THE HIGH COURT

JUDICIAL REVIEW

[2015 No. 43 JR]

BETWEEN

A.O.M.

APPLICANT

AND

MINISTER FOR JUSTICE AND EQUALITY

RESPONDENTS

JUDGMENT of Ms. Justice Stewart delivered on the 11th day of November, 2016.

1. This is an application seeking, *inter alia*, an order of *certiorari* in respect of the decision of the respondent made on 3rd December, 2014, to refuse to refuse to revoke a deportation order made against the applicant on 8th January, 2003. The deportation order was made pursuant to s. 3(11) Immigration Act 1999.

Background

2. The applicant is a 34 year old male, who entered the State and made an application for refugee status on 4th September, 2000. On 30th July, 2002, the applicant was informed that the respondent had decided against granting the application and was proposing to make an order for his deportation. Said order was issued on 8th January, 2003, and executed on 20th May, 2004. Following this deportation, the applicant entered the United Kingdom and illegally took up residence in Northern Ireland. He was joined there by an Irish citizen, N.F., with whom he had entered into a relationship during his stay in this jurisdiction. On 24th December, 2005, their child was born and the applicant was granted parental responsibility rights and duties under the Family Law [NI] Act 2001. The family lived together until October, 2007. The following November, the mother (N.F., who has maintained a watching brief over these proceedings) suddenly returned to this jurisdiction. The applicant entered the State soon after, in the hope of seeing his daughter and saving the relationship. These efforts would appear to have been unsuccessful, as the applicant soon instigated guardianship proceedings. These proceedings were to be heard in the District Court on 31st March, 2008. But this hearing did not take place because the applicant had been discovered within the State and, following his failure to secure revocation of his deportation order, he was again deported to Nigeria on 17th December, 2007. The applicant remained in Nigeria before securing employment in the United Arab Emirates (U.A.E.), where he currently resides.

3. On 10th April, 2014, the applicant instructed that fresh legal proceedings be instigated, seeking access to and guardianship of his child. In September, 2014, said proceedings came before the Family Law District Court sitting in Dublin and were adjourned to October in order to facilitate the applicant's attendance in person. When the matter came before the Court again, the proceedings were struck out, allegedly because the applicant was not present to execute them, notwithstanding the presence of his legal team. An application for a visa to allow him to prosecute the proceedings was refused on 17th June, 2014. On 3rd December, 2014, the respondent refused to revoke the deportation order that was preventing his re-entry to this jurisdiction.

Submissions

4. Ms. Blake, S.C., with Mr. Daniyan, B.L. for the applicant, submit seven grounds on which leave to seek judicial review was granted:

> A. Failure to pay due consideration for the applicant's right of access to the court: The applicant alleges that his relationship with his child has been entirely frustrated and that he must have access to the courts to see his rights vindicated. The applicant relies on *Re Article 26 of the Constitution and Sections 5 and 10 of the Illegal Immigrants (Trafficking) Bill 1999* [2000] 2 I.R. 360 as proof that non-nationals' right to court access and due process is identical to that of a citizen's. He submits that he cannot access the courts until he is allowed to return to the State and relies on the DAR transcript of his previous proceedings as proof thereof. The applicant alleges that the respondent's decision makes contrary findings on this point and is therefore incorrect in fact and in law. The applicant also submits that the impugned decision places an onus on the child to see their rights vindicated, an act that she is incapable of performing due to her age. On that basis, the applicant submits that the decision is unreasonable and irrational.
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> B. Errors of law and fact as to the applicant's aims: The applicant submits that the respondent made a finding that the applicant would be a burden on State resources. The applicant alleges that this is patently untrue, as he is well remunerated in the U.A.E. and has valid health insurance that would cover a short stay in Ireland. He maintains that his stay would only subsist for the purposes of his court action and maintaining a relationship with his child. It is submitted that any suggestion of permanent residence is conjecture on the respondent's part.
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> C. Lack of proportionality: The applicant submits that the impugned decision is disproportionate in its consideration of the rights of the child and the familial rights held by the applicant and his child under Bunreacht na hEireann and Article 8 of the European Convention on Human Rights (E.C.H.R.). The applicant also alleges that the respondent applied the wrong test to the facts. He submits that the proper test is not adverse effect on the child's interests. The alleged proper test involves consideration of a child's right to her parents and a parent's rights in relation to child rearing. The applicant relies on *A.O. v. Minister for Justice No. 2* [2012] IEHC 79 in asserting that this balancing exercise should be approached from the perspective of Article 40.3 and 42.1 of Bunreacht na hEireann. The applicant also refers to *E.A. and P.A. v. MJELR* [2012] IEHC 371 and *X.A. v. Minister for Justice* [2011] IEHC 397 to fortify this point.
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> D. Failure to properly balance rights: The applicant submits that the respondent failed to give proper weight to the rights of the child and parent when balancing them against the rights of the State. He also alleges that weight was given to matters such as the economic well-being of the State, which are irrelevant given that the applicant has no intention of relying on the State. The applicant again relies on the above three cases.
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> E. Failure to have proper regard to the rights, welfare or wellbeing of the child: The applicant again relies on the above three cases.

F. Failure to properly appreciate the consequences of the decision: By taking this action, the applicant alleges that he is effectively cut off from his child until she achieves the age of majority, thus ensuring that he never plays a hand in child rearing and that one of his constitutional rights is entirely frustrated. The applicant again relies on *E.A.* and *A.O.*

G. Improper application of case law: The applicant submits that the respondent made an error of law and fact in its application of the case of *Mahmood v. Home Secretary* [2000] EWCA Civ 315. As an English decision, it only holds persuasive value in this jurisdiction. The applicant also alleges that the circumstances in *Mahmood* are not the same as the circumstances in this case, most particularly because Irish jurisprudence in weighing respective rights is more advanced. The applicant alleges that, by failing to apply relevant and current law, the decision is invalid. The applicant relies on the above three cases in this regard.

5. The applicant acknowledges the series of cases in this jurisdiction that state that a father has no constitutional right to his child *(State (Nicolaou) v. An Bord Uchtala* [1966] I.R. 567, *G v. An Bord Uchtala* [1980] I.R. 32). However, the applicant also points out that he has guardianship and statutory rights, per the Family Law [NI] Act 2001, as amended. He also relies on the case of *W.O'R v E.H.* [1996] 2 I.R. 248, in which the Supreme Court held that the rights of interest or concern between father and child were matters to be taken into account when considering guardianship/custody/access applications. The applicant refers again to Hogan J.'s judgment in *A.O.*, where he stated:

> *"…the active involvement of both parents in child-rearing is also inherently desirable from the child's perspective, even if the parents are not married, assuming always that this is feasible and practicable."*

6. In regard to questions over Article 8, the applicant relies on the cases of *Ciliz v. Netherlands* (App. No. 29192/95, decision of 11th July, 2000), in which it was established that decision-makers must take rights flowing from Article 8 into account to a degree sufficient to protect those interests. The applicant points out that such considerations persist even where the parent has consistently flouted immigration rules (*Nunez v. Norway* (App. No. 55597/09, delivered on the 28th June 2011)).

7. The applicant acknowledges the judgment of the Supreme Court in *A.O.* and *D.L. v MJELR* [2003] 1 I.R. 1 in which the State's interests in maintaining the integrity of the immigration system outweighed the children's right to the care and company of their parents within the State. He also notes the ameliorating effect of the *Ruiz-Zambrano* judgment on these matters. But he focuses more particularly on *E.A.* and the case of *S v. Minister for Justice* [2011] IEHC 417. In these cases, the condemnation of a child to a parental absence for the entirety of their formative years motivated the Court to act. The settlement of the family for a significant period of time and the degree of integration with the Irish education system were significant factors. In *E.A.*, Hogan J. also distinguished the *A.O./D.L.* case because the end result in that case was not of necessity depriving an Irish child of the opportunity for any real personal contact with their parent.

8. With regard to the right of access to the court as a litigant, the applicant relies on *Efe and Ors v. Minister for Justice* [2011] IEHC 214, in which Hogan J. stated that Article 40.3.1-2 of Bunreacht na hEireann give rise to a right to an effective remedy for an injustice done. The applicant submits that, unless the deportation order is revoked, his right to an effective remedy has been breached. He also relies on *Murphy v. Greene* [1990] 2. I.R. 566, in which the right of access to the courts was affirmed for every individual, regardless of citizenship status.

9. The applicant also submits that, in coming to the impugned the decision, the respondent failed to apply the test outlined by Denham J. (as she then was) in *Meadows v. MJELR* [2010] IESC 3. He alleges this is so on foot of the disproportionate impact on the applicant's constitutional rights and the consideration of irrelevant issues. The applicant quotes from the *Efe* case as follows:

> *"In summary, therefore, it is clear that, post [Meadows] at any rate, it can no longer be said that the courts are constrained to apply some artificially restricted test for review of administrative decisions affecting fundamental rights on reasonableness and rationality grounds. This test is broad enough to ensure that the substance and essence of constitutional rights will always be protected against unfair attack, if necessary through the application of a [Meadows] style proportionality analysis: see, e.g. decisions as such [Holland], [Clinton No. 2] and [P.S]. This, after all, was a feature of the promise of Walsh J. in East Donegal Co-Operative Livestock Mart Ltd. v. Attorney General [1970] I.R. 317, at p. 349:-*
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> > *"A person exercising his constitutional right to litigate may be assured that the resources of the Courts established under the Constitution are not so limited that they could facilitate, or that they would be exercised in any way which would facilitate, the concealment of an infringement of constitutional rights or the masking of injustice.""*

10. Ms. Butler, S.C., with Mr. Gibbons, B.L. for the respondent, submit that the applicant is not required to actually be present in court in order to execute the proceedings, as modern technology and facilities will more than suffice. The respondent notes that the applicant has failed to request access to such facilities or explore this option. According to the affidavit of Mr. Owen Wilson, a solicitor in the Chief State Solicitor's Office, these options are available and, until they are explored, the District Court's ruling cannot be construed in a manner that would require revocation of the deportation order.

11. The respondent maintains that the applicant's history (He was deported from Ireland twice, remained illegally within the borders of the United Kingdom and was refused a visa to enter Italy) more than justifies the decision she has taken in this case. The respondent affirms that its decision on foot of s.3(11) of the Immigration Act 1999 did include a balancing of the applicant's Article 8 rights. The respondent also directs the Court's attention to the lack of any active involvement on the applicant's part in the upbringing of his child. The respondent submits that this fact has serious implications for his claims to familial and *Zambrano* rights and that it distinguishes him quite significantly from the applicants in *Nunez* and *Ciliz*. The respondent also questions how the applicant can claim guardianship rights under a Northern Irish piece of legislation when he is attempting to litigate in the Metropolitan District Court sitting in Dublin.

12. Regarding the seven grounds of review, the respondent submits as follows:

A. Deportation Order & Access to the Court: The respondent takes issue with the DAR transcript submitted and its ability to substantiate the applicant's claims. The applicant has submitted that the 2014 proceedings were struck out on the basis that the applicant was not present in the State to execute them. The respondent submits that the hearing in question related to an attempt by the applicant to adjourn the proceedings until the conclusion of the case currently before this Court and that they were instead struck out because the applicant had no immediate plans to pursue them. The respondent also notes that nothing is preventing the applicant from instigating fresh proceedings at a later date. The respondent submits that, if the right of court access also conferred a right to enter the State, the State's ability to

control its borders would be totally undermined. The respondent, while not denying that all individuals have a right to litigate, points out that the *Article 26* case that outlined the right of court access applies only to individuals within the jurisdiction.

B. Possibility of an economic burden: The respondent submits that, in considering economic matters, she is not presuming anything but merely appraising all the possible scenarios. It is also alleged that the economic analysis is wholly subsidiary to the analysis of family rights. If an error of fact exists, the respondent submits that it is not unreasonable in the *Meadows* context. She also submits that this decision related to the revocation of a perpetual deportation order and not a temporary visa application, thus requiring a full prospective analysis that includes employment prospects. The respondent submits that she is entitled to view the applicant's assertions of a temporary stay with scepticism, given his history and his attempt to use *Ruiz-Zambrano* processes.

C. Grounds 3-6 on Balancing Rights: The respondent objects to any attempt on the applicant's part to undermine the decision based on his child's rights, as he is neither a next friend nor a guardian under Irish law. The respondent also reminds the Court that the applicant strenuously objected to any attempt on the mother's part to join these proceedings. While the applicant had intended to join his child to these proceedings, he has discontinued those efforts and his child is not a party to this case. The respondent also notes that the applicant is attempting to impute knowledge of the family law proceedings on to the respondent that she did not have at the time the decision was made. The respondent thereby refers to the Court to the facts actually submitted at the time of decision-making, as opposed to considering the facts provided in the case at hand. The respondent submits that the impugned decision contains a fair and balanced analysis of the Article 8 issue. Issue is also taken with the reliance on the *A.O.* and *E.A.* cases, as they were applications for interlocutory injunctions and *Campus Oil* principles are less stringent than those employed in full judicial review proceedings. The respondent underlines the "feasible and practical" element of the quotation from Hogan J. in A.O. (*supra*) put forward by the applicant. She also seeks to distinguish the *X.A.* case on the basis that the individuals in that case were married, a fact that is not at play here. The respondent quotes extensively from the cases of *Esme v Minister for Justice* [2015] IESC 26 and *M.R.J. v MJELR & Ors* (Unreported, High Court, MacEochaidh J., 22 January 2014, ex temp). The respondent thereby draws a number of conclusions: 1) That the integrity of the immigration system is a valid consideration that counter-balances Article 8 and the State enjoys a wide margin of appreciation therein (*Esme*), 2) That individuals cannot be allowed to organise their family affairs so as to intentionally frustrate immigration policy (*Esme*), 3) That precise and careful arguments must be made in order to establish that a balancing exercise offends the principle of proportionality (*M.R.J.*); and, 4) That the court can only intervene in a balancing exercise where the decision arrived at absolutely offends logic or is unreasonable (*M.R.J.*).

D. The Pertinence of *Mahmood*: The respondent submits that the *Mahmood* case provides a useful summary of E.C.H.R. jurisprudence in this area. The impugned decision is not based exclusively on this case. It merely refers to it and allegations of misapplication by the applicant are misguided.

13. The respondent submits that the relief sought is discretionary and should be refused on foot of the applicant's lack of candour and history of flouting Irish immigration law. For all these reasons, the respondent argues for the refusal of relief.

Decision

14. At the core of this case is the applicant's contention that, despite the fact that he is lawfully excluded from this jurisdiction by virtue of the earlier deportation order, he should nevertheless be allowed to re-enter the jurisdiction for the purpose of litigating family law proceedings in respect of his daughter. He contends that the only way he can prosecute these proceedings is by being present in Court and giving vice voce evidence.

15. *Viva voce* means "with the living voice". It usually refers to evidence given orally during a court hearing. "*Viva*" is an abbreviation for a *viva voce* examination, which is one involving a live and spoken interview. Evidence from the witness box in court is given *viva voce*.

16. It is true to say that the traditional understanding and most common method of giving evidence in our courtrooms is by attendance of the parties and/or their witnesses in person and the giving of oral evidence, subject to cross-examination, having taken the oath in the witness box. However, there have been many advances in technology, particularly in recent times, leading to the widespread availability of instantaneous communications with people and places in other parts of the world. Even the formal methods of video conference calls have evolved, in the relatively short period since the facilities for such calls first became available. Within this context, the Court respectfully disagree with the *obiter dictum* of Finnegan J. in *D.P. v Governor of the Training Unit and Ors* [2001] 1 I.R. 492, which states that a refusal to grant leave to enter the State for the purpose of prosecuting a civil claim against the State would *prima facie* be unlawful and unconstitutional. Such a proposition seems to me to be out-of-step with, and does not account for, modern technological advances and the contemporary circumstances in which the Courts now operate.

17. I do not have to make a definitive finding with regard to whether or not viva voce evidence means, and can only mean, the physical presence in a courtroom of the person for the purposes of giving evidence from the witness box. I do not believe that such a question is central to my decision in this judicial review, which is a challenge to a refusal to revoke a deportation order based on alleged flaws in the decision-making process. Suffice it to say that I do not believe that an applicant should be prevented from giving evidence via live video link and/or other electronic communications for the purposes of relaying information relevant to court proceedings. This view is of course subject to the appropriate formalities being observed at the other end of the video link. However, this case has yet to advance to that stage, as there is no evidence before this Court to suggest that that issue was canvassed in any way before the District Judge with a view to processing the family law application brought by the applicant in these proceedings.

18. At the outset of the District Court application on 20th October, 2014, the applicant's legal representatives sought an adjournment to pursue a contemplated *judicial review* by way of *mandamus* in respect of a then-pending application for the revocation of the deportation order. The solicitor for the mother objected to the proposed adjournment and applied for an Isaac Wunder order against the applicant, which would prohibit him from bringing any fresh application in the District Court without prior leave of the Court to do so. Having considered the submissions of the parties, the District Judge, stated:

> *"Now, in relation to the two applications that are before the Court for access and legal guardianship. These applications originated in an application that was filed on 13th March 2014, if I am correct. On reviewing the file there was also a further application by Kevin Tunney Solicitors on 27th November 2007. When people make applications to the Court they must be in a position to advance them to the Court. This matter was adjourned peremptory against Mr. [M] and it was adjourned on the last occasion that it was in court which I understand was in or around 20th June 2014. So what I am doing today, I am striking out the current proceedings and applications but I am not making an Isaac Wunder order*

against [M], Thank you."

19. It is clear earlier in the transcript that the District Judge was aware that the applicant was not present in court. However, it was also clear that the solicitor for the applicant opened the proceedings on that day by applying for an adjournment for the purposes of pursuing contemplated judicial review proceedings in respect of the Minister and the then-pending revocation decision. The applicant in these judicial review proceedings has sought to portray the District Judge's decision as one where the proceedings were struck out because the applicant was not present in court. No such decision was made by the District Judge. Even after the DAR transcript was obtained and exhibited in these proceedings in a supplemental affidavit from the applicant's solicitor, no attempt was made to amend and/or clarify that averment. No direct evidence was adduced before this Court that a District Judge had or would refuse an application to give evidence by video link. In fact, the only evidence on this issue is quite to the contrary, being the evidence from Mr. Wilson, on behalf of the respondent. He averred at para. 2 of his affidavit sworn on 24th May, 2016:

> *"I am a practising solicitor in the Chief State Solicitor's Office (CSSO) since 1979. From my considerable experience with the CSSO and having consulted with the Court Service, I am aware that the Dublin Metropolitan District Court has the facilities to hear evidence via video link in family law matters if the need arises and a request for such is made.*
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> *3. I note from the District Court proceedings disclosed in within proceedings that no such request for video evidence was made by the applicant or his legal representatives."*

20. During the course of the hearing, an application was made on behalf of the applicant to cross examine Mr. Wilson on the content of his affidavit. I refused this application because there was no conflict in relation to the affidavit evidence. The matter was not addressed at all in the affidavit evidence put before the Court on behalf of the applicant. This is, of course, a judicial review challenging a decision whereby the Minister refused an application to revoke a deportation order. One cannot avoid the conclusion that this case was, to some extent, being used as a vehicle for a collateral attack on the decision made by the District Court on 20th October, 2014, without any formal challenge being taken to that decision. In any event, it is hard to imagine in what shape or form such a challenge might have been formulated.

21. It seems to me that this aspect of the applicant's case, as argued before the Court, must fail. At best, the application is premature; there has been no attempt made to ascertain from the District Court whether or not it would entertain an application from the applicant to hear his evidence via video link. I accept the respondent's submission that, had such an application been made and refused, then this Court would be dealing with an entirely different proposition. But we are not dealing with such a situation. The applicant places great emphasis on O. 8 of the Rules of the District Court, which states that evidence must be given *viva voce* on oath. As stated earlier, it does not seem to me that this necessarily requires the physical presence in court of the person giving the evidence on oath. In my view, O. 39 of the Rules of the District Court is relevant in relation to this matter. It comes under the heading of "Part III Civil Proceedings":

> *"Order 39 Civil Proceedings: General rules*
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> *1. Where no procedure provided for*
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> *(1) If the procedure for the conduct of civil proceedings is not prescribed by these rules or by an enactment, or for any other reason there is doubt about the manner or form of the procedure, the Court may determine what procedure is to be adopted and may give directions.*
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> *(2) Subject to O.12, r. 9(4), where no form for use in the Court in respect of a step, notification or other action in a civil proceeding is for the time being prescribed, any form for the time being in use in the Circuit Court or the High Court for the corresponding step, notification or other action in civil proceedings may be used in civil proceedings in the Court with the necessary modifications."*

22. It is clear from a practice direction issued by the then President of the High Court Mr. Justice Richard Johnson, on 3rd May 2007 that the use of video conferencing link for taking of evidence in civil cases is permitted by the High Court. Similar permission is outlined in s. 26 Civil Law (Miscellaneous Provisions) Act 2008 and O. 46, R. 8 of the District Court Rules (as amended by the District Court (Civil Procedure) Rules 2014). Certain directions were given by the President with regard to how the Court should be notified of such a proposal and the arrangements to be put in place:

> *"The solicitor for the party calling the witness is required to do the following:*
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> *Undertake to the court to participate fully in all required test-calls to the remote location.*
>
> *To provide the registrar with the necessary technical information in relation to the remote location and the case in which the application is being made (the form at Appendix I to this Practice Direction is to be completed in full and furnished to the court registrar).*
>
> *To ensure that the appropriate sacred text for taking the oath prior to giving evidence is available to the witness in the remote location.*
>
> *To ensure that the witness in the remote location is provided with any documents (including pleadings) to which he / she may be referred while giving evidence…"*

23. Clearly the procedure set out in the Practice Direction of 3rd May, 2007 provides for a manner in which evidence is to be given *viva voce* on oath without the person tendering the evidence being physically present in the courtroom in this jurisdiction. I fail to see why an applicant in a proposed family law application in the District Court would be discriminated against and prohibited from giving evidence in this fashion, if necessary. For these reasons I cannot agree with the submissions made on behalf of the applicant to the effect that the only manner in which the applicant can progress family law proceedings in the District Court in respect of an application for access and/or contact with his child who is an Irish citizen residing in this jurisdiction is by way of admittance to this country for the purposes of attending the hearing of the application. I therefore reject this ground of the applicant's complaint.

- The s. 3(11) decision

24. The applicant complains that the decision-maker, when arriving at a decision on foot of the revocation application, did not appropriately and/or proportionately balance the rights of the applicant & his child and did not appreciate the consequences of that decision. The applicant invokes both constitutional rights and Art. 8 rights in respect of his family. Contrary to what has been

submitted on behalf of the applicant, it appears to this Court that, when the decision maker was arriving at a determination in respect of the revocation application, the respondent engaged in a very full and thorough analysis of the background to the application, the applicant's then-present personal circumstances, his right of access to the court, Art. 24 of the Charter of Fundamental Rights of the European Union, Art. 20 of the Treaty on the Functioning of the European Union, Art. 8 of the European Convention on Human Rights and the overall nature of a s. 3(11) application before arriving at detailed conclusions. I can discern no error in the reasoning and analysis applied by the decision-maker. On the contrary, it appears to be a very thorough, balanced and proportionate assessment of the applicant's situation. I accept the respondent's submission that the analysis of potential economic burden occurred within the context of that thorough assessment and for the purposes of appraising all potential scenarios flowing from the potential granting of the application. These potential scenarios were construed, *inter alia*, in light of the applicant's history with the immigration authorities and his desire to secure a visa for the purposes of visiting the State & spending time with his daughter on a recurring basis.

25. As for the consequences of the impugned decision for the applicant's relationship with his daughter, it would be inappropriate to draw any conclusions at this juncture, as the extent of the applicant's rights regarding his child has yet to be established under the law in this jurisdiction (as opposed to any rights asserted under the law in Northern Ireland). Such an assessment would, of course, include an assessment of the child's right to an ongoing relationship with her father. The applicant places heavy reliance on the decision of Hogan J. in *A.O. No. 2 (supra)*. However, in that case, Hogan J. was dealing with an interlocutory injunction application seeking to bring about a situation whereby that applicant would not be deported from the State until his District Court family law application was determined. Campus Oil principles state that the applicant only has to show that he has an arguable case and that the balance of convenience lies with the grant of interlocutory relief. That is not the situation before the Court in this case. This is a full judicial review hearing. For reasons I have already set out, I am not of the opinion that the applicant, Mr. M., is being prevented from accessing the District Court for the purposes of progressing an application for access to his daughter. There is un-contradicted evidence before the Court that he can advance and participate in the proceedings from the U.A.E. via video link. The District Court has not refused an application for the applicant to participate in that capacity, nor indeed has it been asked to do so.

26. The applicant complains that the decision of the Supreme Court in *Meadows (supra)* was not referred to by name. That is undoubtedly the case. However, the whole ethos of the *Meadows* decision permeates the decision impugned in these proceedings. I find no merit in the alleged failure to explicitly refer to the *Meadows* case.

27. The applicant further complains that the decision-maker refers to the *Mahmood* case, a decision of the English Court of Appeal. He complains that this case was referenced and relied on, instead of the *Meadows* case, as the benchmark for the appropriate test to be applied. Again, I find no merit in this submission. It seems to me that the principles set out in *Mahmood* are equally applicable and relevant in this jurisdiction and are of assistance to the Court, always bearing in mind that an overall assessment of the validity and proportionality of the decision must be adjudicated in the light of the principles enunciated by the Supreme Court in *Meadows*.

28. The respondent refers the Court to the decision of MacEochaidh J. in *M.R.J.* delivered on 22nd January, 2014. The applicant took exception to the reliance placed on *M.R.J.*, given that the applicant therein had a conviction for child sexual abuse. Counsel for the respondent was at pains to point out that no such comparison could be made in relation to the case currently before the Court but did point out, and legitimately so in my view, that there was quite a similarity between this applicant and the applicant in *M.R.J.* in relation to their appalling deportation history and flouting of the immigration rules & authorities in this jurisdiction. At para. 31, on p. 14 of the judgment, MacEochaidh J. states as follows:

> *"In any event, it seems to me that the role of the Court in reviewing a balancing exercise which has happened is limited, and for the avoidance of any doubt in this judgment, it seems to me that a clear and expressed balancing of the rights of all the parties – the rights of the mother, the child, the father and the state – happened in this case.*
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> 32. *If one is to say that the balancing exercise offends the principle of proportionality, one is to make a capable argument as to how this happened. Even if one manages to mount such a careful and detailed argument indicating what the particular flaw is, it seems to me that the Court's jurisdiction in reviewing the balancing exercise that did happen must be at the limited end of things. It must be something akin to if not the same as the* State (Keegan) v. Stardust Victims Compensation Tribunal *[1986] I.R. 642 test which requires the Court to ask whether the balancing of the rights and the result achieved once that balancing took place flies in the face of common sense or offends reason. In my view, I could only interfere with the balancing exercise which did happen if I found that it absolutely offended logic or was something which I felt that no reasonable decision maker could ever conclude."*

29. I agree with the statement of my learned colleague. I can find no flaw in the reasoning and analysis adopted by the decision-maker. It certainly does not fly in the face of common sense and is a reasoned and rational decision.

30. In those circumstances, I refuse the application for judicial review for the reasons set out above.