2]

17. Of greater significance, the Minister learned in late 2008 that the appellant had left Ireland and travelled to Nigeria in April2007 and again in July 2007. This information came to light when Mr Adegbuyi was detained and questioned by the UK Border Agency at Heathrow airport when he arrived there from Ahuja on 261h November 2007. He did not disclose his refugee status and did not use his refugee travel document but used a Nigerian passport containing a UK multiple entry visa (hereafter "***the Heathrow passport***") which had not been mentioned when he sought asylum in Ireland and stated that he had never applied for a visa to any other country. This passport is the key document in the revocation process. Mr. Adegbuyi told the entry clearance officer in Heathrow that he was coming to the UK for a one-week stay to visit his in-laws before travelling to Ireland. When his sponsors were telephoned they refused to cooperate or to vouch for him. The Border Agency had some issues relating to his true intentions for entering Britain. When his bags were searched, a return ticket to Ahuja dated 20th February 2008 was found. They also found other items including letters which suggested that Mr. Adegbuyi intended staying in Britain for longer than one week and they also found what appeared to be a homemade University of Lagos rubber stamp and his refugee travel document, Irish medical card, driving licence and GNIB card. He told the UK Border Agency that he was a PhD student at Lagos State University and was applying to conduct research at UK and Irish universities in order to use their facilities and to obtain materials to enable him to finish his course in Nigeria. He also said that he returned to Nigeria to give lectures and to attend a court case which he had taken against another LASU employee for defamation of character. The Border Agency doubted his true intentions for coming to Britain; his visa was cancelled, entry was refused and he was returned to Ahuja. Successive appeals against the refusal of entry were unsuccessful. His refugee travel document and his passport were seized and forwarded with a copy of the UKBA report to the *Garda National Immigration Bureau* (GNIB). A photocopy of the Heathrow passport was before the Court; the original was not available. An examination of the photocopy passport shows that it was issued in Lagos in April 2000 and expired in April 2005. It was stamped "Renewed" and validated until 10th April 2010. The date of the renewal is difficult to decipher beyond the year 2005. The passport contains a UK Class C visit visa valid from 29th June 2005 to 29th June 2010. There are many stamps on the passport certain of which are illegible. It is however possible to identify Nigerian immigration stamps dated 9th May 2007, 26th July 2007 and 25th November 2007 and Heathrow Immigration stamps dated (crucially) 19th December 2006, 10th May 2007 and 26th July 2007. The passport also contains a B1/B2 (business visitor) visa for the USA valid for two years which issued on 18th December 2006. There are several UK visas on the passport. There are no Irish immigration stamps and none which would suggest a journey through France on 4th I 5th January 2007.

18. There followed a lengthy exchange of correspondence between the Ministerial Decisions Unit and the appellant's solicitors in Ireland whereby the Minister sought to establish information on Mr. Adegbuyi's travel and whereabouts and in particular on the use of what appeared to be an undeclared extant passport with visas for the UK and USA. The Minister first wrote to Mr. Adegbuyi at his Irish address in July 2008 asking him to comment on the information obtained from the UKBA. He was specifically asked to explain why he had two Nigerian passports and why he had returned to Nigeria and he was informed that the fact that he had returned to Nigeria and had been travelling on his passport "*may indicate that you no longer require the protection of this country*." Thus from 2008, Mr. Adegbuyi was aware that the passport issue and the return to Nigeria were of primary importance to the Ministerial Decisions Unit.

19. The appellant's solicitors Daly Lynch Crowe & Morris replied in August 2008 without the benefit of the appellant's asylum file. They were instructed that the appellant had lost the Heathrow passport for a period of six months and that during that time he applied for and was issued with the ORAC passport. Their client later found the Heathrow passport which had by then expired but it was carrying a valid five-year multiple-entry UK visa issued in 2005, so he then had that passport renewed. He had submitted the ORAC passport to the Commissioner "*as a form of identification, in connection with his asylum application*".[3] It was confirmed that the appellant travelled to Nigeria via the UK in April 2007 and in July 2007, using the Heathrow passport. He did so to attend court hearings pertaining to the defamation and forgery matters. His attendance was required as he was the principal witness. He denied that he had re-availed of the protection of the Nigerian state or that he had intended to re-establish himself there. The dates of his travel and his court appearances were not specified. This explanation meant that the Heathrow passport was lost before March 2005 when the replacement ORAC passport was issued.

20. In September 2008 the appellant's solicitors wrote again to the Minister furnishing the following documents:-

(1) A letter from the appellant's Nigerian solicitors indicating that he was required to travel there in April and July 2007 to prosecute his civil and criminal cases and that "*our client and his family invest huge resources in providing police escort for our client in order to ensure his security during his visits to Nigeria*."

(2) A certified copy of a letter from the Assistant DPP to the Assistant Inspector General of Police dated May 2008 indicating that Professor O.A. should be prosecuted for the offence of forgery;

(3) A charge sheet relating to Professor O.A. with regard to an offence of forgery on 4th March 2008[4] indicating that an arraignment took place on 27th June 2008 and the case was adjourned to 13th August 2008;

(4) A newspaper article dated Monday 30th June 2008, naming the appellant and indicating that Professor O.A. had been arrested the previous Thursday and immediately charged with forgery, had pleaded not guilty and was released on bail with an adjournment to 13th August (the end of the article was not provided); and

(5) Court papers relating to the civil claim brought by the appellant against COREN and Professor O.A. containing numerous allegations including academic fraud.

The Second Explanation

21. In October 2008 the Ministerial Decisions Unit requested further information in relation to the Heathrow passport, asked him to explain why he did not seek the leave of the Minister before leaving Ireland while his asylum claim was being processed and asked if he had been subjected to any threats during his visits to Nigeria in 2007.

22. By letter dated 10th December 2008, the appellant's solicitors said the Heathrow passport was lost "*sometime around early 2006''*. The loss was reported to the police and a report issued which was submitted to the Passport Office. After "*about six months*" the ORAC passport issued. Then, "*sometime in 2007*", his wife received a phone call demanding a ransom for the return of the passport, which his cousin paid and then sent the passport to the appellant by DHL. Mr. Adegbuyi did not inform the Irish authorities about the recovery of the passport "*as he was already in Dublin*". He did not disclose its existence at an earlier stage to the asylum authorities as he did not have it when he arrived in Ireland. He didn't use the ORAC passport to travel to Ireland because it didn't have a visa and he didn't want to apply for a visa because he had been refused a visa in the past and he believed it would take a long time and as his life was in danger, he did not have time.

23. His solicitors further explained that he didn't seek the Minister's permission to leave the State because he was not aware of such an obligation and he was given less than one week's notice of the requirement to attend court in Nigeria. He stayed in Nigeria for one week only in April 2007 and returned immediately after the case was adjourned. He returned to Nigeria in July 2007 and after the case was adjourned he decided to stay until August as it was financially impossible to return to Ireland. He remained in hiding during that time. In August 2007, the defendant to the civil suit he had brought against COREN and Professor O.A. raised a jurisdictional argument which had not yet been resolved. In November 2007 he tried to come back to Ireland but he was refused entry to the UK, his documents were confiscated and he was returned to Nigeria. He felt the need to pursue his court case in Nigeria in order to clear his name so he could obtain employment in the future. He furnished a number of additional letters relating to the letter forged by Professor O.A.

24. Mr. Adegbuyi instructed that he was not in employment and remained in hiding close to the border with Benin in order to facilitate his escape if his persecutors were to find him. He said he was not safe in Nigeria and was trying to avoid threats. Professor O.A. made threats on his life during the court proceedings in April and August 2007. He reported those threats to the police who said they could not act in the absence of evidence. He was staying with acquaintances and his movements were restricted for fear of being killed. He would be unable to live in Nigeria long-term as he could not find employment in his profession to support himself. He wished to return to Ireland for safety reasons. The Minister was asked to return his travel document to him to allow him to travel to Ireland.

The Decision to Revoke 2010

25. Further enquiries were carried out by the GNIB and the Ministerial Decisions Unit in 2009 and 2010 and by letter dated 20th October 2010 a proposal to revoke issued, relying on ss. 21(a), (d) and (e) of the Refugee Act 1996. The following reasons were given:

> *"You returned to Nigeria in order to pursue a court case, it is quite clear that you have voluntarily re-availed yourself of the protection of your country of nationality. The fact that you have pursued the court case is evidence of that.*
>
> *As you have not registered with GNIB since July 2007 and it has been established that you have returned to Nigeria, it is evident that you have re-established yourself in Nigeria (your country of origin).*
>
> *The fact that you have been given the opportunity of due process to pursue a court case in Nigeria against the people you allege persecuted you (see attached online news article), would indicate that you no longer require international protection and therefore the circumstances under which you were granted refugee status no longer exist. It is a well-established fact that where a remedy exists within the country of nationality, the international community is not obliged to provide protection. "*

26. Mr. Adegbuyi was afforded four weeks to make submissions but no additional representations were made.

27. His file was examined in November 2010. The facts grounding his asylum application and the information which came to light arising from the Heathrow incident were noted at length and the information provided by his solicitors was synopsised. It was noted that an online search indicated that the appellant was registered as an active member of COREN in Lagos and living at the same LASU address. It was concluded as follows:

> *"All the evidence indicates that the applicant in this case has voluntarily re-availed himself of the protection of the country of his nationality and that he has voluntarily re-established himself in that country. It would also appear that the circumstances in connection with which he has been recognised as a refugee have ceased to exist, as it appears that he has been provided due process within his own country. It would also appear that he is pursuing his chosen profession in his country of origin without any hindrance. "*

28. The Minister revoked the appellant's refugee status on 9th December 2010. This was notified to him by letter dated 17th

December 2010 in which the reasons given in the proposal to revoke were recited verbatim.

Developments since the Decision
29. Additional information of considerable significance has come to light since the Minister made his decision. By letter dated 16th November 2011, the appellant's solicitors wrote to the Minister seeking residency under Article 20 TFEU based on the decision of the Court of Justice of the European Union in *Ruiz Zambrano* (Case C-34/09, decision of 8th March 2011). Mr. Adegbuyi claims derivative rights based on the EU citizenship of his daughter P who is stated to be living with her mother, the appellant's wife, in Dublin. A utilities bill bearing his wife's name at an address in Dublin was provided.[5] The letter and its appendices reveal that since at least February 2009, the appellant has been living at his old LASU residence and has been driving a car registered at that address and furthermore, he was issued with a new Nigerian passport in January 2008, valid until 2013. Of particular significance is the appellant's personal statement sworn before a Commissioner for Oaths in Nigeria which avers that he has played a very significant role in his daughter's life since she was three months old, seven years previously. He describes bathing her, changing her nappies, putting her to bed, rocking her to sleep, taking her to kindergarten, bringing her home, preparing her food, feeding her, playing with her, teaching her songs and poems etc. His wife affirmed these activities. Neither affidavit deals with where the family lived during this shared parenthood.

30. In an affidavit sworn before a Commissioner for Oaths in Nigeria on 27th April 2012 for the purposes of the within proceedings, the appellant sought to clarify the information contained in the *Zambrano* application. He accepts that the LASU staff quarters remain his official residence and contact address and says that this address is "*known to everybody that knows me friend or foe*". He says that "*being in hiding means staying away from where I normally reside due to security reasons and not disclosing by whereabout for a period of time*" [sic]. He says that as a lecturer, he is not required to be in the office at all times and that when he said he was unable to obtain unemployment, he meant while in Benin as he did not speak French. He says he never resigned from his job as a lecturer and he returned to work full time in 2009. He said he never gave up his residence at the staff quarters and that "*I stay away whenever I feel threatened.*" He said he was attacked "*on many occasions*" on his way from court, that he had continued to receive numerous threats by phone, that he had suffered unexplained voodoo attacks and that he had stopped going to court for fear of attack.

31. In an email to his solicitor dated 30th April 2012 the appellant said in relation to the criminal case against Professor O.A. that the prosecution case had closed and the defence case was due to commence but he had stopped attending court as he felt the defendant was granted unwarranted adjournments. In relation to the civil case, the appellant said the jurisdictional issue had been determined in the respondent's favour and was now under appeal before the Federal Court of Appeal in Lagos.

The Appellant's Arguments
32. The appellant's argument is essentially that the Minister was not correct to rely on ss. 21(1) (a), (d) or (e) of the Refugee Act 1996 without presenting compelling evidence that circumstances have changed and effective state protection is now available to the appellant in Nigeria. This argument is predicated on the contention that the Commissioner and by implication the Tribunal Member accepted that such protection was not available to him in Nigeria. There is nothing to suggest a change in the availability or effectiveness of state protection and as the burden lies on the Minister to show that there has been such a change, the Minister cannot rely on grounds (a), (d) and (e). While it was accepted that the appellant was wrong not to disclose the Heathrow passport, it was argued that this does not mean effective state protection is now available to him and it does not justify revoking his protection. There is nothing to suggest that Mr. Adegbuyi returned to Nigeria to live there permanently; he went back only to pursue his court cases. The mere fact that he is working there does not mean he is safe. Moreover he did not re-establish himself there *voluntarily*; he was prevented from returning to Ireland when his travel documents were seized. It is his case that he continues to suffer threats and attacks and lives in hiding so as to avoid his assailants, and that the police are unable or unwilling to protect him. Therefore, the circumstances related to which he was granted refugee status remain in existence.

33. The appellant relies on the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* which states that refugee status should not be removed easily. There is a heavy burden on the Minister to establish a real change on the ground in the refugee's country of origin which would make it safe for the refugee to return and be divested of his status. In effect, the appellant argued that the Minister was wrong to revoke his refugee status on grounds (a), (d) and (e) and that the Court could not at this stage rely on additional grounds to revoke his refugee status.

The Respondent's Arguments
34. It is contended that the Minister was correct to revoke the appellant's refugee status based on the information which was before him. It is clear from the Heathrow documents that there was evidence of continued and extended re-establishment in Nigeria just a short time after he was granted refugee status. Moreover, the information now before the Court would entitle the Minister and by extension this Court to proceed under s. 21(1) (h) of the Refugee Act 1996 and confirm the revocation of refugee status on that ground.

THE COURT'S ASSESSMENT
35. If the Court was confined to deciding the appeal solely on the information before the Minister in December 2010, there would be no difficulty in affirming the Minister's decision to revoke. While the Court would have misgivings relating to the *bona fides* of the application for asylum in view of the very obvious misrepresentations on the issue of the Heathrow passport, the Court would have approached the appeal from the premise that the applicant was a refugee but that the evidence that he had returned to Nigeria and engaged in a court process wherein the Nigerian police had investigated his complaints of forgery was adequate to support the conclusion that he had voluntarily re-established himself in Nigeria. However, the further information which was put before the Court by the respondent is strongly suggestive of a fraudulent asylum claim thus rendering the determination that he reavailed of the protection of the Nigerian State and that circumstances had changed illogical in the sense that the information strongly suggests that the appellant was not targeted in the manner described to the asylum authorities and as such he has never needed international protection.

36. In the light of this incongruity, the appeal could be approached in a number of different ways. The Court could confine its assessment to the information before the Minister when he revoked Mr. Adegbuyi's refugee status under ss. 21(1) (a), (d) and (e) of the Refugee Act 1996. Alternatively, the Court could consider all that information together with the new facts which have since come to light. As held at paragraph 9 above, the Court is at large in either case to come to its own decision "*as it thinks proper*". In the view of this Court, the appellate jurisdiction under s. 21(5) permits the Court to endorse the grounds for revocation relied on by the Minister or it may add or substitute its own grounds. It has to be recalled that the Court is not tasked with considering the reasonableness and legality of the decision reached by the Minister, but rather the correctness of the decision to revoke. The Court proposes therefore to consider all the information ayailable and come to its own decision as to whether Mr. Adegbuyi's refugee status should be revoked.

Cancellation of Refugee Status

37. Sections 21(1) (a) to (g) of the Refugee Act 1996, commonly known as cessation and exclusion clauses, have their roots in Articles 1C and 1F of the 1951 Refugee Convention. Their operation depends for the most part on a change of circumstances after the grant of refugee status which renders the international protection provided by refugee status redundant. In contrast, s. 21(1) (h) of the Refugee Act 1996 and its sister provisions Regulation 11(2) (b) of the Protection Regulations (SI No. 518 of2006) and Article 14(3) (b) of the Qualification Directive (Directive 2004/83/EC), have no equivalent in the 1951 Convention. They operate where evidence emerges which invalidates a declaration of refugee status. In other words, it becomes apparent that the person should never have been granted such a declaration and in those circumstances, the declaration becomes void *ad initio*. The validity of the operation of such "cancellation" clauses has been acknowledged by the UNHCR in its Handbook at paragraph 117:-

> *"Article 1 C [of the Refugee Convention] does not deal with the cancellation of refugee status. Circumstances may, however, come to light that indicate that a person should never have been recognized as a refugee in the first place; e.g. if it subsequently appears that refugee status was obtained by a misrepresentation of material facts [...]. In such cases, the decision by which he was determined to be a refugee will normally be cancelled. "*

38. In 2004, the UNHCR published a *Note on Cancellation of Refugee Status* which elaborated upon the circumstances in which cancellation may take place. The Note examines grounds for the cancellation of refugee status, including "*substantial fraud on the part of the applicant with regard to core aspects relating to his or her eligibility for protection*" (see paragraph 17). In that regard, the UNHCR Note indicates at paragraph 19:-

> *"19. The notion that an administrative decision obtained by fraudulent means is vitiated by this very fact and may be cancelled at any time is a generally accepted principle. It is widely reflected in national refugee laws, legislation on general administrative procedures, jurisprudence and doctrine as well as UNHCR policy documents. It is also generally accepted that a decision obtained by fraudulent means cannot form the basis of legitimate expectations or acquired rights.*
>
> *20. Where fraud is considered as the ground for cancellation, States' legislation and jurisprudence consistently require the presence of all three of the following elements:*
>
> *(a) objectively incorrect statements by the applicant;*
>
> *(b) causality between these statements and the refugee status determination; and*
>
> *(c) intention to mislead by the applicant. "*

39. The UNHCR Note goes on to give further guidance as to the each of these elements, and as to the evidentiary requirements including the burden and standard of proof. The Note is of considerable assistance to the interpretation of the requirements of s. 21(1) (h) of the Refugee Act 1996, as amended, which provides:-

> *"... if the Minister is satisfied that a person to whom a declaration has been given [...] is a person to whom a declaration has been given on the basis of information furnished to the Commissioner or, as the case may be, the Tribunal which was false or misleading in a material particular, the Minister may, if he or she considers it appropriate to do so, revoke the declaration." (Emphasis added)*

40. Section 21(1) must be read together with Regulation 11(2) of the Protection Regulations, which is designed to give effect to the terms of Article 14(3) of the Qualification Directive and which to that end provides:-

> *"Where-*
>
> *(a)paragraph(a), (b), (c), (d), (e), (j)or(h)ofsection21(1)ofthel996Actapplies, as respects a person to whom a declaration has been given*
>
> *(b) a person to whom a declaration has been given misrepresented or omitted facts (including through the use of false documents) and this was decisive for the granting of the declaration, or*
>
> *(c) a person to whom a declaration has been given should have been or is excluded from being a refugee*
>
> *the Minister shall ... revoke or, as the case may be, refuse to renew the declaration. " (Emphasis added)*

41. There are certain subtle differences between s. 21(1) and Regulation 11(2). The most important is that Regulation 11(2) (a) has removed Ministerial discretion to revoke refugee status under s. 21(1), making revocation mandatory under all sub-sections save under sub section (g). Regulation 11(2) (b) of the Protection Regulations complements s. 21(1) (h). Under Regulation 11(2) (b) the relevant consideration is whether the misrepresentation or omission of facts was "*decisive*" in the granting of the declaration; in contrast, under s. 21(1) (h), the misrepresentation must be assessed as to whether it was false or misleading "*in a material particular*", which may well be a distinction without a difference.

42. Bearing in mind the contents of the UNHCR Note together with the terms of s. 21(1) (h) and its sister provision Regulation 11(2), it seems that the question to be determined is whether the Minister has satisfied the Court that Mr Adegbuyi provided the asylum authorities with information which was false or misleading in a material particular; that there was a link between the falsity of the information and the grant of refugee status; and that he furnished the false information to the asylum authorities with the intention of misleading them. On the facts of this case, the Court is more than satisfied that this question must be answered in the affirmative. The following matters lead the Court to this conclusion.

- The appellant claimed that he suffered threats and attempts on his life in late 2006. His passport indicates that he entered the UK in February 2006 and again on 19th December 2006. There is nothing on his passport to indicate that he re-entered Nigeria in late 2006. Bearing in mind the timeline which he gave to the asylum authorities and assuming that he was not also using a further, undisclosed travel document, he was most likely not in Nigeria for the alleged shooting incident I attempt on his life I attack on his sister.

- The appellant claimed in early 2007 when he applied for asylum that criminal proceedings and civil proceedings had been

brought against Professor O.A. arising from which attempts were made on his life in 2006. The documents furnished later suggest that the DPP decided to prosecute in 2008 and the arraignment was later that same year. The criminal proceedings were not therefore in being in 2006/7 and he could not have been in court in Nigeria for the criminal trial in April or July 2007.

• The appellant claimed that his fear for his life meant that he could not personally continue his action for damages against COREN and Professor O.A. and that he had left his solicitor to pursue his legal action in Nigeria. The evidence is that he returned there before his asylum claim had been determined and again as soon as he was provided with an international travel document.

• In his questionnaire, Mr. Adegbuyi said that he had two previous passports before the ORAC passport which issued in 2005. He did not disclose the Heathrow passport, which issued in 2000 and was renewed in 2005 and which contained a multiple entry visa to the UK which was used on numerous occasions. His explanation for not disclosing the passport when he applied for asylum, i.e. that it was lost and not available to him at that time, is inconsistent with the stamps on the undisclosed passport which show that it was used and stamped during this alleged period of loss.

• The applicant said on his asylum questionnaire that he had never applied for a visa. He has several visas on his Heathrow passport, including visas to the UK and the USA. Moreover he said through his solicitors in December 2008 that he did not apply for a visa to enter Ireland in early 2007 because he had previously been refused a visa. These statements are mutually inconsistent.

• The appellant told the asylum authorities that he arrived in the State in January 2007. However, in the *Zambrano* application he said on affidavit that he played an everyday intimate role in his daughter's life from the time she was three months old. The baby was born in March 2004. Her mother was not given IBC status until she was 16 months old and there is no evidence before the Court that she left the State either unlawfully or with the permission of the Minister before being granted IBC status. If what Mr Adegbuyi says in his *Zambrano* application is true, he must have been in Ireland habitually from July 2004, some 2 years before the date given to the asylum authorities. If that is the case, he was absent from Nigeria at the times material to his asylum claim. Alternatively, he has presented false or misleading information in support of his *Zambrano* application or his wife left the State illegally.

43. Quite apart from the material misrepresentation that he was fleeing acts of violence perpetrated against him which the Nigerian State was unable to prevent or protect against and that it was unsafe for him to personally prosecute his civil action to clear his name, which in the view of the Court render his refugee status void, the appellant has engaged in a series of acts which compound his dishonesty and demonstrate his lack of any fear of persecution:-

• The appellant attempted to leave the State without permission of the Minister in March 2007 while his asylum application was being processed. He was informed that he was not permitted to leave the jurisdiction during his asylum process.

• The appellant again travelled to Nigeria in April 2007, before he was granted a declaration of refugee status and after the Newry I Belfast incident. He later told the UK Border Agency he was unaware that he required leave to travel.

• He was issued with a refugee travel document on or about 17th July 2007 which expressly stated that he could not enter Nigeria. It appears he travelled to Nigeria very shortly thereafter and remained in Nigeria until November 2007 when he attempted to enter the UK on a false premise using sponsors and documents which were suspected to be inauthentic.

• The appellant failed to disclose to the UK Border Agency when seeking entry to the UK in November 2007 that he was recognised as a refugee in Ireland. Moreover he told the UK Border Agency that he wished to enter the UK for a one-week stay while in fact his return ticket was dated some three months away. He told the Minister that he intended to return to Ireland having been granted entry to the UK. This does not explain the return ticket. He also told the UK Border Agency that he was lecturing in a Nigerian University, which conflicts with the information given to the Minister that he was hiding away in or near Benin and was unable to obtain employment.

• The Heathrow passport shows that the appellant travelled in or out of Heathrow on 19th December 2006, at the height of his asserted troubles in Nigeria. He has never accounted for that stamp on his passport and equally, provided no explanation for a US business visit visa issued on 18th December 2006.

• The explanations given by the appellant for having two passports were neither mutually consistent nor consistent with the dates on the passports. His first explanation was that he lost the Heathrow passport for six months and during that time he applied for and was issued with the ORAC passport (stamped as being issued in March 2005). If that explanation is true, the Heathrow passport must have been missing for a six month period in late 2004 I early 2005. The second explanation was that he lost the Heathrow passport sometime around early 2006 and got the ORAC passport after about six months. That is at variance with the issue stamp on the ORAC passport. Moreover the account of the loss of the Heathrow passport for a period of six months is contradicted by the stamps on that passport which show consistent travel throughout 2005, 2006 and 2007.

• The appellant has been official resident at LASU staff quarters since he returned to Nigeria in 2007. He says he has been in hiding and only returns to staff quarters when he feels it is safe. However, he has not specified where he has been hiding and he has not explained how his claim that he is in hiding could be consistent with his public courts appearances and his continued lecturing since 2007 and his return to full time employment in 2009. He has not addressed where his daughter lived during the period when he was sharing in the daily obligations of a nurturing parent.

• The appellant informed the Minister that he could not renew his residence in Ireland in 2008 because he had no travel documents as they had been seized. However it is apparent from his *Zambrano* application that he was granted a new Nigerian passport in January 2008.

44. In sum, the evidence before the Court renders the core aspects of the appellant's claim for asylum unsustainable. In the view of the Court the factors listed above, whether taken individually or as a whole, support the conclusion that the appellant furnished information to the Commissioner and I or to the Tribunal which was false and misleading in a material particular and that his misrepresentations and omissions were decisive for the granting of a refugee status. The stamps on the Heathrow passport which are not in dispute are of considerable significance in establishing that Mr. Adegbuyi provided objectively false statements. Those

statements went to the very core of his asylum claim. He has woven a tangled web in his practice of deception. The web has unravelled and the Court is satisfied that it is proper to confirm the decision to revoke Mr Adegbuyi's refugee under s. 21(1) (h) of the Refugee Act 1996.

45. As the UNHCR has recognised, the *cancellation* of refugee status, which is based on the premise that the applicant ought not to have been granted refugee status in the first place, is different and distinct from the *cessation* of refugee status which allows for the possibility of circumstances changing after the grant of refugee status to such an extent that the person no longer requires international protection. The Minister revoked Mr. Adegbuyi's refugee status on the basis that he was a declared refugee but because of his early return to Nigeria, his engaging with the Nigerian State authorities in pursuing civil and criminal processes, his continuing with his position as a lecturer at the University of Lagos and his residence at his previous address he found that the appellant had voluntarily re-availed of State protection and re-established himself in Nigeria. The facts relied upon connected to the grant of refugee status had in those circumstances ceased to exist. The Court has come to a different conclusion and found that Mr. Adegbuyi was never a refugee. However, because the Minister relied on the cessation clauses, the appellant's arguments quite naturally focussed on the operation of those clauses in this case and while it is not strictly necessary to address those arguments, they will for completeness be examined.

Cessation of Refugee Status
46. Sections 21(1) (a) to (f) of the Refugee Act 1996 contains *cessation* clauses, which reflect the provisions of Article 1 C of the Refugee Convention and Article 11 of the Qualification Directive. For the present purposes the relevant parts of s. 21 are:-

> *"(1) Subject to subsection (2), if the Minister is satisfied that a person to whom a declaration has been given-*
>
> *(a) has voluntarily re-availed himself or herself of the protection of the country of his or her nationality, [...]*
>
> *(d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution,*
>
> *(e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of his or her nationality,[...]*
>
> *the Minister may, if he or she considers it appropriate to do so, revoke the declaration.*
>
> *(2) The Minister shall not revoke a declaration on the grounds specified in paragraph (e) or (f) where the Minister is satisfied that the person concerned is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of his or her nationality or for refusing to return to the country of his or her former habitual residence, as the case may be. "*

47. Section 21(2) would appear to be of no relevance in the within case. Section 21 (1) (a) is the equivalent of Article 1C(1) of the 1951 Refugee Convention. The Court accepts the appellant's argument that this ground for revocation is inapplicable in Mr. Adegbuyi's case. Paragraph 118 of the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* states as follows in relation to Article 1C(1):-

> *"This cessation clause refers to a refugee possessing a nationality who remains outside the country of his nationality. (The situation of a refugee who has actually returned to the country of his nationality is governed by the fourth cessation clause, which speaks of a person having "re-established" himself in that country.) "*

48. As the appellant has returned to his country of nationality, ground (a) is of no application in his case unlike ground (d), i.e. that he has voluntarily re-established himself in his country of origin. Paragraph 133 of the UNHCR *Handbook* confirms that the equivalent cessation clause under Article 1C of the Refugee Convention relates to refugees who have returned to their country of origin or previous residence. Paragraph 134 provides as follows:-

> *"The clause refers to "voluntary re-establishment". This is to be understood as return to the country of nationality or former habitual residence with a view to permanently residing there. A temporary visit by a refugee to his former home country, not with a national passport but, for example, with a travel document issued by his country of residence, does not constitute "re-establishment" and will not involve loss of refugee status under the present clause. "*

49. The facts before the Minister establish that the appellant voluntarily returned to Nigeria in April 2007 and are strongly suggestive that he re-established himself there on a permanent basis. He was under no compulsion to return and notwithstanding his evidence that he would face death upon return to Nigeria and would be a fool to return, he chose to go there to give evidence at the trial of his civil claim. He did not have permission to leave the State without the consent of the Minister which he did not seek. He knew of this requirement, as the previous month he had been stopped on a bus going to Northern Ireland by a Garda and had been returned to the Republic because as an asylum applicant he was not permitted to leave the State. The appellant's short visit to Nigeria which was followed by a return to Ireland while awaiting the decision in his RAT appeal could not in isolation have led to a conclusion that he had voluntarily re-established himself although the action was clearly inconsistent with his claim. However the same conclusion cannot attach to his actions in returning to Nigeria via the UK two months later and immediately after he was granted refugee status and had registered his status with GNIB. He travelled back to Nigeria when he was fully aware that refugee status was inconsistent with a return to his country of origin. He knew this because he was served with a letter outlining the legal effect of refugee status including the prohibition of travel to Nigeria, and he was notified of the circumstances where such status could be revoked. As soon as he was notified of his declaration as a refugee he requested and received his international travel document which in large and bold print proclaimed that he could not use it to travel to Nigeria. Such travel document is furnished by every state which recognises a person as a Convention refugee and has a format and acceptability endorsed by the UNHCR. It is intended for the use of those Convention refugees who wish to travel but because they do not have access to the protection of their home state, they have no passport. In a cynical abuse of the status he had acquired under the Convention, he travelled to Nigeria very shortly after the travel document issued. He used his refugee travel document when it suited him and his undisclosed Heathrow passport when he wished to enter Nigeria or the UK. He then remained in Nigeria, the country where he said his life was threatened and where the police could provide no effective protection, for a period of four months before attempting to re-gain entry to the UK on a false premise. When questioned by the UK Border Agency as to why he returned to Nigeria when he was a refugee, he told them that he returned to give lectures at LASU and to pursue his defamation claim against a fellow academic. He had a return ticket to Abuja dated 201h February 2008, which strongly suggests that even if he intended to travel back to Ireland via the UK in November 2007, he had every intention of returning

to Nigeria once more within a short period of time. All of these factors tend towards the conclusion that his return to Nigeria in July 2007 was voluntary and uniquely for his convenience until he had an opportunity to weigh up his long term options. They indicate a gross abuse of the asylum system.

50. After he was repatriated to Nigeria by the UK authorities he appears to have settled back into life as a lecturer at the University, living at his previous address which he says he never gave up and is known to friend and foe. He never once wrote to the Irish authorities to explain his position; he never sought to establish that he was a victim of a misunderstanding by the UKBA or to seek re-entry to Ireland. He did not seek the return of his travel document until late 2008 well after the Minister had taken the first steps towards revocation. In January 2008 shortly after his repatriation by the UKBA he was granted a new passport by the Nigerian authorities. The UNHCR *Handbook* states at paragraph 121 that:-

> *"If a refugee applies for and obtains a national passport or its renewal, it will, in the absence of proof to the contrary, be presumed that he intends to avail himself of the protection of the country of his nationality."*

51. There can be little doubt that Mr. Adebuyi voluntarily returned to Nigeria where he benefited from the protection of state institutions such as the police and judicial system and then obtained a passport from Nigeria while resident in that State. This clearly points to voluntary re-establishment on a permanent basis.

52. The appellant's claim made on affidavit that he lives in hiding and has suffered attacks and threats since returning to Nigeria is not persuasive in view of the gross lack of candour and the remarkable deficit of any evidence supportive of any part of those claims compared with the large amount of documentary evidence relating to the claim of academic fraud, the criminal prosecution and the parallel civil claim. Several police reports relating to the allegations of forgery and academic fraud have been furnished but they are all silent on complaints of attempts to the appellant's life, the shooting incident, the attack on his sister, the threats made after he gave evidence, the attacks he has suffered since 2007 on his way to court, the threatening phone calls he has received, or the voodoo attacks. It is not unreasonable to expect that if such threats were real, the same DPP and prosecution authorities who directed the prosecution in 2008 of Professor A.O. for forgery would also have investigated attempts to intimidate the victim of the forgery who was the principal prosecution witness. No such evidence was proffered. No police reports relating to the shooting incident or the attack on his house and sister are before the Court. The appellant says in his affidavit dated 27th April 2012 that he had stopped going to court for the criminal trial because he fears being attacked, however in his email dated 30th April2012 he says "*I have stopped going to court cos I believe it is justice delayed which is justice denied*."

53. In the view of the Court, the appellant has manipulated those parts of the dispute between him and his colleagues at Lagos University which are true to fabricate a case of persecution. Even if the most benign view possible of his actions were to be taken, it is apparent that if he ever genuinely believed that he needed international protection, then this requirement has ceased due to his voluntary re-establishment in Nigeria.

54. Ground (e) of s. 21(1) only arises where a person had an established well founded fear of persecution and was unable or unwilling to avail of the protection of his home state at some time and circumstances in that home state have ameliorated to such extent that he no longer requires the protection of the host state. There is clear evidence that Mr. Adegbuyi never had a well-founded fear and should never have been declared a refugee. While the Minister approached the revocation from the premise that Mr. Adegbuyi had at one time been a refugee and therefore a person who was unable or unwilling to avail of state protection, this Court has come to a different conclusion and in those circumstances, ground (e) is inapplicable. The Court accepts the appellant's argument that there was no evidence before the Minister or before this Court of identified changes in Nigeria on the availability of state protection of the nature described in paragraph 135 of the UNHCR *Handbook* which says of Article 1C(5) of the Refugee Convention, the equivalent of s. 21(1) (e):-

> *"Circumstances" refer to fundamental changes in the country, which can be assumed to remove the basis of the fear of persecution. A mere -possibly transitory - change in the facts surrounding the individual refugee's fear, which does not entail such major changes of circumstances, is not sufficient to make this clause applicable. "*

55. There is nothing to suggest that effective state protection, which (rightly or wrongly) was found to be unavailable to the appellant some years ago, has since become available to him. However as the reality is that Mr. Adegbuyi either never required state protection in Nigeria or that it was always available to him, the application of s.21 (1) (e) is inappropriate and the want of information on changes in circumstances becomes irrelevant.

Conclusion

56. For the reasons outlined, the Court is satisfied that the Minister was correct to revoke the appellant's refugee status. On the basis of the evidence before the Court on this appeal the revocation is affirmed on the basis of s. 21(1) (h). As the finding is that the declaration of refugee status is void *ab initio*, no other grounds for the revocation are appropriate or necessary.

[1].A Higher Executive Officer in the Ministerial Decisions Unit examined the passport in May 2008 and in a report declared that she suspected it to be false. It does not appear any further steps were taken to confirm or dismiss her suspicions and the authenticity of the ORAC passport was not at issue in the proceedings.

[2].The appellant has not commented on this incident at any stage of the proceedings.

[3].In fact the letter referred to the number of the Heathrow passport but it was submitted on behalf of the appellant and the Court accepts that this was a simple mistake.

[4].It was submitted on behalf of the appellant that the date discrepancy was a simply typographical error. The respondent has not disputed that possibility.

[5].It indicates an estimated bill with low usage.