

**THE HIGH COURT
JUDICIAL REVIEW**

**2007 1208 JR
[2007 No. 1208 JR]**

BETWEEN

**J. W. O. (A MINOR SUING BY HIS FATHER AND NEXT FRIEND J. I. W.),
J. I. W. AND S. M. O.**

APPLICANTS

**AND
MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM
COMMISSIONER OF AN GARDÁ SIOCHANA
ATTORNEY GENERAL, IRELAND**

RESPONDENT

Judgment of Mr. Justice Hedigan delivered on the 13th day of December, 2007

1. I have considered this matter over lunch and in this application it is clear to me that the matter ultimately depends upon the balance of convenience.

2. The first applicant is an infant citizen of the State. The second applicant is a Liberian citizen who, following certain family difficulties came to the State to seek asylum in December 2006. He had applied for asylum previously in Germany and the UK. His application here was transferred to the UK and a transfer order has been made against him. He therefore is a person with no entitlement to be in the State. It is admitted that in violation of this State's immigration laws he entered on a number of occasions prior to December 2006. The third applicant is the mother of the first and wife of the third applicant and is entitled to reside in the State under the IBC/05 scheme. She has admitted on previous occasions that she was seriously untruthful in attempting to mislead the immigration authorities.

3. The duty of the State to implement the provisions of its international arrangements in relation to asylum and immigration is a very serious one. In that regard, I think a very good exposition of that duty was laid out in the Supreme Court by Mr Justice Murray in the case of *Lobe & Osayande v. Minister for Justice* [2003] I.R. 17:

"It is an inherent and fundamental right of the State to control and regulate immigration. Its right, and even its duty to do so, arises in the interests of the common good which includes the maintaining of true social order within its territory and concordance in its relations with other nations. These principles must, in my view, be considered well established in the light of the foregoing case law and in particular having regard to the decision of this court in the *Illegal Immigrant (Trafficking) Bill 1999* case. That the control and regulation of immigration by the Government, through powers conferred on the [respondent], is in the interest of the common good of the nation cannot in my view be gainsaid and it is universally so accepted in sovereign democratic states."

4. I would certainly very strongly concur with that. The State's duties in relation to the international arrangements in relation to asylum and immigration are very important duties and very much in the interests of everyone in this country, including the people who actually come here applying for asylum.

5. The strongest argument, it seems to me, advanced on the part of the applicants is that family life would be so seriously disrupted by the second applicant's transfer that the constitutional and/or Convention rights of all would be seriously prejudiced. The factors that I think are involved here and that I should consider are as follows: firstly, that there is a transfer to another state involved here. I note in this respect that in the case to which I was referred, *Zadeh v. The Minister*, (Supreme Court, *ex tempore* judgment of Hardiman J, 2nd November 2007), emphasis was laid upon the fact that the transfer involved was to the Netherlands which is another European Union state and one in which rights with which we are familiar are well established. The same applies in relation to the United Kingdom, which indeed is an even more familiar system for those involved in the common law than would be the Netherlands. So I think that the point in relation to the transfer to another EU state made in *Zadeh* is even significant in this case than in *Zadeh*. The UK has in place all the protective provisions required to secure the Human Rights of the applicant. The rights of the applicant will be very adequately and properly protected.

6. Secondly, as to the possible further deportation of the applicant, it appears to me that in the event that there was any possibility of a further deportation out of the United Kingdom to a third country that any rights that the applicant might have would be more than adequately advanced before the courts of the United Kingdom. I note that, in the *Zadeh* case, there was raised the possibility of a transfer to Iran. Dealing with this the Supreme Court said as follows, at paragraph three:

"In relation to the inference made by senior counsel for the applicants regarding the first named applicant's possible deportation from the Netherlands to Iran and which he asked this court to draw, this may very well be something that the first named applicant may fear. There is, however, no evidence that this deportation from Holland to Iran would happen should the applicant be transferred to Holland and there is no need to infer this."

7. The Court here is in the same position and is therefore not going to infer a further deportation.

8. As to the disruption of family life, it appears to be the case that for three of the four years of this four-year-old first applicant's life, his father was not, in fact, present in his life. If he was not entirely absent, he was certainly absent for nearly all of the time. I presume that there was some contact in the illegal entries and re-entries that he made to Ireland at this time. I can appreciate and counsel for the respondents have stated that it is not going to be the case that there will not be any disruption. There certainly will be disruption, and some of the disruption has been referred to. Nonetheless, it does not appear to me to be disruption of a kind that cannot be handled particularly in a family where they have been apart for so much of this child's life.

9. As to the claim that access to the courts would be infringed, I do not think that there is much weight to this argument. There is nothing whatever to prevent the applicant from continuing to access the Irish courts from the United Kingdom while he is there.

10. The issue of a lack of candour was presented to the Court in this application and I think it was very correctly and very fairly stated on both sides that, whilst there was a certain lack of candour, that nonetheless on the part of the second applicant it did not appear to rise to the level of the barefaced lies that are referred to in the *Zadeh* case. Nonetheless, it is the case that the third applicant was apparently guilty of some very serious attempts to mislead the authorities albeit in previous applications. I cannot

entirely rule that out of my mind but I would have to say that I put it to one side because I think it is agreed by both sides here that there are big lies and small lies and that as far as the second applicant is concerned his could only be described as small lies and, of course, as far as the first applicant is concerned he is entirely innocent in every way.

11. The final thing that I come to in this context therefore is the duty of the state. As outlined by the judgment of Mr Justice Murray, as he then was, now the Chief Justice, the duty of the state in relation to the international arrangements for immigration and asylum law is a very heavy burden on the state and it is one in which the State has a huge interest in fulfilling, just as it has the justifiable expectation that every other state will fulfil their part as well.

12. For all of these reasons, it appears to me that the balance of convenience lies against the applicant in this case and therefore I am refusing the application for the interlocutory order.