Neutral Citation Number: [2008] IEHC 307

THE HIGH COURT

2007 No. 1372 JR

BETWEEN

OL. O. (A MINOR, SUING BY HIS MOTHER AND NEXT FRIEND E. O.),
OR. O. (A MINOR, SUING BY HER MOTHER AND NEXT FRIEND, E. O.)
AND F. D. O.

APPLICANTS

AND
THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENT

Judgment of Mr. Justice Hedigan delivered on the 9th day of October, 2008.

1. The first and second named applicants are Irish citizens and the third named applicant is a national of Nigeria. The Minister for Justice, Equality and Law Reform ("the Minister") decided to make a deportation order in respect of the third named applicant on 20th September, 2007. The applicants are seeking to have that decision quashed. They are also seeking a declaration that the Minister's decision was unlawful, and an injunction prohibiting the removal of the third named applicant from the State.

I. Factual Background

2. The first and second named applicants ("the applicant children") are brother and sister. They were born in the State and are now aged seven and eight years, respectively. They live with their mother, who is a national of Nigeria and is lawfully resident in Ireland. Their father has left the family. Also residing with them are their four half-siblings, who are Nigerian nationals. All of the half-siblings are adults, now aged 19-24. The young daughter of the eldest half-sibling also lives with the family.

3. The third named applicant is currently living with this family group. She is the mother of five children, all under the age of 14, who live in Nigeria with their father. She arrived in the State in March, 2006 and moved in with the applicant children's family roughly two months later. The third named applicant says that she is a cousin of the children's mother, although there is some ambiguity about their exact relation.

4. It is claimed that the third named applicant plays an important role in the upbringing of the applicant children, alongside their mother. Her role is described as being comparable to that of a 'nanny'. It is said that she is particularly important to the first named applicant, who was born with Downs Syndrome, has a congenital heart disease, and suffered from leukaemia at a young age; he then underwent chemotherapy and now has a damaged heart chamber. It is said that his mother is depressed and finds it difficult to cope with him and his siblings, although it seems clear that she is a devoted and loving mother who is dedicated to the well-being of her children.

II. Procedural Background

5. Soon after her arrival in the State, the third named applicant applied for asylum in the ordinary way. Her application was given priority and she quickly received a negative recommendation from the Office of the Refugee Applications Commissioner ("ORAC"), which was affirmed on appeal to the Refugee Appeals Tribunal ("RAT").

6. After her appeal was rejected, she forwarded two letters to the Minister, one from a Social Worker and the other from a General Practitioner. The Social Worker's letter stated that the third named applicant was "a source of huge support to her cousin" and that it would be "of great benefit" to her cousin's family if her situation could be considered under humanitarian grounds. The GP's letter detailed the health problems of the first named applicant and stated that "a supportive family member would be essential to the well being of the family". It has emerged that the latter may not have reached the Minister but I do not think that much turns on this discrepancy.

7. Thereafter, by letter dated 10th November, 2006, the Minister notified the third named applicant that he proposed to make a deportation order and invited her to make representations as to why she should not be deported, and/or to apply for subsidiary protection. Representations seeking leave to remain were made on her behalf, along with an application for subsidiary protection, on 1st December, 2006. Attached were a statement of the children's mother and a personal statement of the third named applicant.

8. The application for subsidiary protection was unsuccessful and her file came to be analysed under s. 3 of the Immigration Act 1999, by an officer of the Repatriation Unit of the Minister's Department. In the s. 3 analysis, dated 24th August, 2007, consideration was given to the third named applicant's rights under Article 8 of the European Convention on Human Rights ("the Convention"). Under the heading "private life", the officer accepted that the proposed deportation may interfere with the third named applicant's private life, in relation to her work, education and social ties formed since arriving in Ireland. The officer stated, however, that such interference is in accordance with law, pursues a pressing social need and a legitimate aim, and is necessary in a democratic society.

9. Under the heading "family life", the officer set out details of the third named applicant's family in Nigeria and her involvement with her cousin's family in Ireland. The officer concluded that her removal from the State would not interfere with her Article 8 rights, having made the following observations:-

> "Although [the third named applicant] may help her cousin, there is nothing on file to suggest [she] is the primary care-giver of these children. There is nothing on file to suggest that [the children's mother] is medically unfit and would not be physically capable of looking after the children if [the third named applicant] was to be removed. It should also be noted that [the children's mother] has been residing in the State with her children since 2000 and managed to look after her children without [the third named applicant]'s help for 6 years."

10. A handwritten note added to the s. 3 analysis by an Assistant Principal of the Repatriation Unit on 27th August, 2007, makes the additional observation that a number of adult siblings lived with the applicant children's family group and that they could assist their mother to care for the applicant children. The Assistant Principal concluded that there were no grounds for granting leave to remain, and recommended that the Minister make a deportation order. As I have noted, the Minister signed a deportation order on 20th September, 2007. This decision was notified to the third named applicant by letter dated 5th October, 2007. On 30th November, 2007, the applicants were granted leave to apply for judicial review of the Minister's decision.

III. The Applicants' Submissions

11. The applicants' complaints in respect of the impugned decision are as follows:-

a. That the Minister failed to consider the applicant children's rights under Article 40.3 of the Constitution;

b. That the Minister failed to consider the applicant children's right to respect for private life under Article 8 of the Convention;

c. That the Minister failed to engage in a balancing exercise; and

d. That there was a breach of fair procedures.

12. I will address each of these in turn.

(a) Consideration of the children's constitutional rights
13. It is submitted that the applicant children's personal rights under Article 40.3.1° of the Constitution should have been given consideration by the Minister in the terms set out by the High Court and Supreme Court in *Oguekwe v. Minister for Justice, Equality and Law Reform* [2007] IEHC 345; [2008] IESC 25. That case involved, *inter alia*, a challenge to the Minister's decision to deport the Nigerian father of an Irish citizen child. Finlay Geoghegan J. in the High Court noted that Irish citizen children enjoy certain rights under Article 40.3 of the Constitution, including:-

> "1. The right to live in the State.
>
> 2. The right to be reared and educated with due regard to his/her welfare including a right to have his/her welfare considered in the sense of what is in his/her best interests in decisions affecting him/her."

14. She went on to find that when consideration is being given to the deportation of one or both of the Irish citizen child's parents, the Minister's decision-making process must comply with the following principles:-

> "(i) It must consider the facts relevant to the personal rights of the citizen child protected by Article 40.3 of the Constitution, if necessary by an appropriate enquiry in a fair and proper manner; and
>
> (ii) It must identify the grave and substantial reason at the relevant time, which requires the deportation of the non-national parent of the Irish citizen; and
>
> (iii) It must demonstrate that the respondent considers deportation, having regard to each of the above, to be a reasonable and proportionate decision."

15. Denham J. affirmed these principles in the Supreme Court, stating as follows:-

> "I would agree and affirm paragraph (i) above, though perhaps state it now in slightly different words: "(i) It must consider the facts relevant to the personal rights of the citizen child protected by Article 40.3 of the Constitution, if necessary by due enquiry in a fair and proper manner." As to paragraph (ii), I am satisfied that the decision making process should identify a substantial reason which requires the deportation of a foreign national parent of an Irish born citizen. The test is whether a substantial reason has been identified requiring a deportation order. The term 'grave' is tautologous, and while it reflects the serious nature of a 'substantial' reason, it is not an additional factor to 'substantial', and there is the danger that it could be so construed. As to (iii), the Minister is required to make a reasonable and proportionate decision." (emphasis in original).

16. Denham J. later set out a non-exhaustive list of 16 matters that she said "relate to, the position of an Irish born child whose parents may be considered for a deportation order". Among these matters are the following:-

> "Specific reference to the position of an Irish born child of a foreign national parent is required in decisions and documents relating to any decision to deport such foreign national parent."

17. The applicants contend that the obligations set out in *Oguekwe* extend beyond cases involving a parent/child relationship to all cases where a deportation has the potential to impact upon the constitutional rights of Irish citizens. They submit that the Minister failed to comply with his obligation, as set out in *Oguekwe*, to give consideration to the applicant children's welfare, in the sense of what was in their best interests, when analysing the third named applicant's file under section 3.

(b) Consideration of the children's Convention rights
18. The applicants contend that the applicant children's right to respect for private life under Article 8 of the Convention is engaged because, in their submission, developmental aspects of a child's life, as well as his or her mental health and mental stability, fall within the sphere of "private life". It is suggested that these aspects of the first named applicant's private life, in particular, would be affected if the third named applicant was deported. The applicants are not basing their arguments on the right to respect for "family life" because at the leave stage, Dunne J. ruled that the connection between the applicants was not sufficiently close as to constitute "family life" and she granted leave only to pursue the argument that their situation constituted "private life" under Article 8.

19. The applicants submit that in the circumstances, the Minister was obliged to consider the children's right to respect for private life in the terms set out in *Oguekwe* [2007] IEHC 345; [2008] IESC 25. In that case, it was not disputed that the applicants' Article 8 rights were engaged. In the High Court, Finlay Geoghegan J. held that where an applicant enjoys a right to family and/or private life in the State so as to engage his or her Article 8 rights, the Minister must address the following questions before making a deportation order:-

> "1. Whether or not the proposed decision will constitute an interference with the exercise of the applicants' or other family members' rights to respect for his or her private and family life.
>
> 2. Unless a conclusion is reached that the proposed decision will not constitute an interference […] then:
>
> (i) Is the proposed decision being taken in accordance with law; and
>
> (ii) Does the proposed interference pursue a legitimate aim i.e. one of the matters specified in article 8.2

(iii) Is the proposed interference necessary in a democratic society i.e. is it in pursuit of a pressing social need and proportionate to the legitimate aim being pursued."

20. Finlay Geoghegan J. noted that guidance is available from the judgment of the European Court of Human Rights in *Boultif v. Switzerland* (2001) 33 EHRR 50 at paragraphs 39-56, as to how these questions should be assessed. In the Supreme Court, Denham J. affirmed this general approach, but she added the following caveat:-

> "However, the issues and questions are interrelated and need not be addressed in such a micro specific format, as long as the general principles are applied to the circumstances of the case. […] The formal approach with specific questions as required by the High Court is not necessary, each case will depend on its own relevant facts."

21. As to the nature of consideration required of the Minister, the applicants also place reliance on the judgment of the European Court of Human Rights in *Üner v. The Netherlands* (App no. 46410/99, judgment of 18th October, 2006 [GC]). In that case, the State imposed a 10-year exclusion order on a Turkish national who had been lawfully resident in Holland since the age of 12. He had fathered two children with a Dutch national, and maintained a close relationship with them. The Court clarified (at § 57) that in addition to the criteria set out in *Boultif* (above), regard should be had to:-

> "- the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and
>
> - the solidity of social, cultural and family ties with the host country and with the country of destination."

(c) Failure to engage in a Balancing Exercise

22. The applicants submit that the Minister failed to carry out a balancing exercise as to the competing constitutional and Convention rights of the applicant children and the right of the State to run a coherent and orderly immigration system. Furthermore, it is contended that the Minister has failed to provide any justification, in terms of proportionality, for the proposed deportation. The applicants contend that it is insufficient to state a policy objective by using standard terminology (i.e. citing the public interest and the integrity of the immigration process) in order to justify an interference with Convention rights. They say that this is particularly relevant in light of their contention that a higher standard of review, often called 'anxious scrutiny', is to be applied with respect to decisions that potentially impact upon constitutional and human rights, rather than the traditional O'Keeffe test. It is said that in order to be able to review a decision with such 'anxious scrutiny', there must be sufficient detail in the decision to allow a court to determine whether or not there was good and sufficient reason for the deportation, and whether the deportation was proportionate to the aim pursued.

23. They point, in this regard, to A*madasun v. The Minister for Justice, Equality and Law Reform* [2007] 3 I.R. 421. At issue in that case was a deportation order made in respect of the Nigerian mother of an Irish-born child. The s. 3 analysis contained details of the asylum application and some personal details of the applicant. It then stated, under the heading "the common good", as follows:-

> "It is in the interest of the common good to uphold the integrity of the asylum and immigration procedures of the State."

24. Peart J. noted that apart from this "general or formulaic reference to the upholding of the integrity of the immigration system", the s. 3 analysis did not disclose any reason for the decision to deport, either on its face or in the documents before the Court. The court was, therefore, unable to form an opinion as to whether there was good and sufficient reason for the deportation. Moreover, Peart J. held that there was no consideration given to the question of proportionality. He suggested that "there might need to be some evidence within the documentation to enable the court to scrutinise the considerations and factors to which the [Minister] had regard" when he was assessing whether or not a proposed deportation was proportionate. The applicants contend that this criticism may equally be levied at the s. 3 analysis in the present case.

(d) Fair Procedures

25. A subsidiary complaint levelled at the impugned decision is that the s. 3 analysis contains a number of presumptions and inaccuracies. This argument can be dealt with swiftly. I am not at all convinced by the applicants' arguments in this regard, and in any event, it seems that the applicants were not granted leave to pursue this argument; rather, leave was granted to pursue the complaint that the Minister failed to take into account relevant considerations. The applicants' arguments in this regard therefore fail.

IV. The Respondent's Submissions

26. The respondent submits that the obligations set out in the decisions in *Oguekwe* [2007] IEHC 345; [2008] IESC 25 do not apply in the circumstances of the present case and that sufficient regard was, in fact, had to the applicant children's rights.

(a) Consideration of the children's constitutional rights

27. The Minister contends in the first instance that the applicants have failed to identify any personal right that would be breached if the proposed deportation were to proceed. Moreover, the Minister contends that there was no obligation upon him to consider the applicant children's personal rights in the terms set out in *Oguekwe* [2007] IEHC 345; [2008] IESC 25. It is contended that the obligations identified in *Oguekwe* apply only where the Minister proposes to deport one or both parents of a citizen child.

28. It is contended that instead, the Minister's sole obligation when considering whether or not to make a deportation order is to consider representations made by the third named applicant and to notify her of his decision. In this regard, reliance is placed on the decision of Keane CJ in *Baby O v. The Minister for Justice, Equality and Law Reform* [2002] 2 I.R. 169 and that of Clarke J. in K*ouaype v. The Minister for Justice, Equality and Law Reform* [2005] IEHC 380.

29. It is further contended that adequate consideration was, in fact, given to the applicant children's welfare and best interests. The respondent submits that it is clear from the s. 3 analysis that the officer and Assistant Principal who carried out the analysis were aware of the children's situation and of the impact of the proposed deportation on them. The respondent submits that this demonstrates compliance with *Pok Sun Shum v. The Minister for Justice, Equality and Law Reform* [1986] ILRM 593.

(b) Consideration of the children's Article 8 right to respect for Private Life

30. The respondent contends first and foremost that the proposed deportation would not interfere with the applicant children's right to respect for private life within the meaning of Article 8. The respondent says that the deportation would not impact upon the children's moral and physical integrity, their personal identity, information or sexuality, or their private or personal space. The respondent points in particular to the decision of the European Court of Human Rights in *Nnyanazi v. UK* (App no. 21878/06, decision

of 8th April, 2008). In that case, the Court was reluctant to find that the applicant had established a "private life" in the UK, even though she had been living there for ten years, had formed close ties with a church there, had partially qualified as an accountant, and had entered into a relationship with a male friend. Moreover, the court considered that even if it was assumed that the applicant had, indeed, established a "private life", the proposed interference with her "private life" by deportation would be justified under Article 8(2) of the Convention.

31. The respondent contends that in the circumstances, there was no obligation on the Minister to give consideration to the children's Article 8 right in the manner set out in *Oguekwe* [2007] IEHC 345; [2008] IESC 25. The respondent further submits – as with the constitutional rights – that it is clear from the s. 3 analysis that adequate consideration was, in fact, given to the prospective interference with the children's private life, as the officer and Assistant Principal made specific reference to the third named applicant's involvement with the children, in the sections entitled "private life" and "family life". The respondent submits that this is sufficient, and relies on the decision *in Sanni v. The Minister for Justice, Equality and Law Reform* [2007] IEHC 398.

(c) Balancing Exercise
32. The respondent contends that the decision to deport was proportionate to the aim pursued. In this regard, reliance is placed on the decision in *R (Razgar) v. Secretary of State for the Home Department* [2004] 1 A.C. 368, as applied in this jurisdiction by Dunne J. in *Sanni v. The Minister for Justice, Equality and Law Reform* [2007] IEHC 398.

VI. The Court's Assessment
33. At the outset, I would stress that the court's assessment of the arguments in this case is informed by the fundamental principle that the interests of the applicant children must be balanced with the integrity of the State's immigration laws. The court strongly concurs – as it did in *Oghosasere & Ors v. The Minister for Justice, Equality and Law Reform* [2007] IEHC 453 – with the findings of the Supreme Court in *A.O. and D.L. v. The Minister for Justice, Equality and Law Reform* [2003] 1 I.R. 1, at p. 24, that "[t]he inherent power of Ireland as a sovereign State to expel or deport non-nationals … is beyond argument". This power is "an aspect of the common good related to the definition, recognition, and protection of the boundaries of the State" (*Osheku v. Ireland* [1986] I.R. 733; *Laurentiu v. The Minister for Justice, Equality and Law Reform* [1999] 4 I.R. 26). It follows, as noted by Costello J. in *Pok Sun Shum v. Ireland* [1986] ILRM 593, at p. 599, that :-

> "[…] the State, through its Ministry for Justice, must have very wide powers in the interest of the common good to control aliens, their entry into the State, their departure and their activities within the State. There must be given to the Minister wide discretion in this area."

34. Similarly, the European Court of Human Rights has gone to great lengths to underline the importance of the sovereign power of Contracting States in relation to immigration and asylum. In *Bensaid v. the UK* (App no. 44599/98, judgment of 6 February, 2001), for example, it recalled, at § 32, that:-

> "[…]Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations including the Convention, to control the entry, residence and expulsion of aliens."

35. As this Court noted in *H.I. & R.B. v. The Minister for Justice, Equality and Law Reform* [2007] IEHC 447, the case law of the European Court of Human Rights is replete with cases where Article 8 rights in immigration and refugee cases have been considered and save for unusual circumstances the court has upheld the rights of Member States to a high level of control. In sum, the jurisprudence of the European Court of Human Rights parallels that of the Irish courts as to the State's inherent and fundamental power to expel and deport foreign nationals, and the wide discretion that must, consequently, be available to the Minister for that purpose.

Standard of Review
36. It is now standard practice for applicants to argue that the traditional standard of review – as set out by the Supreme Court in *O'Keeffe v. An Bord Pleanála* [1993] 1 I.R. 39 – does not apply to the review of decisions that potentially impact on human or constitutional rights. Applicants generally argue, as they have done in the within proceedings, that in such cases, a more detailed, heightened scrutiny is required, often called "anxious scrutiny", and that such an approach was suggested by Fennelly and McGuinness JJ. in *A.O. and D.L.* (cited above).

37. In this respect, as noted in *H.O. v. The Refugee Appeals Tribunal & Anor* [2007] IEHC 299, I would sympathise with the stricter approach in cases involving potentially serious violations of human or constitutional rights. Nevertheless, as stated in *S.M. & Ors v. The Office of the Refugee Applications Commissioner & Ors* [2007] IEHC 290, it is not entirely clear what is meant by "anxious scrutiny" and such labels sometimes do carry their own inherent dangers. It has not yet been decided by the Supreme Court whether or not the "anxious scrutiny" test does, in fact, apply, and a decision on the subject is awaited. In the interim, whether or not the applicable standard is to be labelled "anxious scrutiny" or otherwise, this Court will continue to be careful and thorough when reviewing decisions that potentially impact upon human and constitutional rights.

38. With that in mind, I turn now to the substantive arguments.

(a) Consideration of the children's constitutional rights
39. There is no question but that the applicant children, as Irish citizens, enjoy a number of personal rights under the Constitution, including those identified by the High Court and Supreme Court in *Oguekwe* [2007] IEHC 345; [2008] IESC 25. It does not necessarily follow, however, that the Minister was obliged to consider those rights in the terms set out in *Oguekwe* before making a deportation order in respect of their mother's cousin herein.

40. I do not accept that the obligations set out in *Oguekwe* apply to the present case. At issue in that case was the proposed deportation of the Nigerian father of an Irish citizen child. That child would have had to return to Nigeria in order to live in a family unit, or remain in Ireland without the care and company of his father. There was a clear risk of an interference with the Irish citizen child's constitutional rights. It was, therefore, crucial that the Minister consider the child's welfare and his best interests. No such risk arises in the present case. The proposed deportation does not interfere with the applicant children's rights to reside in the State or to have the society, care and company of their parents. There is no prospect of the applicant children returning to Nigeria with their mother's cousin if she is deported. Their mother is lawfully resident in Ireland and they will, without question, remain in the State with her, and continue to enjoy her society, care and company.

41. The court is of the view that the extent of the Minister's obligation to consider the best interests of the children in the present case is as set out in *Pok Sun Shum v. The Minister for Justice, Equality and Law Reform* [1986] ILRM 593. In that case, the applicant was a Chinese national who was married to an Irish citizen. The applicant's wife had three children and was pregnant with a fourth

when the applicant's permission to remain in the State was revoked. The Minister refused to grant a certificate of naturalisation. This decision was challenged on the basis that the Minister gave insufficient attention to the needs of the applicant's family prescribed by the Constitution. Costello J. held (at p. 600) that although the Minister and his staff "did not take down the Constitution and consider the constitutional provisions relating to the family before reaching a decision or making a recommendation", that did not vitiate the decision reached. This was because:-

> "The Minister was well aware of the marital status of the applicant. […] it would seem to me to be unnecessary to send out an officer to enquire as to the effect of (a) the refusal of a certificate of naturalisation and, (b) a refusal to permit residence in the country because it seems to me that the Minister was entitled to assume that these would be very serious indeed. […] The evidence clearly suggests that the Minister was aware of the applicant's marital status, and that is sufficient, to my mind, that there was no failure to carry out fair procedures in the plaintiffs' case."

42. Thus, it was sufficient in the circumstances that the decision-maker was aware of the constitutional implications of the proposed deportation; there was no requirement that the decision-maker recite this in the decision. This may be applied to the present case all the more so because the relationship of the applicant children to the third named applicant in the present case – being at most second cousins – is considerably more tenuous than that of the married couple involved in *Pok Sun Shum*. That being so, it is apparent from the text of the s. 3 analysis that the Minister's agents had the third named applicant's relationship with the applicant children in mind. It was not necessary to specifically recite that the best interests of the children were considered.

(b) Consideration of the children's Article 8 rights

43. It is argued that the applicant children's right to respect for their private life under Article 8 is engaged because the third named applicant is an important part of the children's personal sphere - that of the first named applicant in particular - and that she has had a stabilising effect on their mental stability.

44. In my view, although the third named applicant may indeed have played a role in the applicant children's lives since mid-2006, no evidence has been adduced to suggest that her deportation would interfere with their development, mental health or stability. When she arrived in the State, the applicant children were aged approximately five and six years old. Their mother had been solely responsible for them since their father left the family, which seems to have been soon after the birth of the first named applicant. She appears to have coped commendably during that time, in the absence of her cousin, in spite of her many commitments and constant pressures. This is clear from the Social Worker's letter, quoted above, which states that the children's mother is "an extremely devoted and loving mother" and is "excellent at keeping appointments and manages to attend the various agencies as required". Moreover, the applicant children are now her only minor children. As is normal in any family situation, it must be expected that her four adult children, who reside with the family group, will assist with the care of their minor half-siblings, even if they also have individual commitments. I am, therefore, not prepared to accept that the proposed deportation of the applicant children's mother's cousin could be seen as an interference with the children's "private life" so as to engage Article 8.

45. Even were I mistaken in this regard, I am not of the view that the Minister would have been obliged to consider the children's Article 8 rights in the terms of the *Oguekwe* decisions. The distinctions drawn above between that case and the within case apply with equal force in this context. I am guided, also, by the statement Finlay Geoghegan J. in *Oguekwe* that the Minister's obligations "will depend upon the factual circumstances of the individuals and family concerned and the potential interference in the rights of the individual members of that family to respect for their private and family life." In the light of this statement, it is instructive that the case of *G.O. & Ors v. The Minister for Justice, Equality and Law Reform* [2008] IEHC 190, demonstrated factual circumstances that directly resemble those of the present case. G.O. involved a challenge to a deportation order made in respect of a Nigerian national who was the grandmother of two Irish-born children. She was the primary carer of one grandchild, and closely involved in the upbringing of the other. The applicants complained that the Minister failed to have regard to the Article 8 rights of the grandchildren in the terms set out in *Oguekwe*. Birmingham J. found (at paragraphs 51-52) that the case had more in common with *Sanni v. The Minister for Justice, Equality and Law Reform* [2007] IEHC 398 than with *Oguekwe*. He acknowledged that the proposed deportation would involve "a degree of reorganisation" with respect to the care of the Irish citizen children, but observed that "those are the kind of decisions and compromises that countless families across the State make on a daily basis." This applies equally to the circumstances of the present case.

46. Following *G.O.*, the extent of the Minister's obligations in the context of the present case is as set out by Dunne J. in *Sanni*. In that case, it was argued that the deportation of a Nigerian adult would have an effect on the Article 8 rights of his Irish citizen siblings, who were minors. Both the minor siblings and their parents were lawfully resident in Ireland, and there was no question of their leaving the State upon the deportation of the applicant. Dunne J. found it to be "untenable" to suggest that the applicant's family circumstances were not present in the Minister's mind when he was making the decision. She noted as follows:-

> "The respondent had all the information in relation to the circumstances of the first named applicant. He knew the nature and extent of the family unit. It does not seem to me to be necessary to specifically recite that the Minister considered the impact of the deportation on either the first named applicant or the second and third named applicants or indeed his parents or to state expressly that he considered Article 8."

47. It is clear that the rationale behind this decision is analogous to that employed in *Pok Sun Shum*. As noted above, when this reasoning is applied to the present case, it is clear that the Minister and his agents had the applicant children in mind when conducting the s. 3 analysis. As above, I am satisfied that this was sufficient and that no express recitation of the fact of consideration being given to the children's rights was necessary.

48. A distinction comparable to that drawn with *Oguekwe* may be drawn between the present case and the case of *Üner v. The Netherlands* (App no. 46410/99, judgment of 18th October, 2006 [GC]), upon which the applicants rely. That decision related to the proposed expulsion of the parent of a citizen child, who would be deprived of the company and care of a parent. It is not, in my view, analogous to the present case and thus, the obligations identified in *Üner* do not extend to cases such as the present.

49. The applicants' arguments therefore also fail in this regard.

(c) Failure to engage in a Balancing Exercise

50. It is submitted that the Minister was obliged to engage in an express consideration of the proportionality of the proposed deportation when compared to the impact it might have on the applicant children's constitutional and Convention rights. Reliance is placed on the case of *Amadasun* [2007] 3 I.R. 421. In this regard, I note that in *G.O.* (cited above), Birmingham J. distinguished the *Amadasun* decision on the basis that it was both a leave application and a case involving the deportation of parents of an Irish citizen. In that regard, *Amadasun* might be seen as something of a predecessor to the decisions in *Oguekwe*, which set out special considerations that apply to cases involving the deportation of the parents of Irish citizen children.

51. The case of *Baby O v. The Minister for Justice, Equality and Law Reform* [2002] 2 I.R. 169, involved a challenge to a decision to make a deportation order on the basis, *inter alia*, that the Minister failed to give any or adequate reasons for his finding that s. 5 of the Refugee Act 1996, was complied with. Keane CJ held as follows:-

> "I am satisfied that there is no obligation on the first respondent to enter into correspondence with a person in the position of the second applicant setting out detailed reasons as to why refoulement does not arise. The first respondent's obligation was to consider the representations made on her behalf and notify her of his decision: that was done and, accordingly, this ground was not made out."

52. Although the decision in *Baby O* concerned the Minister's obligations with respect to section 5, it is evident from *Dada v. The Minister for Justice, Equality and Law Reform* [2006] IEHC 140 that the principles established in *Baby O* apply also to the nature of consideration required with respect to the other matters that also require consideration before a deportation order is made. In *Dada*, it was argued that the Minister failed to consider and balance the applicant's rights under Article 8 of the Convention against the upholding of the integrity of the immigration policy of the State. O'Neill J. held as follows:-

> "Whilst in the *Baby O* case, what was in issue was a consideration of a refoulement issue, in my view, issues of lesser weight such as arise, in a reliance on Article 8 would a *fortiori* have to be dealt with in the same restrictive fashion."

53. As in the present case, the applicant in *Dada* submitted that *Baby O* was no longer good law with respect to Convention issues, such as Article 8, because of the subsequent importation of the Convention into Irish law. O'Neill J. firmly rejected this submission.

54. Finally, the Court is guided by the decision of Finlay Geoghegan J. in *Dimbo v. The Minister for Justice, Equality and Law Reform* [2006] IEHC 344, where she noted as follows with respect to the section 3 analysis carried out by the Minister before making deportation orders in respect of the applicants, who were the Nigerian parents of an Irish citizen child:-

> "The documents do not expressly identify any interest in the common good … or grave and substantial reason which is stated to require deportation as required by the decision in *A.O. and D.L. v. The Minister for Justice* [2003] 1 I.R. 1. However, the examination on file in considering the matters set out at s. 3(6)(j) of the [Immigration Act 1999] under the head of the common good states:
>
> > 'It is in the interest of the common good to uphold the integrity of the asylum and immigration procedures in the State.'
>
> Such a reason may satisfy the requirements of *A.O. and D.L.* […]."

55. The requirements of *A.O. and D.L.* to which Finlay Geoghegan J. was referring were set out in that case by Hardiman J., at page 164:

> "In my view, the need to preserve respect for the asylum and immigration system […] is a generally applicable open-ended administrative reason capable of satisfying the test in *Fajujonu v. Minister for Justice* [1990] 2 I.R. 151. When this reason is given it must, of course, be considered in the light of the facts of each individual case […]."

56. Hardiman J.'s reference to the test in *Fajujonu* referred to the finding of Finlay CJ that the Minister could make a deportation order interfering with the Constitutional rights of a family including an Irish citizen child only in the following circumstances:-

> "[…] only if, after due and proper consideration, he is satisfied that the interests of the common good and the protection of the State and its society justifies an interference with what is clearly a constitutional right. […] The reason […] has to be a grave and substantial reason associated with the common good."

57. In sum, Finlay Geoghegan was of the view that in order for him to have given "due and proper consideration" to the interests involved, as required *in A.O. and D.L.* and *Fajujonu*, it may be sufficient for the Minister to have simply stated that the deportation of the Irish citizen child's parents was in the interest of the common good. Applying this reasoning to the circumstances of this case, which has consequences much less severe than the deportation of a citizen child's parents, the applicants' arguments must fail. The relief sought is refused.