

## THE HIGH COURT

**2007 1620 JR**  
**[2007 No. 1620 JR]**

BETWEEN

H.I. AND R.B.

APPLICANTS

AND

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENT

**Judgment OF Mr. Justice Hedigan delivered on the 13th day of December, 2007**

1. The applicant seeks an interlocutory order restraining the minister from executing the deportation order made against him pending the hearing of his application for judicial review of the respondent's decision that he did not enjoy EU Treaty Rights to remain in Ireland.

2. I have listened to the submissions in this case on both sides. Mr. Ladenegan has pressed very strongly upon me the grounds why he thinks that his client will win the case ultimately and would suffer irreparable damage in family terms and also financial loss as a result of being deported from the jurisdiction.

3. However, I have also got to take into account some of the other factors in this case as well and balance them and those, it seems to me, are that there is a valid deportation order in existence made in 2005 and the applicant has been aware of that in those two years and more. There is a dispute over whether he presented himself in September 2005. He says that he did, and the affidavit filed yesterday evening on behalf of the respondents by Ms Marina Bradwell denies that and says that he did not. So that matter is in issue. I have not enough information to come to a view on it.

4. However, it is also clear that the RAC and the RAT who dealt with his application for asylum found that it was apparently seriously lacking in credibility. As has been pressed upon me, the applicant has had the full panoply of his rights -- I do not think it is an exaggeration to describe it as such -- to date. The deportation order that was finally made as a result of all those proceedings remains unchallenged. The case of *Cosma v. Minister for Justice, Equality and Law Reform* has been opened to me to support the proposition that, where there is a valid deportation order in being, an injunction to restrain should not normally be granted. The passage cited appears on page three of the four pages that appear in the print out which I have and begin:

"In this case, the decision being appealed from is a decision of the respondent made under section 3 (11) not to revoke a deportation order against the appellant. There is no appeal and can be no appeal for the decision of the learned High Court judge refusing relief in relation to the deportation order itself. It has been held by the High Court that the deportation order is valid and that finding cannot be challenged before this court. If the court were to grant an injunction such as is being sought by appellant, the effect would be to thwart the operation of the perfectly valid deportation order and would, at least to some degree, prevent the operation of a perfectly valid and unappealable High Court order.

"There might indeed be circumstances, although it is hard to envisage them, where the Supreme Court might exercise its inherent jurisdiction to grant an injunction which could have this effect. For example, it might conceivably be exercised when a previously unknown fact comes to light, being a fact which was unknown at the time of making the deportation order and which is one of such gravity as might stay implementation of the order. No such case has been made out before us."

5. That seems to cover the situation that arises here. No unknown fact has been brought to the attention of the Court. His most recent application, based on his spouse's EU Treaty rights failed and it also is not challenged.

6. As far as the adequacy of damages go, I note what counsel for the respondent has said, which is that in the event of the applicant winning his case that there will be no problem in paying the damages that would have been incurred which presumably would be mostly travel expenses.

7. As regards irreparable loss, the European Convention on Human Rights has been referred to. I have been asked to consider the applicants Article 8 rights under the Convention. The case law of the European Court of Human Rights is replete with cases where Article 8 rights in immigration and refugee cases have been dealt with and with which the Court has not found any problem, save for unusual circumstances. The Court's case law is further replete with statements under lining the importance of the sovereign power of the States in relation to immigration and asylum.

8. As to the submission that there will be a separation from his wife, the case of *Oyenyi v. Minister of Justice*, was opened to me. Mr. Justice Peart's judgment found that the fact the wife had to follow the applicant in that case did not amount to an irreparable loss. It may well be a matter of considerable inconvenience to this man's spouse if she has to follow him to Nigeria but there is certainly nothing stopping her doing so.

9. As to the balance of convenience, first of all, as has been pointed out, the applicant has no right to be in the State. The preservation of the immigration system is a heavy duty on this state and a great public interest. This afternoon, in the judgment I delivered in *Oghosasere v. the Minister for Justice, Equality and Law Reform*, I referred to the Supreme Court judgment in *Lobe v. the Minister for Justice, Equality and Law Reform* [2003] IR 17 and specifically to the judgment of Mr. Justice Murray as he then was, now the Chief Justice, whose views I entirely agree with it. It is a very important matter in both the country's national and international interests that the immigration system is supported by this State.

10. It has also been urged upon me that all that is involved here is a pure point of law and indeed this led to the submissions that Mr. Ladenegan made on behalf of his client in that regard. It is quite clear that it actually is on a point of European law that this case will ultimately turn. He is very confident of success and that may well be justified or not -- we will see in the fullness of time -- but the fact that there is a pure point of law involved leads me to the judgment of *Nicolas v. Minister for Justice, Equality and Law Reform* opened to me by the respondents which establishes that there is no need for the presence of an applicant in such cases. It is entirely open to him and to his lawyers to argue the case without his assistance.

11. As to conduct and candour and whether or not that should disentitle the applicant, I think the court should be slow to act on the basis that anybody has not conducted themselves properly. However, one matter is clearly the case, that is that he is an evader and

he is well aware of it and was for some time in that he did not comply with the deportation order which was made. He may or may not have turned up in September 2005. The fact is he has not departed from the State. Therefore, he is a violator of the immigration laws of this country.

12. It is the case that in the period that he was in the country since his deportation order he has married. He now is seeking to move this court to restrain his removal from the State on the basis of an advantage that has accrued to him as a result of this wrongdoing and the Court should not save in some special case, execute its discretion to grant judicial review.

13. As to his ticking the 'No' box in relation to the question as to whether there was any outstanding deportation orders against him, I cannot accept and I do not think any court would accept that when an important document is filled out quite clearly in a manner which appears to mislead that it should, without some clear explanation take any other conclusion from it other than that there was an intention to mislead the State in relation to his application for a residence card.

14. The Court must look at the whole case in the round. It seems to me that taking his conduct and his lack of candour into account, even if all the other grounds that I felt disentitle the applicant to relief today, on the ground of his conduct and lack of candour I would refuse the applicant his relief in the circumstances.

15. At the very end of his submissions, Mr. Ladenegan asked me in the event that the order was not granted to require certain undertakings from the respondents. I do not think I am in a position to do that but, in any event, I do note that, as I have already referred to, that Mr. Moore said in the event that the applicant did win his case he would have his costs of transfer back to the State paid and I think it goes without saying that in the event that he won his case and that it was found that he had EU Treaty rights to reside in Ireland there is no question but that he would be allowed to reside in Ireland.

16. For those reasons, I am refusing the request for an interlocutory injunction in this matter.