THE HIGH COURT

JUDICIAL REVIEW

[2017 No. 603 J.R.]

BETWEEN

A.B. (ALBANIA)

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

(No. 2)

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 25th day of January, 2018

1. In *A.B. v. Minister for Justice and Equality (No. 1)* (21st December, 2017) I declined to grant certiorari of a decision refusing to revoke an unchallenged deportation order. Mr. Michael Conlon S.C. (with Mr. Mel Christle S.C. and Mr. Ray Walsh B.L.) now applies for leave to appeal that decision to the Court of Appeal, and I have received submissions from him and from Ms. Gráinne Mullan B.L. for the respondent. I considered the law in relation to leave to appeal as set out in *Glancré Teoranta v. An Bord Pleanála* [2006] IEHC 250 as well as *S.A. v. Minister for Justice and Equality (No. 2)* [2016] IEHC 646 [2016] 11 JIC 1404 para. 2, and *Y.Y. v. Minister for Justice and Equality (No. 2)* [2017] IEHC 185 [2017] 3 JIC 2405 at para. 72.

First question – alleged conflict in jurisprudence

2. The first question relates to an alleged conflict in Supreme Court jurisprudence. But it is possible to read the jurisprudence in a way that avoids any such conflict. It is not contradictory to say, as I do here, that an applicant can make a s. 3(11) submission on any basis he or she wishes including points that were there originally (which is how I read *Sivsivadze v. Minister for Justice, Equality and Law Reform* [2016] 2 I.R. 403 (see para. 52)), but that the Minister is entitled to refuse the application unless it amounts to something significantly new (which is how I read *C.R.A. v. Minister for Justice, Equality and Law Reform* [2007] 3 I.R. 603 and *Smith v. Minister for Justice, Equality and Law Reform* [2013] IESC 4). But in any event, having further considered the matter, Mr. Conlon accepts that this point may not arise because it was not determinative in the sense that I accepted his entitlement to make submissions under s. 3(11) by way of further elaboration of points that were there originally; and accordingly he did not particularly press this issue.

Second question – alleged requirement on the Minister to revisit s. 3 matters at the revocation stage

3. The second question is "*where s. 3(6) reasoning on family life has proceeded on a particular - potentially mistaken - factual basis in relation to family relationships, "There was no evidence that the Applicant was receiving support from his brother or indeed is in contact with him*", *which is contradicted by materials submitted for the 3(11) application* ("Our client is residing with his brother") *and* "I confirm that the above patient attended with his most supportive brother*", is the new contradictory material sufficient to require the 3(11) decision maker to look de novo at the question of the applicant's family life*"?

4. Mr. Conlon accepts that relationships between adults do not necessarily require the protection of art. 8 of the ECHR without evidence of further elements of dependency involving more than the normal emotional ties (see *S. v. the United Kingdom* [1984] 40 D.R. 196 at 198, as discussed recently in *Secretary of State for the Home Department v. Onuorah* [2017] EWCA 1757 at para. 36). There are a number of fundamental obstacles for this application in the context of the actual submission made by this particular applicant. First of all, the additional material furnished came nowhere near establishing the sort of dependency that would make deportation unlawful by reason of art. 8, or that would even require more detailed consideration of the art. 8 issue. The case being made to me is a case that was simply not made to the Minister. The Minister was provided with a skeletal one-liner saying that the applicant was living with his brother. The reference in the doctor's report to the brother being supportive does not particularly advance matters. More fundamentally, the contradiction between the submission and the material furnished by the applicant's previous legal advisers to the Minister by way of submission was not explained nor was the previous statement that he was semi-homeless withdrawn expressly. No link was made between the treatment for the depression and living with the brother as such, other than the entirely anodyne statement that the brother attended and was supportive. So it seems to me this point cannot arise on the facts of this particular case, but even if it had arisen it seems to me the issue is already determined by the Supreme Court, which has made clear that the Minister does not have to review the s. 3 issues at the revocation stage and that a s. 3(11) decision should be quashed only in exceptional circumstances. Ms. Mullan placed a particular reliance on the judgment of MacMenamin J. in *P.O. v. Minister for Justice and Equality* [2015] IESC 64 [2015] 3 I.R. 164, particularly at p. 180 where he states that in a revocation application the Minister must consider the submissions made and determine whether a change of circumstances triggers a prohibition on return but "*there is no obligation to embark on a new investigation or inquiry*". It seems to me that that very clear statement covers the point now being sought to be made. Mr. Conlon suggests, very ambitiously, that his point is tenable because there is a difference between a conclusion being expressed and being implied, and that the judgment of MacMenamin J. does not expressly cover the type of point he is making now, but it seems to me that that judgment clearly does cover the position that there is no obligation to revert to the s. 3(6) analysis. That, it seems to me, is determinative of the question (see also, on the limited scope of challenges to s. 3(11), the case law I referred to in the No. 1 judgment, particularly *Smith v. Minister for Justice and Equality* [2013] IESC 4 (Clarke J.) *Kouyape v. Minister for Justice and Equality* [2005] IEHC 380 [2011] 2 I.R. 1 (Clarke J.) *Dada v. Minister for Justice, Equality and Law Reform* [2006] IEHC 166 (Unreported, MacMenamin J., 21st January, 2006), *C.R.A. v. Minister for Justice, Equality and Law Reform* [2007] 3 I.R. 603 (MacMenamin J.) and *L.C. v. Minister for Justice, Equality and Law Reform* [2007] 2 I.R. 133 [2006] IESC 44 (McCracken J.)).

Third and fourth questions

5. The third and fourth questions amounted to further variations of the essential point made in the second question, but it seems to me those questions are very fact specific, and in any event are also covered by *P.O.*, for the reasons I have outlined above.

Fifth question – alleged requirement to positively verify absence of changed circumstances

6. The fifth question is "*where a decision-maker has stated that* "All documentation and information received for or on behalf of the Applicant have been read and fully considered", *can it be inferred that any change in circumstances between the facts/assumptions on which the 3(6) reasoning is based on the contents of the 3(11) application have been lawfully considered (see for example the*

judgment of Hardiman J. in G.K. v. Minister for Justice and Equality [2002] 4 I.R. 418, especially at p. 426 to 427) or, alternatively, does any requirement to verify that there has been no change in circumstances, insofar as it applies to Article 8 family rights, require the decision-maker to identify any change in circumstances which show that the assumptions on which the 3(6) reasoning was based are not correct or are no longer correct?"

7. That question can only have meaning in the context of a case such as this if it implies a free-standing obligation on the part of the Minister to identify potential changes in circumstances where these have not been clearly highlighted and explained by an applicant in the s. 3(11) submission. It seems to me that the judgment in *P.O.* to which I have referred is fatal to such a proposition. It is for the applicant to make their best case and there is no free-standing obligation on the Minister to resolve contradictions in the applicant's case, to boot-strappingly identify changes in circumstances or generally to help an applicant out of a hole of his own creation, as in the present case.

Order

8. Despite Mr. Conlon's excellent advocacy on behalf of the applicant it is hard see what purpose can be achieved by a further appeal in relation to issues that have already been determined by the Supreme Court, particularly given the totally minimal, and indeed contradictory, nature of the various submissions furnished to the Minister in this case. So on that basis leave to appeal to the Court of Appeal will be refused.