THE HIGH COURT

JUDICIAL REVIEW

[2017 No. 857 J.R.]

BETWEEN

O.D.N. AND A.A.N. (A MINOR SUING BY HER MOTHER AND NEXT FRIEND O.D.N.) (NIGERIA)

APPLICANTS

AND

THE INTERNATIONAL PROTECTION OFFICE, THE MINISTER FOR JUSTICE AND EQUALITY, THE ATTORNEY GENERAL AND IRELAND

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 21st day of December, 2017

1. The applicants in this case are a mother and daughter from Nigeria. The mother arrived in the State in February, 2006, at the age of 16. The child was born in the State on 24th February, 2006. The mother applied for asylum on 28th March, 2006, including the child in the application. That application was refused on 23rd May, 2006. An appeal against that refusal was dismissed on 27th July, 2006 by the Refugee Appeals Tribunal. A proposal to deport was issued on 25th August, 2006. An application for subsidiary protection was made in 2006 and was subsequently refused on 11th January, 2008.

2. Deportation orders against the applicants were made, and notified to the applicants on 15th September, 2009. However, the applicants failed to present to the GNIB. On 9th October, 2014 they applied for revocation of the deportation orders while being evaders, and ultimately presented on 16th June, 2016, thus having evaded for almost seven years. During that time they did not provide an address and apparently had up to three sets of solicitors. They seemed to have expected the Minister to reply to their correspondence despite being evaders. However, under those circumstances it seems to me that the requirement that legal or constitutional rights are first situated in a social contract, and in corresponding and relevant duties, has the consequence that there is no obligation whatsoever on the Minister or any decision-maker to consider any representations from a person who will not disclose their whereabouts and who is on the run (to that extent I would respectfully disagree with the views to the contrary of Eagar J. in *Ashade v. The Governor of the Dóchas Centre* [2014] IEHC 643 on this issue). In any event, in November, 2016, the s. 3(11) application was rejected.

3. A subsequent application for permission to re-enter the asylum process was made on 31st October, 2017, and this case concerns that application. It was made after the mother was informed that the applicants would be deported. Both the timing and the legalistic content of the application make it clear that it is an abusive eleventh-hour application made for delay purposes. The applicant was due to be collected on 2nd November, 2017 for the purpose of deportation, but instead went to hospital complaining of back pain. The hospital has stated that there was no reason why she could not board an aircraft, that no sinister cause for her symptoms was found and that she was mobile on discharge.

4. On 8th November, 2017, a consent form was submitted to the Department of Justice and Equality to authorise solicitors to act on her behalf, and on the same date the present judicial review was launched, seeking a declaration that the applicants were entitled to remain in the State pending the determination of the application for consent to re-enter the protection process under s. 22 of the International Protection Act 2015. On 17th November, 2017, the applicants were refused consent to make a subsequent application. The International Protection Office concluded that there were no new elements or findings presented which would have made it significantly more likely that they would qualify for international protection.

5. In the light of that finding, I permit an amendment to the proceedings to allow *certiorari* of that decision to be sought. I have heard helpful, detailed and informative submissions from Mr. Anthony Lowry B.L. for the applicants, and Ms. Emily Farrell B.L. in reply for the respondents and I am grateful to them both.

Relief sought

6. The substantive relief is at para. D5 of the statement of grounds as amended, namely *certiorari* of the refusal of the permission to make a subsequent application for protection under s. 22 of the 2015 Act. Further relief is sought at para. D1 by way of a declaration that the applicants are entitled to remain in the State pending a determination of their application under s. 22, but that only arises if the Minister's decision on the application is quashed. Other declaratory and injunctive relief is also conditional on showing the unlawfulness of the s. 22 decision. The ground for quashing that decision is that the child should be entitled to a personal interview. Mr. Lowry accepts that the mother is not so entitled.

Does failure to afford an interview render the second named applicant's right to be heard impossible or unduly difficult?

7. The argument made by Mr. Lowry is that refusal of a personal interview renders the right to a consideration of the re-application an impossibility, or effectively annuls or severely curtails that right. However, it seems to me on the facts that that premise is not correct. It has not been demonstrated that the applicants have been hampered by the lack of an interview. Firstly, they did not ask for an interview, which is fatal to the present application. Secondly, they did not aver in these proceedings that they have been hampered by the lack of an interview. Thus, the factual premise for the elaborate and learned argument made simply does not arise. On these facts, it seems to me that a personal interview was not necessary for an effective hearing of the applicants. It certainly has not been shown how a personal interview would have significantly advanced matters, let alone would have been necessary to avoid the right to be heard being rendered impossible or unduly difficult. Thus, the argument made under this heading simply does not arise.

8. Insofar as reliance is placed on the recast Procedures Directive (Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection), while it is true that certain provisions of that directive could be thought of as elucidating the meaning of the original directive, this is not such a provision. Thus, the point under consideration here is quite different from the provision I considered in *F.I. v. The Governor of Cloverhill Prison (Maher)* [2015] IEHC 639 [2015] 10 JIC 2103.

9. Insofar as Mr. Lowry relies on art. 24 of the EU Charter of Fundamental Rights on the rights of the child, the requirement to take

into account the best interests of the child and hear the voice of the child is not necessarily meaningful in this context where the child is not in a position to give evidence regarding the alleged persecution. Anyway, the voice of the child has been heard in writing. It is not a breach of the requirement to hear the voice of the child to require that that be done through a written procedure. On a purposive interpretation, a personal interview of an eleven year old regarding alleged persecution that occurred before she was born will not achieve a whole lot. On these facts, it has not been demonstrated that she has the age and understanding to contribute anything meaningful on this issue.

10. Insofar as reliance is placed on Case C-560/14 *M.M. v. Minister for Justice and Equality*, that decision was the interpretation of art. 4 of the Qualification Directive 2004/83/EC (Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted), which includes a specific procedure for application in a quite different context to that under consideration here.

Order

11. For these reasons the order will be:

(i). that the application be dismissed; and

(ii). considering and applying *Okunade v. Minister for Justice, Equality and Law Reform* [2012] IESC 49, that the injunction restraining deportation be discharged.