Neutral Citation Number: [2011] IEHC 256

THE HIGH COURT

2010 1148 JR

BETWEEN

DESIREE O'LEARY, DIARMAID O'LEARY, MARGARET

LEMIERE, LEON LEMIERE

APPLICANTS

AND

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENT

JUDGMENT of Mr. Justice Hogan delivered on 30th June, 2011

1. In this application for leave to apply for judicial review, the applicants seek to quash a decision of the Minister for Justice, Equality and Law Reform of 27th July, 2010, pursuant to s. 4(7) of the Immigration Act 2004 whereby he refused to give the third and fourth applicants ("the Lemieres") permission to reside in the State. As we shall presently see, at the heart of this case lies the question of whether the extent to which the relationship between adult parents and an adult child are protected by Article 41 and, if so, the implications of this for the State's immigration policy.

2. The Lemieres are South African citizens. Ms. Lemiere is now aged 68 and Mr. Lemiere is 72. In 1994 Mr. Lemiere took early retirement from his position with South African Railways and Harbours Board. He and his wife expected that they would be able to live relatively comfortably on the pension package that was offered to him, but, unfortunately, this did not prove possible for reasons which I will presently explain. The Lemieres had four children, two sons and two daughters. One son, Vincent, sadly died in 1989. One of the two daughters, Chantelle, has become a UK citizen and lives there with her Portuguese husband. Another son, Brenton, also lives in the UK with his partner. While he has South African citizenship, he also enjoys indefinite leave to remain in the UK.

3. The first applicant, Desiree O'Leary, is the other daughter of the Lemieres and was originally of South African nationality. Her husband, Diarmaid, the second applicant and is an Irish citizen by birth. The couple married in Durban in 1982 and Ms. O'Leary subsequently acquired Irish citizenship by marriage in August 1983. The O'Learys have lived in Ireland since 1995 and they have two adult daughters. Mr. O'Leary is an engineer and Ms. O'Leary has been a College lecturer in UCD since 2000.

4. The O'Leary's are relatively well circumstanced in that they own their own family home and have a small mortgage. There was frequent contact between the O'Learys and the Lemieres over the last fifteen years or so. Thus, for example, the Lemieres regularly travelled to Ireland during the summer months to stay with them for an extended holiday. During those visits, they assisted their daughter and son-in-law with minding the children and general household duties.

5. By the mid-2000s, however, the Lemeries were experiencing financial strain. The security situation in South Africa had deteriorated and each of them had significant health problems. The Lemieres then lived in a pleasant house in a suburb in Kwa Zulu Natal. While they had paid off their mortgage, the difficulty for them was that the area had poor public transport links and security was a constant and immediate daily problem. Their house was a frequent target for burglars, despite the elaborate security precautions which they had taken. In addition, even getting access to cash was a problem, since not all businesses and shops will accept credit cards and robberies at automated teller machines are virtually a daily hazard of life for elderly South Africans.

6. For some time, Ms. O'Leary has sought to provide financial assistance to her parents. Ms. Lemiere was added as a cardholder to Ms. O'Leary's credit card account sometime and it is clear from the copious credit card statements that have been provided to me that significant drawings have been made on that card over the years by Ms. Lemiere in order to pay for outgoings such as medical and pharmaceutical bills, groceries and petrol.

7. The Lemieres are required to pay ZAR2,952 of their monthly income of ZAR5,426 on medical insurance. Given that South Africa does not have a system of public health care and social supports which remotely compares with our own, this must objectively be regarded as a vital necessity for the Lemieres in view of their age and health condition. This leaves a balance of some ZAR2,500, i.e., approximately €250 a month. Making all due allowance for the cheaper cost of living in South Africa, this still a sum which is, for example, well below the after tax income of someone earning the minimum wage in Ireland. The O'Learys had supplemented this figure with regular monthly payments, starting with €130 per month in 2002, which figure had risen to €500 per month in 2007.

8. In July 2008 the Lemieres were simultaneously afflicted by severe health problems which required both of them to be hospitalized. On this occasion, both of them were needed appreciable care and attention. Given the very limited social support network prevailing in South Africa, both of them would have been effectively housebound and unable to fend for themselves following their discharge from hospital. Fortunately, their two daughters were in a position to travel at short notice to South Africa to look after them and to drive them to their various post-operative medical appointments.

9. It is scarcely a surprise that in the wake of these events that the O'Learys decided that it was best that the Lemieres came to stay with them, at least for a substantial period of time. They arranged for and paid for flights from South Africa to Ireland. Here one must note that South Africa is a visa exempt country, so that there was simply no procedure whereby the Lemieres could have applied for residency in advance. It would appear nevertheless that the Lemieres intended to apply for permanent residency once they arrived in Ireland

10. When they arrived at Dublin Airport on 29th February 2009, Mr. and Ms. Lemiere were dealt with by different immigration officials.

Mr. Lemiere was given one's months permission to stay and told that he must report to the Garda National Immigration Bureau ("GNIB"), whereas Ms. Lemiere's passport was endorsed with a six month permission to stay. Following contact with the GNIB, the matter was referred to the Department of Justice.

11. On 1st May 2009 the Lemieres requested, through their solicitor, an extension to their permission to stay. On 21st May 2009 the Department refused to extend the permission and requested them to leave the State by 31st May 2009. There was then further correspondence between the Lemieres's solicitors and the Department. This culminated in a temporary extension of the Lemieres' permission to remain and a direction that they should leave the State and re-enter with the purpose of obtaining the relevant passport endorsement permitting them to live and reside with relatives.

12. The Lemieres then duly left Ireland on 11th August, 2009, and then returned to Ireland on 26th August, 2009. Ms. O'Leary travelled to Frankfurt for this purpose to accompany them back to Dublin. At immigration control in Dublin Airport, the Lemieres were told that there was no express stamp for this purpose, but the purpose of the visit was nevertheless recorded on the computer system.

13. There next followed a further exchange of correspondence with the Department. The Department initially refused permission for long term residence, but following a review of the file, permission was granted to reside in the State until 31st July, 2010, subject to the condition that they could not have recourse to public funds, state services or benefits.

14. Undaunted, the applicants then sought to have the decision revoked insofar as it required the Lemieres to leave the State by that date. I should break off this narrative to record that the Lemieres actually returned to South Africa in February, 2010 where they sold their house for a sum of approximately €110,000. While they had let the property, it was nonetheless a target for vandals and the security problems were appreciable.

15. The Lemieres then returned to Ireland in June, 2010 where they have been residing with the O'Learys since that date. The Department of Justice, Equality and Law Reform refused to extend the permission to stay beyond the end of July, 2010 for reasons I will presently consider. Strictly speaking, the Lemieres have been residing illegally in the State since that date, but no action has been taken against them during the currency of the present proceedings.

The decision in TM v. Minister for Justice, Equality and Law Reform
16. At the outset, it is appropriate to note that many of these issues were also considered by Edwards J. in *M v. Minister for Justice, Equality and Law Reform* [2009] IEHC 500, a case where similar arguments were made on behalf of a 54 year old Chinese national. Critically, in that case Edwards J. noted that the applicant had set out no information why she cannot support herself financially in China. The judge added:-

> "The court has not been told whether she has ever worked in China, or as to whether work is available to her in China. There is also no information concerning whether she has any training or skills that might assist her in getting work. The court has been told nothing about her assets or liabilities (if any) or as to what are her living arrangements in China. We do not know if she owns her own dwelling or rents one. We have not been told whether she has non-employment income (or potential income) from any source other than from her daughter and son-in-law. We have not been told if she is entitled to any aid or assistance from the Chinese Government, for example, a widow's pension. All we are told is that, "she would live a poor and difficult life in China" were it not for the support that she receives from her daughter and son-in-law. The court will readily accept that this may be the case, and is certain that the financial assistance that she receives from Ireland is extremely welcome, but the critical question is whether it is essential for her support as opposed to being merely most welcome. In this court's view, the evidence of financial dependency that has been offered is insufficient, even for the purposes of a leave application. The applicants bear the burden of proof and I am not satisfied that prima facie evidence of dependency, beyond a bald and unsupported assertion in that regard, has been adduced. The applicants have therefore failed to establish substantial grounds for contending that rights inuring to them under Article 41 of the Constitution and/or under Article 8 [ECHR] respectively, have been engaged in the circumstances of this case."

17. Edwards J. added:-

> "I accept the submissions of the respondent to the effect that dependency means some level of handicap, incapacitation, some disqualifying factor which makes one a dependent not simply financially, but also socially, something that precludes one from completely independent living. Moreover, as per the judgment in *Mokrani,* there must be additional elements of dependence, other than normal emotional ties."

18. Unlike *TM*, it is plain that the applicants here have provided copious detail of dependency, as well as setting out the details of their financial affairs. The Lemieres are moreover significantly older and have obvious health problems. To that extent, the present case is very different from that which presented in *TM*, where the applicants claim of dependency rested entirely on bald assertions, none of which - unlike here – were, for example, supported by independent documentation of financial transfers over a long period.

19. In any event, I would, with respect, prefer to qualify the test posited by Edwards J. in *TM* somewhat by asking not so much the question of whether the financial transfers were "essential for support as opposed to being merely most welcome", but rather whether such transfers were appreciable and significant in the context of the recipients. If the words of Edwards J. were taken absolutely literally, they might prove difficult to apply, since what one person deems essential to independent living, might be regarded as a frivolous luxury by another.

20. Given that the Lemieres' monthly income following payment of medical insurance is approximately €250, one would have to regard payments of some €500 per month, together with the credit card facility as appreciable and significant in this sense. If I were required to apply the *TM* test, I would also conclude that the payments were essential in this sense.

Whether Article 41 rights are engaged by the Minister's decision
21. Perhaps the first question to be addressed is whether the decision by Ms. O'Leary to invite her parents to come to stay with them in Ireland engages the family rights provisions of Article 41 of the Constitution. It is certainly curious that this issue does not appear to have been directly addressed in the case-law hitherto, with the exception of the seminal judgment of Edwards J. in *TM*.

22. Be that as it may, the question must now be directly confronted. Counsel for the Minister, Mr. Conlan Smyth, argued forcefully that Article 41 had no application at all to a case of this nature, as he contended that it was clear from the context of Article 41 with its juxtaposition beside Article 42 dealing with education that the former provision is concerned exclusively with the rights and duties

of parents and their minor children.

23. While it is certainly true that the vast majority of the Article 41 case-law deals with questions of custody, guardianship and the general level of autonomy which parents enjoy in respect of their minor children, I cannot agree that Article 41 is exclusively so confined. As counsel for the applicants, Mr. Finlay SC pointed out, there is also a significant stream of case-law with which deals with the autonomy of family decision making, quite independently of minor children. Examples here include *McGee v. Attorney General* [1974] I.R. 284 (contraception), *E.R. v. J.R.* [1981] I.L.R.M. 125 (confidentiality of marital communications), *Murray v. Ireland* [1991] I.L.R.M. 465 (right to procreate) and *Re Article 26 and the Matrimonial Homes Bill* [1994] 1 I.R. 305 (distribution of matrimonial property). Indeed, if there is one single underlying theme of this case-law, it is to stress the autonomy of family decision making in relation to such matters, free from unnecessary State interference, save where this is objectively justified.

24. Next, it must be recalled that Article 41.1.1 describes the family as a "moral institution" possessing inalienable and imprescriptible rights. This presupposes a system of natural love and support based on ties of blood, kinship and friendship. While it is true that the Oireachtas has intervened by law to allow, for example, the courts to provide maintenance for spouses and minor children, for the most part the law allows families to arrange their own financial affairs *inter se*. Indeed, the Supreme Court has recognized that, for the most part, family arrangements of this kind do not give rise to contractual obligations, since they are generally undertaken in a spirit of mutual love and affection in circumstances where there is no intention to create legal relations: see *Rogers v. Smith*, Supreme Court, 16th July, 1970.

25. Providing support for parents in advancing years is one dimension of the moral nature of the family as an institution. This precept has been a cornerstone of our moral understanding for at least 2,000 years and it has deep roots in all societies, religions and social systems. By enacting Article 41 of the Constitution, the People clearly espoused a desire to protect the family and to uphold these deeply cherished fundamental values associated with family life. As I ventured to suggest in my own judgment in *RX v. Minister for Justice, Equality and Law Reform* [2010] IEHC 452, [2011] 1 I.L.R.M. 444, 456:-

> "….it cannot have been intended by the People in 1937 that the family contemplated by Article 41 should be confined exclusively and for all possible purposes to what nowadays would be described as the nuclear family of parents and children. The fact that marriage was (and, of course, is) regarded as the bedrock of the family contemplated by the Constitution does not mean that other close relatives could not, at least under certain circumstances, come within the scope of Article 41. In this regard, it must be borne in mind that grandparents and adult siblings form part of many family units which are (or, at least, were originally) formed by married couples and this was probably at least as true in 1937 as it is today."

26. A decision by an adult child to provide emotional and financial support for parents in advancing years by inviting them to live with her and her husband clearly in principle engages Article 41 rights. Such a decision is plainly encompassed by the "moral" nature of the family as an institution as so described by Article 41.1.1. Of course, much will depend on the individual facts of each case and, as Edwards J. noted in *TM,* the engagement by the adult child with the parent must be real and substantial, going well beyond the ordinary social courtesies. As I observed in *RX*:-

> "Thus far we have been dealing with the question of whether there was any a *priori* rule of constitutional interpretation by which grandparents (and, by extension, adult siblings) were excluded from the scope of the family life envisaged by Article 41. For such persons to come within the scope of the constitutional protection, it is, however, necessary to demonstrate that they have such ties of dependence and inter-action with other family members that they would come within the rubric of that family and that the family itself is based on marriage. This normally pre-supposes that a person such as a grandparent would share the same house as the other family members in question and that they would have an active role in the comings and goings of the family in question. A grandparent could not, for example, be regarded as a family member simply by reason of ordinary social courtesies or even by reason of regular visits to the grandchildren's family home. While each case must turn on its own facts, something further than the ordinary inter-action between a grandparent and a grandchild or other family member would generally be required. This, as it happens, is also the position of the European Court of Human Rights with regard to Article 8 ECHR: see, *e.g., Marckx v. Belgium* (1979) 2 E.H.R.R. 33, *Boughanemi v. France* (1996) 22 E.H.R.R. 228"

27. In a context such as the present one, this principle would suggest that the emotional and financial dependency must be a real one between the adult child and his or her parents, and not, for example, simply a contrivance to circumvent immigration legislation. While cohabitation may not be necessary in every case, the fact that the parties are living under one roof appreciably strengthens family ties: see, *e.g.,* the comments of Birmingham J. in *GO (a minor) v. Minister for Justice* [2008] IEHC 190, [2010] 2 I.R. 19 at 29. Although these comments were made in the context of Article 41, they apply by analogy in the case of Article 41 arguments as well.

28. Returning now to the facts of the present case, as we have noted already, the trigger point for the decision by the O'Learys to assume a greater responsibility for the Lemieres came in July, 2008 when both Mr. Lemiere and Ms. Lemiere were simultaneously ill and hospitalized in South Africa. It was, as we have seen, necessary for Ms. O'Leary to take leave at short notice and to travel to South Africa to look after her parents. This was a perfectly understandable human response. It would seem that the O'Learys had decided from that point onwards that it would be increasingly necessary for the Lemieres to reside with them in Ireland. It was obvious that, given their health conditions, the Lemieres would be likely to need more – and not less – practical support from their children and that Ms. O'Leary was best placed to give that support. The effect, however, of the Minister's decision to refuse to grant the Lemieres permission to reside in Ireland has been to frustrate that decision.

29. It is plan that, by analogy with the Supreme Court's decisions in *North Western Health Board v. HW* [2001] IESC 90, [2001] 3 I.R. 635 and *Oguekwe v. Minister for Justice, Equality and Law Reform* [2008] IESC 25, [2008] 3 I.R. 795 an interference by the State with a family decision of this kind otherwise protected by Article 41 can be upheld if the Minister can point to a substantial reason associated with the common good. Given that the Lemieres are obviously persons of good character, two other broad public policy reasons can immediately be advanced.

30. First, the Minister would obviously be entitled to insist that the Lemieres would not be charges on any public funds. Given that our system of health care for the elderly presupposes a form of intergenerational dependence - so that the tax and social security contributions of the present generation of taxpayers is premised on the implicit solidarity to be shown by the next generation of taxpayers when the present generation retires – it is only fair that the State should be able to insist that persons who made no such contributions to this State (or, where appropriate, another EU or EEA State) while employed should be able to do so in their retirement years. This means that the Minister would be entitled to insist as part of any visa condition that the Lemieres would not seek to draw on public funds or avail of the wider Irish social security system. The Minister would be further entitled that the Lemieres

have up to date and comprehensive private health insurance to ensure that there was no drain on public resources in the health care field.

31. It is only fair to record that there is no expectation to the contrary on the part of the applicants. Indeed, Ms. O'Leary promptly arranged for comprehensive VHI cover once the Lemieres were granted an extension of their temporary permission to reside in the State by Inspector Ryan of Garda National Immigration Bureau in March, 2009.

32. The second public policy consideration relates to the integrity of the immigration system so that this system is applied in a consistent and fair manner. This consideration is often to the forefront where those with a precarious immigration status – typically failed asylum seekers - seek to frustrate the system by creating, so to speak, "facts on the grounds" (such as marrying an Irish or EU citizen or become a parent) which either makes deportation impossible in practice or, at least, very difficult to achieve. But, of course, however, while the balance of competing interests is in the first instance a matter for the Minister, the assessment of the underlying facts must be conducted in a fair and reasonable fashion: see, *e.g., S. v. Minister for Justice, Equality and Law Reform* [2011] IEHC 92. Moreover, it is the judicial branch who will have the last word on whether the balance struck as between the competing rights and interests is fair and reasonable: see, *e.g., Meadows v. Minister for Justice, Equality and Law Reform* [2010] IESC 3, [2010] 2 I.R. and *ISOF v. Minister for Justice, Equality and Law Reform (No.2)* [2010] IEHC 457.

33. It is against that background that we may examine the reasons actually set out by a senior civil servant in a memorandum of 27th July 2010 ("the July memorandum") which grounded the Minister's decision to refuse to permit the Lemieres to reside in the State pursuant to s. 4(7) of the Immigration Act 2004. Seven distinct grounds in favour of granting permission were advanced by the O'Learys and these were responded to in detail on behalf of the Minister. We can address some of these reasons in turn.

Whether the Lemieres are dependent and are given financial, emotional and physical support by the O'Leary's going beyond the ordinary social courtesies

34. The July memorandum referred to the credit card payments, but concluded that this was not "adequate proof of providing financial support." I should have thought that it plain that the financial support actually provided went a great deal further for the reasons already stated. Moreover, the engagement between the O'Learys and the Lemieres goes well beyond the ordinary social courtesies. Viewed objectively, there are strong reasons as to why Ms. O'Leary would want her parents to reside with her and this decision is far from some devious stratagem designed to circumvent our immigration laws.

Crime levels and the state of health of the Lemieres

35. Ms. Lemiere has severe arthritis and has had a major operation in July 2008. As we have seen, Mr. Lemiere was also hospitalized at the same time. He also suffers from deep vein thrombosis and has had spiking blood pressure. Ms. O'Leary argued that, given their health condition, they would be very vulnerable to burglary and random violence if they remained in South Africa.

36. In response, the author of the July memorandum expressed concern and sympathy, but suggested that this was a standard concern of elderly persons living alone in many communities. This may be true, but even the casual Irish visitor to South Africa cannot but be struck by the elaborate security measures taken in that jurisdiction by almost every householder and at a level which is virtually unknown in this country. This, one imagines, can be readily attested by consulting even basic country of origin information.

The Minister's decision will impact on a number of Irish citizen's lives, including the entire O'Leary family

37. In answer to this the point the memorandum stated:-

> "To state that a refusal to grant residency would impact on a number of Irish citizen lives*, i.e.*, the O'Leary's and their children, is overstating the fact. Up to last year…it seems that the Lemieres had visited Ireland, but for the most part lived in South Africa. I fail to see how a refusal will impact on the Irish citizen lives, particularly as the O'Leary grandchildren are no longer children…."

38. We can pass over immediately the reference to the O'Leary children who are themselves now adults. While they are doubtless devoted to their grandparents, unlike cases such as *RX*, their relationship with them is not central to the present case. This leaves the position of Mr. and Ms. O'Leary. They are so manifestly affected by this decision to refuse permission that the suggestion to the contrary contained in the memorandum for the Minister is, with respect, quite divorced from reality. It requires little imagination to understand the grief and anxiety Ms. O'Leary would have suffered if she had been denied the opportunity to care for her ailing parents in her own home. It is totally unrealistic to expect Ms. O'Leary to be able to travel to South Africa on a regular basis or that - as occurred in July 2008 - she should be expected to make that very long journey at almost a moment's notice to care for them when they became ill and are unable to look after themselves.

39. Even if they remained in good health, I have no doubt but that Ms. O'Leary would have been beset by continual anxiety having regard to the clear vulnerability of her parents to attack in their home had they remained in South Africa. A further consideration is that the Lemieres no longer have any children resident in South Africa and it is obvious that Ms. O'Leary would want to provide the necessary emotional and other support to her parents in such circumstances.

The conduct of the Lemieres vis-à-vis the Minister

40. One striking feature of the July memorandum was the extent to which the conduct of the Lemieres was subject to some strong and - perhaps it would be more accurate to say - acerbic criticism. It was suggested that they had "attempted to circumvent and manipulate the immigration system to their own ends." The author continued:-

> "…the Lemieres ostensibly entered the State for a holiday which subsequently changed to an extension of permission to remain and then to long-term dependency. I feel that the Lemieres have been disingenuous in many of their dealing with the Department and entered the State with the express intention of remaining in Ireland for as long as they choose."

41. As if this were not enough, the author added:-

> "The Lemieres have two children living in the UK with their respective partners and families. However, they were refused a visa to enter the UK for a 10-day holiday in March, 2009 with the UK authorities citing a number of reasons, including the fact that they had applied for residency to live in Ireland and that application had not been determined. One could infer from this that the Lemieres are 'shopping around' for a country to live in and that they have no particular affinity with Ireland and could just as easily live in any other EU country as in Ireland. On that basis, it might be argued that they are not dependent on Ms. O'Leary alone for physical and mental support."

42. It is very difficult to know what to make of this criticism, save, that, strive as I have, I can see no possible justification for such comments, which some may consider ill-judged. It is true that the Lemieres did not declare in advance of their arrival in Ireland in February 2009 that they intended to reside here on a long term basis, but, as has been pointed out, there was no procedure whereby such an application could have been made in advance in respect of a couple coming from a visa-exempt country such as South Africa. So far as I can see, the Lemieres conducted themselves completely properly up to the point of the decision and complied with the directions of the Department.

43. Nor am I prepared to draw any adverse inferences from the fact that the Lemieres sought to visit the UK. A far more natural inference, for example, from the Lemieres' application for a visa to the UK is that they wanted to visit their two other children who are based there. Even if it be said that the Lemieres contemplated at one stage staying in the UK on a long term basis, this, too, is perfectly understandable. Their children have made their life in Ireland and the UK and it is scarcely a surprise that parents in their position would want live closer to them or that, for example, they would be just as happy in principle to stay with one daughter in the UK as distinct from another in Ireland.

Conclusions

44. It is implicit from the foregoing that the applicants have established substantial grounds for challenging the Minister's refusal pursuant to s. 5(2) of the Illegal Immigrants (Trafficking) Act 2000. I would therefore grant leave to apply for judicial review on the general basis that the Minister's decision represented a disproportionate interference with Ms. O'Leary's Article 41 rights and that the reasoning for the refusal was not based on a fair and reasonable assessment of the underlying facts and considerations.

45. I will also grant leave to the applicants to challenge the decision by reference to Article 8 ECHR and Article 14 ECHR, although in the light of the Supreme Court's decision in *McD v. L.* [2009] IESC 81, [2010] 2 IR 199 regarding the sequence to be followed in relation to such claims, it is plain that these ECHR arguments only arise should it transpire that the domestic constitutional law arguments will not avail the applicants.

46. The question of reverse discrimination under EU law also hovers over this case. It is not in dispute but that had Ms. O'Leary been a citizen of another EU state, she would have been entitled to have her dependent parents reside with her pursuant to the provisions of Directive 2004/38/EC. However, as she is an Irish citizen she is not permitted to invoke the provisions of the Directive within the realm of matters which are governed entirely by domestic law: see, *e.g.,* Case C-43/90 *Shirley McCarthy* (2011).

47. The applicants do not dispute this proposition. But Mr. Finlay SC urges that it would be incongruous that dependent parents could be protected under EU law if no equivalent protections were available under our domestic law and that Article 41 should not be so weakly interpreted as to sanction this state of affairs. I regard this argument as implicit in the leave just granted, but, if necessary, I will also expressly grant leave on this ground as well.

48. The obvious devotion of Ms. O'Leary to her parents is manifest. Her steadfastness in this regard is thoroughly commendable and is, indeed, an example to us all. Mr. O'Leary's dedication to the welfare of his parents-in-law is no less exemplary. Their deportment vis-à-vis their respective parents and parents in law should be a matter for praise and encouragement, rather than suspicion and criticism. While virtuous conduct cannot always be rewarded by the law, I should have thought that, measured by the values to which this society has committed itself in Article 41 of the Constitution - the protection of which is the solemn duty of this Court - the O'Learys should not be placed at a disadvantage simply because they believe more than most of us do in the precepts of the Fourth Commandment.