Neutral Citation: [2015] IEHC 178

THE HIGH COURT

JUDICIAL REVIEW

[2014 No. 631 J.R.]

BETWEEN

A. S.

APPLICANT

-AND-

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr. Justice Mac Eochaidh delivered on the 16th day of March 2015

1. This is an application for an interlocutory injunction restraining the applicant's deportation pending the determination of a challenge to a refusal to revoke a deportation order. Leave to seek judicial review was granted *ex parte* on 3rd November 2014.

Background:
2. The applicant is a Bangladeshi national born on 1st April 1971. The applicant states that he was a university lecturer in political science and an active member of the Bangladesh Nationalist Party (BNP) in his home country. He states that he was 1st Joint Secretary of a committee within the party in this regard. He is married with a son and daughter and his family continue to live in Bangladesh. He states that following the declaration of emergency powers legislation in Bangladesh on 11th January 2007, the government began arresting and torturing members of the opposition such as the BNP. He claims that he was dismissed from his employment on 2nd February 2007 owing to his political involvement.

3. In his affidavit of 29th October 2014, the applicant avers that some of the information which he originally provided to the authorities during his application for refugee status in the State was incomplete and misleading. In particular, the applicant admits that he failed to tell the Irish authorities that he had been granted two visas permitting him to visit the United Kingdom. The applicant states that he visited the UK from the 11th April 2006 to 1st August 2006 and from 15th November 2007 until 19th March 2008. He states that these visa dates are confirmed by the relevant entry and exit stamps appearing on his Bangladeshi passport, possession of which he had also failed to disclose to the authorities. The applicant states that he conducted these visits to the UK in order to visit some educational institutions and to learn about the UK's education system. The applicant claims that he did not tell the Irish authorities about these visits as he feared he would be returned to the UK and eventually deported from there to Bangladesh.

4. The applicant now claims that following his return to Bangladesh on 19th March 2008 he organised a BNP party meeting in his house. He states that the police found out about the meeting and raided the house. He claims that he escaped and ran away, staying in a hotel and contacting his BNP colleagues from there. He claims that with the help of his older brother and a friend he went to Dhaka and with the help of an agent arranged to travel to Iran before travelling to Turkey. He states that he left there by ship and reached Ireland on 5th April 2008. He claims that he stayed with some Bangladeshi nationals in Trim, Co. Meath who informed him how to apply for asylum but that he was in ill-health after the long journey and did not make his application immediately. He claims that before he got the opportunity to apply for asylum he was arrested by Gardai when he was found to be without proper identification. The applicant's claimed fear is that he will be persecuted in Bangladesh owing to his political opinion and activities.

5. The applicant was refused a recommendation of refugee status by the Refugee Applications Commissioner on the basis of a lack of credibility and this finding was affirmed on a 'papers only' appeal to the Refugee Appeals Tribunal. He subsequently made an application for subsidiary protection and for leave to remain in the State. The Minister notified the applicant of the refusal of his application for subsidiary protection on 10th August 2011 and by letter of 9th September 2011 he was informed that his application for leave to remain was also refused and that a deportation order had been made against him. The applicant thereafter initiated judicial review proceedings in respect of the decisions refusing subsidiary protection and leave to remain on 24th October 2011. On 26th March 2013, the respondent sought to have the proceedings dismissed on the basis that the applicant had failed to disclose those material facts set out above during his application for refugee status. As such, the applicant withdrew the proceedings and the respondent obtained an order for its costs.

6. An application pursuant to s. 3(11) of the Immigration Act 1999 was made on 6th November 2013 for revocation of the deportation order made against the applicant. The applicant states that the basis of this application was the submission of a large amount of new evidence and a change in circumstances in Bangladesh. The applicant also states that he sought an undertaking not to deport him pending the consideration of this application but the undertaking was not forthcoming from the Minister. Updated submissions and documentation was furnished to the Minister on 16th, 24th and 27th of January 2014 enclosing further country of origin information which documented the developing situation in Bangladesh.

7. Following his attendance at the GNIB offices on Burgh Quay, Dublin on 11th April 2014, it became apparent to the applicant that the authorities were seeking to organise an identification document from the Bangladeshi Embassy in London in order to facilitate his deportation. As it appeared that his deportation was imminent and he had yet to receive a consideration of his s. 3(11) application for revocation, the applicant launched judicial review proceedings seeking leave *ex parte* from this court on 12th May 2014. Leave was granted on that date with an interim injunction restraining deportation until 19th May 2014 also granted. When the matter appeared in the list on that date, counsel for the respondent stated that the Minister had agreed to give an undertaking not to deport the applicant until 23rd June 2014.

8. By letter of 16th May 2014, the applicant was notified of the refusal of his s. 3(11) revocation application. On 23rd June 2014, the applicant again sought the *ex parte* leave of the High Court to challenge the said refusal. Leave was granted on that occasion by Keane J. and an interim injunction restraining deportation was also made in respect of the applicant. These proceedings were later struck out on consent on 28th July 2014 following the agreement by the respondent to withdraw the refusal of the revocation application and to issue a new decision in this regard.

9. Updated representations were made by the applicant's solicitors on 19th August 2014 and by letter of 1st October 2014 the applicant was notified that his application for revocation had been refused again. The applicant attended at the GNIB for signing

purposes on 21st October 2014 and was given his next signing date of 18th November 2014. It is noted that while the respondent has previously, on occasion, granted an undertaking not to deport the applicant counsel was informed that any such undertakings would not be continuing henceforth and commenced ex parte proceedings seeking leave to apply for judicial review. Leave to seek judicial review was granted by this court on a second occasion on 3rd November 2014 and an interim injunction restraining deportation was granted until 17th November 2014.

Submissions:
10. Counsel for the applicant, Mr. Anthony Hanrahan B.L., submits that this is a refoulement-type case in the context of apparent on-going political violence in Bangladesh. In this regard, it is submitted that the law governing the granting or withholding of an interlocutory injunction is clear and is as set down by Clarke J. in *Okunade v. Minister for Justice* [2012] IESC 48 and Laffoy J. in *P.B. N. [DR Congo] v. Minister for Justice & Equality* [2014] IESC 9.

11. The applicant refers specifically to para 10.6 of the judgment of Clarke J. in *Okunade* to the effect that:

> "if an applicant can demonstrate that deportation, even on a temporary basis, would cause more than what one might describe as the ordinary disruption in being removed from a country in which the relevant applicant wished to live, such as a particular risk to the individual or a specific risk of irremediable damage then such factors, if sufficiently weighty, could readily tilt the balance in favour of the grant of an injunction or a stay."

12. It is submitted that the applicant in this case faces a particular risk or a specific risk of irremediable damage if deported back to Bangladesh. In this regard, counsel refers to the country of origin information furnished to the Minister highlighting the politically motivated violence in the country, particularly around the elections held in January 2014. Counsel also refers to the applicant's political involvement in his home country and his fears of returning in light of the deterioration in the political situation.

13. Counsel refers to the dicta of Clarke J. at para. 10.7 where he states:

> "Where, on an arguable grounds basis, the situation with which a judge of the High Court is faced when considering an interlocutory injunction application in this field is one where there is a credible basis for suggesting that a real risk of significant harm would attach to the applicant on deportation, then it would require very weighty considerations indeed to displace the balance of justice on the facts of that case, certainly if what was intended was a deportation back to the country in which the relevant applicant would face those risks (rather than, for example, to an earlier "safe" country in accordance with the Dublin Convention). While, therefore, important and fundamental rights can be involved it does not necessarily follow that, in each case in which an interlocutory injunction is sought, there is any credible basis for suggesting that truly fundamental rights are, in fact, involved. Where such rights are involved a very heavy weight indeed needs to be attached to them."

14. It is submitted that in the light of the country of origin information submitted to the Minister, there is a real risk of significant harm to the applicant if he was deported to his home country and that weighty considerations need to be shown by the respondents to displace the balance of justice in favour of the applicant on the facts of this case. In this regard, counsel refers to a number of different newspaper articles submitted by the applicant which outline the numbers killed in political violence in Bangladesh and to an Amnesty international report highlighting the enforced disappearances and torture of people in Bangladesh.

15. It is conceded by counsel that the applicant has shown a lack of candour in the past, particularly in the context of his initial application for asylum, however it is submitted that he has at all times maintained that his stated fear which caused him to flee from his home country relates to the raid by police on the BNP party meeting held his house and the persecution of BNP party members in this regard. It is stated that the entry and exit passport stamps confirm the applicant's contention that he was in Bangladesh when the claimed BNP meeting in his house was held and that he remains credible on the underlying basis for his stated fear. Counsel also refers to further country of origin information in the form of a newspaper article submitted to the Minister (and which the Minister does not appear to doubt) which shows the applicant running for mayor in 2002, information which it is said underpins the applicant's contention that he was politically involved in Bangladesh.

16. Counsel refers to the test to be applied by the court in this injunction application and notes that Laffoy J. in the Supreme Court in *P.B.N. [DR Congo] v. Minister for Justice & Equality* [2014] IESC 9, examined the principles set out in *Okunade* and stated (at paragraph 26):

> "the question for this Court is whether, on an arguable grounds basis, there is a credible basis for suggesting that a real risk of significant harm would attach to the appellant on deportation. If the answer is in the affirmative, then, in the absence of very weighty countervailing considerations, the balance of justice favours granting an interlocutory injunction restraining deportation."

17. In this regard, it is noted that Clarke J. in relation to the standard of proof applicable in an application for an interlocutory injunction to restrain deportation, observed in *Okunade* that:

> "9. 41 Requiring that the applicant establish a prima facie case does not seem to me to, in any way, deprive an applicant of an effective remedy for the purposes of European Union law. The relevant applicant has access to a tribunal and is only required to satisfy that tribunal (being the High Court) that there is an arguable case to be tried on the merits. It is hard to see how an applicant who fails to meet that relatively low threshold could be said to have been denied an effective remedy in the event that the court does not make an interlocutory order."

18. It is submitted that in refusing the application for revocation, the Minister found that the applicant would not be in danger from political violence in Bangladesh if he were returned to that country. It is contended in the Statement of Grounds that this finding is unreasonable and that on the 3rd November 2014, this court in granting leave to bring these proceedings found that the applicant had shown arguable grounds. It is contended that it has thus already been established on an arguable grounds basis that the respondent's finding that the applicant would not be in danger in Bangladesh is unreasonable. It is submitted that it logically follows that it has been established on an arguable grounds basis that there is a credible basis for suggesting that there is a real risk of the applicant suffering significant harm in Bangladesh if returned there.

19. While it is conceded that the court must ask itself different questions when considering an application for leave and when considering whether to grant an interlocutory injunction, it is submitted that the tests are very similar, as confirmed by Clarke J. in *Okunade*:

"9.21 What the first part of the *Campus Oil* test requires is that the applicant establish a fair or arguable case. However, if an applicant was in a position to have an immediate hearing of the leave application, then it would be necessary to establish a sufficient case in order that leave be granted. I find it difficult to understand how it can be argued that an applicant, who could be refused leave by reason of failing to establish a sufficient arguable case, has an effective remedy but an applicant who, pending leave, is, in order to meet the first leg of the *Campus Oil* test, required to meet a similar (or in some cases, where substantial grounds would need to be shown to obtain leave, lower) standard is said to be denied access or an effective remedy."

20. In this light, it is therefore submitted that the applicant is entitled to an interlocutory injunction restraining deportation pending the determination of the proceedings.

21. Counsel for the respondent, Mr. Anthony Moore B.L., notes in the first instance that the applicant made his application for asylum on 27th May 2008 after being arrested on the 15th May 2008 during the course of an inspection of a restaurant. Counsel states that the applicant's claim for asylum was based on the ground of "political opinion" as he had been a member of the Bangladesh Nationalist Party and had to go into hiding in 2007 in Bangladesh and remained in hiding until March, 2008, when he held an unauthorised political meeting. The respondent notes that the applicant failed to disclose that he had used a passport to obtain two visas to enter the United Kingdom, and that the latter occasion on which he entered the United Kingdom in 2007 coincided with the time during which he had untruthfully claimed to have been in hiding and in fear of his life in Bangladesh.

22. In this regard, it is noted that in refusing his revocation application, the Minister took the view that he was not at risk in Bangladesh as he had a low political profile and the political situation in Bangladesh had returned to normality, with the party of which the applicant claimed to be a member participating in local elections with considerable success. Further, it is said that the Minister also disbelieved the applicant's narrative about why he had to flee Bangladesh, having regard to the fact that he was actually in the UK for a considerable period of the time he claimed to have been in hiding.

23. Counsel submits that the 'default position' with regard to the operation of deportation orders is set out by Clarke J. in *Okunade v. Minister for Justice* [2012] IESC 49. Clarke J. states:

"10.2 The entitlement of the executive of any country to exercise a significant measure of control, within the law, of its borders is an important aspect of the public interest of any state. It seems to me, therefore, that a significant weight needs to be attached to the implementation of decisions made in the immigration process which are prima facie valid. It would, in my view, be an insufficient recognition of the legitimate entitlement of the state to ensure the orderly conduct of the immigration and asylum process not to place a high weight on the need to respect orders and decisions made in that process unless and until they are found to be unlawful. The importance to be attached to the exercise by the state of its right to control its borders and implement an orderly immigration policy has been touched on by this court in a number of decisions most recently in *Meadows v. Minister for Justice, Equality and Law Reform* [2010] IESC 3. In *Meadows* Murray C.J. referred to *'public policy, including the integrity of the asylum system'* as being part of the balance which needed to be struck in decision making. Likewise Denham J., in the same case, noted that *'the Executive has a primary role in relation to policy and immigration*.' While those comments were made in a case involving an assessment of substantive rights it seems to me that like considerations require that appropriate weight be attached to the orderly implementation of immigration policy in determining where the balance of justice lies at the interlocutory stage."

24. Further, counsel notes that Clarke J. commented:

"10.4 [I]n the absence of any additional factors on either side, it seems to me that, if faced simply with an assertion on the part of the Minister that it is desired that a deportation order be enforced unless and until it be found invalid and an assertion on the part of an applicant that the applicant in question does not wish to run the risk of being deported only to be readmitted if the relevant proceedings are sufficiently successful, the position of the Minister would win out. It should also be taken into account that, at least in many cases, the result of a successful judicial review challenge will not necessarily lead to the applicant in question being entitled to remain indefinitely in Ireland or if already out of Ireland to be entitled to come back to Ireland for the purposes of remaining here indefinitely. In very many cases the only consequence of a successful challenge is, as has been pointed out, that issues of substance will require to be considered again or that some further process will need to be engaged in before a final decision is made. That too is a factor to which appropriate weight should be attached and which favours, in the absence of material countervailing factors, the implementation of a deportation order. Of course, where the presence of the relevant applicant in Ireland might be necessary to enable any subsequent process to be conducted or hearing to be held, that factor too would need to be taken into account, although there are many ways (such as an by appropriate undertaking) by which such attendance, if found necessary, could be facilitated.

10.5 The default position is, therefore, that an applicant will not be entitled to a stay or an injunction."

25. Counsel also refers to the comments of McCracken J. in the Supreme Court in *Cosma v. Minister for Justice* (Unreported, Supreme Court, 10th July, 2006) where the court refused to grant an injunction as it was believed that the effect would be to thwart the operation of a perfectly valid deportation order and would, to some degree, prevent the operation of a perfectly valid and unappealable High Court order.

26. The respondent submits that the Supreme Court made clear in *Okunade* that, absent strong countervailing considerations, the default position when it comes to assessing the balance of convenience is that the Minister should be allowed to enforce the deportation order. Counsel refers to the decision of this court in *Khan v. Minister for Justice* [2013] IEHC 186 in that regard. In that case this court took into account certain factors in reaching its decision:

"I bear in mind certain factors when I seek to answer the question whether sufficient countervailing circumstances have been addressed or have been explained to the court: first, the length of the marriage, and this marriage, it must be said, is not of long duration. Secondly, I bear in mind that unlike a situation in *Okunade*, there is no question of any children being deported in this case. There will, undoubtedly, be disruption to the relationship the children have formed with their mother's new husband, but they will not be deprived of their father.

I also bear in mind that it is a natural consequence of any deportation that people will be deeply upset at the disruption that such deportation will cause. I have regard to the manner in which such disruption was addressed by the Supreme Court in *Okunade*, where at paragraph 10.6, the court said as follows:

> 'Furthermore, if an applicant can demonstrate that deportation, even on a temporary basis, would cause more than what one might describe as the ordinary disruption in being removed from a country in which the relevant applicant wished to live, such a particular risk to an individual or a specific risk of irremediable damage then such factors, if sufficiently weighty, could readily tilt the balance in favour of the grant of an injunction or a stay.'
>
> I have come to the conclusion that the disruption and the disadvantage which has been urged upon the court as being the countervailing circumstances which should displace the default position are not sufficiently weighty and are not of the order which would warrant this court interfering with a deportation, the legality or validity of which has never been challenged before this court."

27. In this regard, it is submitted that the wrongful conduct and lack of candour of the applicant ought to weigh heavily in the balance when deciding whether or not to refuse his injunction application. It is asserted that the applicant has not come to court with clean hands and it is submitted that he should be refused injunctive relief as a result. Counsel refers the court to the dicta of Hardiman J. in *Zadeh v. Minister for Justice* (Unreported, Supreme Court, 2nd November, 2007), Peart J. in *Oyenyi v. Minister for Justice* (Unreported, High Court, 3rd July, 2007), Hogan J. in *Y.M. v. Minister for Justice* [2011] IEHC 452 and Cooke J. in *AW v. Minister for Justice* [2010] IEHC 258 in support of this proposition.

28. The respondent submits that the underlying principle applicable in this case was discussed by Clarke J. in *Okunade*, who stated:

> "9.19 [T]he same underlying principle applies in any application taken in the context of a judicial review which is designed to determine what position is to pertain until the substantive judicial review proceedings in question have been finally determined (including the position which is to pertain pending a contested inter partes leave application). The court is required to make an order which minimises the risk of injustice. I am also satisfied that the so called *Campus Oil* test provides a useful starting point in determining the proper principles to be applied in the analogous situation which arises pending the hearing of a judicial review application."

29. In this regard it is contended that the Supreme Court's approach applies equally to pre-leave and post-leave applications for injunctions:

> "9.24 This case is, however, concerned with is the proper test to be applied where there is an interlocutory application before the court which is designed to prevent the implementation of a deportation order pending either a relevant leave application in judicial review proceedings or, indeed, at least in theory, post leave and pending a full hearing. For the reasons already analysed I am satisfied that the fair or arguable issue to be tried leg of the Campus Oil test must also be met in the context of judicial review applications."

30. Counsel submits that the Supreme Court recognised that it may be appropriate to give effect to orders such as deportation orders pending trial and that the same applies even where, as in this case, arguable grounds have been shown for contesting an administrative decision. The comments of Clarke J. are noted that:

> "9.30 …An order or measure which is at least prima facie valid (even if arguable grounds are put forward for suggesting invalidity) should command respect such that appropriate weight needs to be given to its immediate and regular implementation in assessing the balance of convenience."

31. The respondent asserts that a case-by-case analysis is required and notes that at para. 9.42 of *Okunade* Clarke J. said that as part of the "overall test" the court is entitled to place all due weight on the strength or weakness of the applicant's case.

32. Counsel notes that in *P.B.N. [DR Congo] v. Minister for Justice* [2014] IESC 9, the Supreme Court acknowledged this view, subject to the qualification that the issues arising do not involve "*detailed investigation of fact or complex questions of law*" as per Lord Diplock in *American Cyanamid Co. v. Ethicon Ltd.* [1975] 1 AC 396.

33. It is noted that Laffoy J., having found that the applicant had established an arguable case for the contention that the Minister had erred in his assessment of her claims, went on to consider where the greatest risk of injustice would lie:

> "26…Obviously, in applying that test, the Court must have regard to the factors outlined by Clarke J. at (i) to (iv) of paragraph (b) of 'the overall test' set out in paragraph 9.42 of his judgment quoted earlier and, in particular, the Court must have regard to guidance given as to the application of those factors to immigration cases in the *Okunade* judgment. The aspect of that guidance which, in my view, is of most relevance to the circumstances of this appeal is to be found in paragraph 10.7. Applying the passage from that paragraph quoted at paragraph 10 earlier, the question for this Court is whether, on an arguable grounds basis, there is a credible basis for suggesting that a real risk of significant harm would attach to the appellant on deportation. If the answer is in the affirmative, then, in the absence of very weighty countervailing considerations, the balance of justice favours granting an interlocutory injunction restraining deportation.
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> 27. I am satisfied that there is, on an arguable grounds basis, a credible basis for suggesting that a real risk of significant harm would attach to the appellant if the Deportation Order were implemented. I am also satisfied that no very weighty considerations have been identified to displace the balance of justice being in favour of granting an injunction. In reaching that conclusion, I have had regard to whether this case falls within the category of judicial review cases identified by Clarke J. in paragraph 10.7 in the judgment in the *Okunade* case. There Clarke J. referred to a situation where the Court is in a much better position to form a judgment on the question whether there is a real risk of serious harm should a deportation order be implemented because the applicant has had the opportunity to have the facts underlying his or her claim to such a risk analysed by a series of administrative and judicial bodies. While there was before the High Court and there is before this Court, not only the lengthy file examination carried out on the s. 3(11) application, but also a review carried out by an official in the Ministerial Decisions Unit of the respondent's Department on the s. 17(7) application, in my view it is not possible, and it would be inappropriate to attempt, to form a view that there is not, on an arguable grounds basis, a credible basis that there would be a real risk of harm to the appellant if she were deported to the DRC. The reality is that the evidential conflicts raised on the documents considered by the administrative bodies and exhibited on this application, including the Unsafe Return Report and the UKBA Report, which concern the fundamental right to be protected from serious risk of harm, are such that it is not the function of the Court to attempt to resolve them on an interlocutory application."

34. It is submitted by the respondent that this case is distinguishable from that of *P.B.N.* While it is conceded that it is common to both cases that arguable grounds have been identified for the contention that the Minister erred in making the decision under

challenge, it is submitted that in this case, unlike in *P.B.N.*, there are "weighty considerations" which displace the balance of justice being in favour of granting an injunction. In particular, counsel submits that the applicant has engaged in wrongful conduct and shown a lack of candour throughout the asylum, subsidiary protection, and leave to remain processes, specifically asserting that he was in hiding in fear of his life in Bangladesh in 2006 and 2007, whereas in fact he was actually lawfully in the United Kingdom during that period and freely returned to Bangladesh thereafter.

35. It is submitted the applicant, even in these proceedings, has skirted the ramifications of the lies told by him throughout the asylum process in respect of his overall claim. In this regard, it is stated that he admits that he was in the UK and returned to Bangladesh on the 19th March, 2008, but fails to explain how, if at all, he managed to organise a meeting in his house on the 25th March, 2008 which contravened a state of emergency and ultimately led to him fleeing his home country.

36. It is submitted that there is no credible basis that there would be a real risk of harm to the applicant were he to be deported pending a post-leave hearing. It is contended that, at its height, his claim is that he has a low political profile in Bangladesh on account of his activities with the BNP party. It is noted that he sought to argue in his revocation application that he would be at risk arising out of electoral violence in January 2014, however it is submitted that the information obtained by the Minister showed that there was nothing to suggest low-level BNP activists were being detained by the authorities and importantly that political tensions in Bangladesh had abated, with reference being made to the BNP's participation and success in local elections later that year. It is submitted that the applicant has not put forward any evidence to contradict that or to displace the views of the Minister that he would not be at risk on account of his political activities with regard to the BNP if returned.

37. Therefore, counsel contends that unlike in *P.B.N.*, there are no evidential conflicts raised on the documents before the court. Using the language of Clarke J. in *Okunade* (at paragraph 10.6), it is submitted that it is relatively straightforward to establish on the evidence that a person with the limited political profile of the applicant and the current situation in Bangladesh does not give rise to a "particular risk to the individual or a specific risk of irremediable damage" in the event of his return there.

38. Finally, counsel for the respondent notes that the applicant maintains that there would be no risk of "floodgates" opening if an injunction is granted in a case such as this where a refoulement issue is raised and leave is granted on it at the *ex parte* leave stage. However, it is submitted that the success of his application for an injunction would in fact have the effect of rendering the considered judgment of the Supreme Court in *Okunade* an exercise in theory and stymie the enforcement of deportation orders. The basis for this contention is that any experienced legal team would be able to identify some arguable grounds (the threshold being low) for the contention that returning their client to his country of origin would breach the prohibition on refoulement or otherwise expose him to ill-treatment. Counsel submits that this is precisely why the Supreme Court in *Okunade* stated that:

> "While, therefore, important and fundamental rights can be involved it does not necessarily follow that, in each case in which an interlocutory injunction is sought, there is any credible basis for suggesting that truly fundamental rights are, in fact, involved."

39. It is submitted that this is precisely the type of case the court had in mind and that the argument that the applicant would be at risk in Bangladesh on the basis of his low political profile in wholly illusory. It is therefore submitted that the injunction sought should be refused.

Analysis:
40. The applicant has sought revocation of a deportation order because of a changed policitical situation in his country of origin. However, the reasons for his fears of persecution are not new and have been rejected in a series of decisions given by ORAC, the RAT and the Minister on his application for subsidiary protection and in his recent revocation application.

41. Interlocutory applications to prevent a deportation in proceedings against a refusal of revocation because of a rejection of the alleged risk of refoulement are governed by the principles set out in *Okunade*. In other words, it is not possible to avod the *Okunade* rules by simply asserting a fear of refoulement. That leave has been granted to challenge a refusal to revoke does not establish to the standard required the existence of circumstances which tip the balance in favour of restraining deportation and against the well-established default position which is that deportations must be effected pre-trial if the State so desires.

42. The principles governing an application for interlocutory relief where an applicant alleges that the rejection by the Minister of his stated fear of refoulement was unreasonable have been restated by Laffoy J in *P.B.N*: "the question for this Court is whether, on an arguable grounds basis, there is a credible basis for suggesting that a real risk of significant harm would attach to the appellant on deportation. If the answer is in the affirmative, then, in the absence of very weighty countervailing considerations, the balance of justice favours granting an interlocutory injunction restraining deportation".

43. Ultimately, (assuming the applicant has met the basic *Campus Oil / Okunade* test but faces the default position in favour of deportation) to succeed, the applicant must persuade me on an arguable grounds basis that he faces a real risk of significant harm if deported.

44. Reviewing the applicant's narrative of his fear of harm from its first telling to its final iteration in these proceedings, it is very difficult to identify evidence of a real risk of significant harm attaching to the applicant's circumstances. No evidence has been presented to the court that persons such as the applicant are at real risk of significant harm in Bangladesh. The arguability of this proposition has not been established. The evidence which has been presented is the same evidence presented on the application for revocation of the deportation order. Nothing in this material supports the suggestion that low echelon members of the applicant's political party are at risk of harm.

45. I see no difference between the approach to assessing the existence of fear of harm in a refoulement context to the approach adopted in the general refugee context. A person who asserts fear of harm as the basis for resisting deportation must establish a subjective basis of the fear as well as some obejective basis for the fear. In accordance with the dicta of Laffoy J., the standard to which this must be established on an interlocutory basis is not very high. Arguable grounds for the existence of both the subjective and objective elements of the fear are needed.

46. It is important to note that the applicants's alleged fears which form the basis of this application are the same as the fears which formed the basis of his various applications for asylum and subsidiary protection and revocation, though of course he says that the current political environment in Bangladesh has increased the risk of harm.

47. The applicant has consistently sought to demonstrate the existence of the subjective element of his fear by saying that he was forced into hiding in Bangladesh between February 2007 and March 25th 2008. Having been through the international protection

regime, it emerged that he had not been in hiding in Bangladesh or anywhere else between the 15th of November 2007 and the 19th of March 2008. The applicant accepts that he was visiting the United Kingdom recreationally at that time. This untruth presents two problems for the applicant. As indicated, it harms his claim that his fear of persecution forced him into hiding. Secondly, the fact that he returned from the UK to the source of his fear, suggests that he had no such fear at the relevant time. The applicant has made no effort in these proceedings to deal with the extent to which a major element of his evidence in support of the existence of his subjective fear is false. He should, on this application, attempt if he can to undo the harmful effect such untruths have on his general credibility because the rules require him to establish that he fears real harm, on the basis of arguability. For such a claim to be arguable at this stage, the negative effects of the untruths as to his fears must be addressed, however minimally, and this has not occurred. Having failed to deal with this issue in any way in this application it is very difficult for the court to accept that he has established even to the relatively low standard required that he personally fears significant harm in Bangladesh. The applicant's evidence in support of the subjective element of the fear is not credible because of the untruths he told in the past about being in hiding and this damage has not been repaired on this application.

48. It is recalled that the applicant's case is that he organised a political meeting on the 25th of March 2008. He says that he will be persecuted on his return because he organised this meeting which indicates his political affiliation and that the risk of persection has increased because of recent events in Bangladesh. His credibility as to his core claim has been consistently rejected by various Irish authorities. That case having been rejected in decisions which have not been disturbed by this court, it seems to me that some effort must be made in this interlocutory application to suggest why the rejection of his claims for asylum and subsidiary protection are wrong. Some such effort is required because the basis for the fear he asserts in this application is the same basis for the fear he asserted in the rejected applications for international protection.

49. Other negative factors about the applicant's history are before the court and are unaddressed. He has not offered this court any explanation as to how he came to be arrested in a restaurant in Meath in 2007 and only made a claim for asylum after his arrest. He has not attempted to explain to the court why he returned to Bangladesh from the UK and how such return is to be understood in the context of his stated fear of persecutory forces in Bangladesh.

50. In contrast to the position of the applicant in *P.B.N.*, this applicant does not rely on evidential conflicts in the material considered by the officials and the Minister on his application for revocation. I accept the respondent's argument that the applicant has not put forward any evidence to contradict that or to displace the views of the Minister that he would not be at risk on account of his political activities if returned. He asserts that the Minister has taken an unreasonable view of the county of origin information. In *P.B.N.*, the applicant persuaded the Supreme Court that there was a credible basis for a fear of harm estabished to the standard of arguability because of the evidential conflicts apparent in materials exhibited to the court as to circumstances in the Democratic Republic of Congo. The court said that it was not its function to resolve such conflicts at the interlocutory stage but once the evidential conflicts were shown to exist, the applicant met the test to resist deportation before trial. In this case, no evidence has been adduced to suggest that the Minister's conclusion that the applicant will not face risk of harm is wrong. Though enough has been done by way of leagl argument to secure a grant of leave, more is required to obtain an interlocutary injunction. I acknowledge that the applicant has exhibited a report written by Amnesty International entitiled "Stop Them Now", dated September 2014. It is not apparent how the mischief described in that document relates to the position of the aplicant or, more importantly, how it contradicts the material considered by the Minister and the conclusion reached that the aqpplicant did not face a risk of refoulement. The conflict of evidence which was central to the decision of Laffoy J. in *P.B.N.* is absent in this case.

51. I refuse the application for an interlocutory injunction to enjoin deportation of the applicant.