Neutral Citation [2016] IEHC 473

THE HIGH COURT

JUDICIAL REVIEW

[2015 No. 178 J.R.]

BETWEEN

FAVOUR PECULIAR OLAKUNORI (A MINOR SUING BY HER MOTHER AND NEXT FRIEND B.I.A.), B.I.A., R.A. (A MINOR SUING BY HIS MOTHER AND NEXT FRIEND B.I.A.) AND P.O.A. (A MINOR SUING BY HER MOTHER AND NEXT FRIEND B.I.A.)

APPLICANTS

AND

MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 29th day of July, 2016

1. The applicants in this case consist of a mother and three of her six children. The mother, who is the second named applicant in this case, was born in Nigeria in 1965.

2. Her first daughter, who is not a party to these proceedings, was born in 1986 to her and a Mr. Omwanighe, the first of four fathers referred to in this case.

3. In 1989 and 1991, two further daughters, who are also not involved in this case, were born to the mother and Mr. Moses Aghedo.

4. On 4th December, 1999, the first named applicant was born to the mother and Mr. Festus Olakunori.

5. When this child was less than four months old, the mother left her behind in Nigeria and came to Ireland, where she applied for asylum on 23rd March, 2000. The first named applicant's name on this application was given as Miss Peculiar A.

6. In 2002 and 2003, the third and fourth named applicants were born to the mother and Mr. Besi Olawepor. Under the system in place at the time, since reformed, they acquired Irish citizenship.

7. In 2005, the mother obtained lawful residence in Ireland under the "IBC05 Scheme".

8. Four years later, in 2009, the mother sought a visa for the first named applicant, so that she could join her mother in Ireland. This was refused.

9. On 30th August, 2012, the mother became a naturalised Irish citizen.

10. In December 2013, the Minister adopted a policy document on non-EEA family reunification. As I outlined in *Li v. Minister for Justice and Equality (No. 1)* [2015] IEHC 638 (Unreported, High Court, 21st October, 2015) at para. 60, policy documents of this kind promote greater consistency in decision-making and serve the objective of equality before the law. At pp. 27 and 28 of the document, the economic impact of admission decisions on the State is considered. It is clear that this impact is a factor in decision-making, as is the capacity of the sponsor to support the person for whom admission is sought. In a footnote, the document quantifies the cost of admission per child as being in the region of €8,000 per child for the provision of educational services. The mother expressly accepts (para. 23 of written submissions) that she does not meet the financial thresholds set out in the policy document. I was informed by Ms. Diane Duggan B.L., for the respondent, led by Ms. Nuala Butler S.C., who also addressed the court, that, in 2015, approximately 2,600 applications by children to join their parents in Ireland were made to Irish embassies and missions worldwide, a very substantial number of which were accepted.

11. Mr. Michael Lynn S.C., who appeared (with Mr. Anthony Lowry B.L., who also briefly addressed me on the s. 5 issue referred to below) for the applicants, in a very able submission, accepts that the court can legitimately take this sort of information, which is peculiarly within the knowledge of the respondent, by way of statement from counsel without the necessity of an affidavit. While he might have liked greater particularisation of this information, this was something he accepted that he could have pursued prior to the hearing. He accepts that this information is legitimately before this court and can be dealt with by way of comment by either side, as appropriate.

12. On 30th June, 2014, the mother applied again to the Minister for a visa to enable the first named applicant to join her in Ireland. This is the application that gives rise to the present proceedings. The first named applicant's name on this application was given as Miss Favour Peculiar Olakunori.

13. This application was refused at first instance on 12th November, 2014. The applicant appealed on 22nd December, 2014.

14. That appeal was refused on 7th January, 2015, although the refusal was not communicated to the second named applicant until 11th March, 2015. The present judicial review proceedings were commenced on 1st April, 2015, without any pre-action letter having been sent to the Minister.

15. The appeal was refused on four grounds which I am informed by Ms. Duggan are independent of each other. Those grounds were:-

(i) insufficient documentation relating to the mother's custody rights;

(ii) inconsistency in the information provided regarding the name of the first named applicant;

(iii) likelihood of a charge on public funds arising; and

(iv) likelihood of a charge on public resources arising (which I understand from Ms. Duggan relates to indirect costs, such as those of public education, arising from the presence in the State of a person who is not directly financially dependent on the social welfare system).

Anonymity
16. As the second named applicant's asylum claim is tangentially relevant to the matters I have to consider, it appears necessary and appropriate to redact her name. I have also redacted the names of family members sharing the same surname out of a certain abundance of caution although protection of the identity of asylum seekers is not a blanket prohibition on naming any family members whatever. No basis has been put forward by the parties to suggest that naming family members with different surnames will identify the second named applicant to anyone not already aware of her identity.

Does s. 5 of the Illegal Immigrants (Trafficking) Act 2000 apply?
17. This is a challenge to the refusal of a visa, rather than refusal of a permission to land in the State. Does it come within s. 5 of the Illegal Immigrants (Trafficking) Act 2000? The only relevant part of that section, as amended by s. 34 of the Employment Permits (Amendment) Act 2014, relates to a refusal under s. 4 of the Immigration Act 2004. That section, in turn, refers to the refusal of a permission to be in the State, either by way of initial leave to land, by way of subsequent grant or extension of a permission to be in the State. Furthermore, it refers to such permissions as being granted by "*an immigration officer…on behalf of the Minister*" (s. 4(1) and (3)) or alternatively refers to the attachment of conditions by "*an immigration officer*" (s. 4(6)), or alternatively, to renewal or variation "*by the Minister, or by an immigration officer on his or her behalf*").

18. The references to "*an Irish visa*" or a "*valid Irish visa*" in the section (see s. 4(3)(e), (5)(b) and (8)), strongly suggests that a visa is something separate from a permission under s. 4, that is, that the refusal of the visa is not the refusal of a permission. This accords with the purpose of a visa, namely that it permits travel to the frontier of the State but does not guarantee entry. I had better make clear that I was not altogether alive to this distinction when I gave the judgment in *Li*, which uses the terms visa and permission almost interchangeably. However on further consideration, I think that they are not interchangeable terms.

19. In my view, it follows from the wording of s. 4 that a visa is not a permission under that section, firstly because they are separate instruments, and secondly, because it is not granted by an immigration officer on behalf of the Minister. Thus, an action challenging the refusal of a visa does not come within the scope of s. 5 of the 2000 Act. Ms. Butler submits that, while regulated to a limited extent by statute, a visa arises from the executive power of the State and not from any statutory authority and therefore falls outside s. 5, a submission which I accept.

20. On one view, this may be seen as a gaping hole in s. 5, but it is certainly not the only such anomaly and, in any event, it is not one I either can or should address by creative interpretation of the statute. What I can do, however, is respectfully suggest (as I did in *K.R.A. v. Minister for Justice and Equality (No. 1)* [2016] IEHC 289 (Unreported, High Court, 12th May, 2016)) that the wording of s. 5 might be reviewed with a view to reducing the amount of uncertainty and inconsistency arising from it.

21. I now turn to the various grounds of challenge advanced by Mr. Lynn under an unusually lengthy list of headings. Ms. Duggan initially was concerned as to whether all of these headings had been properly pleaded but, upon further consideration, waived any pleading objection. I am grateful to her and to Ms. Butler, who consented to an amendment for the purpose of particularising the claim in relation to the best interests of the child, for dealing with this issue in such a practical manner.

Was the insistence on a court order regarding custody unfair?
22. The appeal refusal included, as noted above, a ground relating to insufficient documentation. The applicant had provided neither the consent of the father in question, nor a court order awarding her sole guardianship, as a basis for the visa application.

23. The requirement for a court order is clearly stated on the Irish Naturalisation and Immigration Service website. For that reason, the mother's complaint that she was not specifically warned about the need for a court order in the original refusal is wholly lacking in substance. All these applicants must be taken to be on notice of the published criteria for such applications.

Was the insistence on a court order regarding custody irrational?
24. As regards her complaint that a demand for a court order is "irrational", this submission is wholly without merit. It is obvious that taking a child across international boundaries is an act of momentous significance in terms of its capacity to extinguish certain rights of that child or of one or other of the child's parents. The State should never put itself in the position of facilitating the ex parte transfer of a child from one jurisdiction to another without due process in relation to the position of any non-consenting parent. By way of example, it would be an absolute denial of natural justice and human rights for the District Court, or any court, to dispense with the consent of one parent to the issue of a visa or passport without notice to that other parent (or formal proof to a high standard that such parent was untraceable). In the present context, the Minister is not only permitted, but required to establish definitive and formal consent from the other parent or the existence of a court order dispensing with the necessity for such consent. Proof of such consent, or a formal process to dispense with it on a lawful and legitimate basis, is required for any step that potentially interferes with art. 8 rights of this kind: see e.g., *Keegan v. Ireland* (Application no. 16969/90, European Court of Human Rights, 26th May, 1994).

25. Mr. Lynn submits that none of this matters because the mother is the guardian anyway, an unacceptable submission which assumes both that Irish law has stood still since the last century, and that Nigerian law must be taken to be equivalent to Irish law in this respect.

26. This submission is a manifestation of a currently fashionable conception of human rights that in theory embraces the principle of universality of rights, but in practice fixes its gaze on certain categories of claimant more than others. The second named applicant demands that the Minister's decision be condemned on the basis of a gold-plated, Rolls-Royce standard of human rights which she claims for herself, while at the same time demanding that no rights whatever may be given to the father of her child. Indeed she says in effect that to afford him any rights is a fundamental legal error rendering the Minister's decision invalid.

27. For good measure, this issue arises in the context where the Minister only had the mother's word for it that the father was not involved in the first named applicant's life, and where the child's name had been changed to the father's surname despite the

assertion by the mother that the father was not involved in the child's life.

28. The requirement by the Minister for a court order making clear that the consent of the father was unnecessary, in the absence of such consent being produced positively, was neither unfair nor irrational. Indeed, it was absolutely necessary. The mother's failure to comply with that requirement was fatal to her application, and therefore to the present judicial review.

Were there inadequate reasons for the finding of inconsistency in relation to information provided?
29. As noted above, one of the free-standing grounds of refusal was that there was inconsistency in the information provided as to the name of the first named applicant, which changed between the mother's asylum application in 2000 and the making of the present visa application in 2014. While an explanation was offered by the mother, this was found to be unsatisfactory by the Minister. Mr. Lynn challenges that finding on the basis of a lack of reasons and a taking into account of an irrelevant matter.

30. As regards lack of reasons, the decision-maker was clearly dissatisfied with the explanation offered for the change of name and the lack of evidence in support of that explanation. It is not clear why the name changed to the father's name, given that there was also an allegation of no contact with the father. In my view, reasons of an adequate nature were provided.

31. In any event, if I am wrong about that, any lack of clarity as to the reasons is classically a matter that could have been teased out in correspondence. There was no pre-action letter in this case seeking to address the issue, a matter which I had previously held in *Li (No. 1)* and *Leng v. Minister for Justice and Equality* [2015] IEHC 681 (Unreported, High Court, 6th November 2015), may go to the discretion of the court. In this case, I would, in any event, refuse relief under this heading as a matter of discretion, by reason of the failure to issue a pre-action letter seeking clarification in this regard.

Did the Minister take irrelevant matters into account in the finding of inconsistency in relation to information provided?
32. As regards the claim of irrelevance, the circumstances of the first named applicant are clearly relevant, and this must include her name and how it came to be changed, as this potentially throws light on her wider family circumstances.

33. Again, as the refusal on grounds of inconsistency is a free-standing basis for the decision, the fact that the applicants have not made out their challenge under this heading is fatal to the present proceedings.

Did the Minister fail to address the first named applicant's change of circumstances?
34. It is submitted that the first named applicant underwent a significant change of circumstances prior to the visa application. She was originally being cared for by a grandmother in Nigeria, but the latter then decided it would be more expedient for her purposes to live in the United States. As a result, the care of the first named applicant was transferred to one of the child's older sisters. It is suggested that this arrangement is "*not sustainable*" and that the Minister failed to give due consideration to this matter.

35. However, the decision clearly states that all circumstances and correspondence have been considered, and in view of the judgment of Hardiman J. in G.*K. v. Minister for Justice, Equality and Law Reform* [2002] 2 I.R. 418 that is a complete answer to this objection as a ground for certiorari. Mr. Lynn submits that there was an "*absolute failure to have regard to the argument that living with the sister is not sustainable*". Unfortunately, this submission fundamentally confuses the requirement to have regard to material with any decision to narratively discuss such material. The Minister states that she has considered all circumstances and correspondence. Therefore this point was considered. It did not warrant narrative discussion. That does not constitute any form of "*failure to have regard*", still less an "*absolute failure*" as submitted. The applicants' submission simply involves a failure to appreciate the distinction. Narrative discussion is not generally required and would only arise in special circumstances of which this is clearly not one and indeed the applicants did not argue that it was. They proceeded on the clearly mistaken basis that failure to discuss meant failure to have regard.

36. In any event, the complaint made borders on the meaningless. Why is the current arrangement not sustainable? Many siblings end up living together for long periods. In due course the first named applicant may in any event want to find another form of living arrangement in order to make her way in the world. The inference which the applicants ask me to draw from the suggestion of "unsustainability" seems to be not far short of an unstated implication that the first named applicant is on the brink of permanent homelessness. Laconic and unexplained suggestions of the kind relied on are not a basis on which the court could accept such a conclusion.

37. The second named applicant seems to believe that sheer assertion from her must be accepted by, or at least warrant narrative discussion by, the Minister. That view is mistaken.

Did the Minister apply an incorrect test of "exceptional circumstances" before a visa could be granted?
38. In the Minister's analysis of rights under art. 8 of the ECHR, it is said that the mother has failed to demonstrate such "*exceptional*" reasons as would require the grant of a visa. Mr. Lynn submits that it is clear from the Strasbourg jurisprudence that the test is not whether exceptional circumstances apply, but whether a fair (and therefore proportionate) balance has been struck between the applicant's interests (including the best interests of the child) and the State's interests in controlling immigration (*Tuquabo-Tekle v. Netherlands* (Application no. 60665/00, 1st December, 2005) at para. 44).

39. Ms. Duggan's submission was that, in its context, the expression "*exceptional circumstances*" essentially meant that the published policy document of the Minister sets out that fair and proportionate balance, and that exceptional circumstances would be required in order to depart from the published criteria. I consider this to be a reasonable interpretation of the expression "*exceptional circumstances*" in this context, while, at the same time, accepting the point that the wording of this part of the decision could be improved upon. If I am wrong about that, I do not think that this infelicity of wording actually gave rise to any substantive injustice to the applicants, taking into account the decision as a whole. Indeed, the information provided by the respondent showing that a significant number of similar applications by children to join parents were granted in 2015, is inconsistent with the contention that the Minister is, in fact, taking an unduly restrictive attitude to the level of exceptionality required for an application to succeed. The Minister is entitled to adopt an approach that exceptional circumstances would be required to depart from her published policy document.

Did the Minister err in stating that this was not a strong claim?
40. Mr. Lynn submits that the Minister stated that the application was "*not a strong claim*" and that this was a misapplication of the test in relation to art. 8 of the ECHR. However, it is clear from the context that this comment was made in a separate section of the decision not dealing with art. 8 and is expressly without prejudice to an analysis of the art. 8 claim, which is then conducted in some detail. In any event, an assessment of the strength of the claim is one for the Minister, and no error warranting the intervention of the court has been shown. This does not appear to be a strong claim. In any event the formulation of the wording of the decision is generally a matter for the decision-maker. This particular complaint regarding wording is far too tenuous in any event to constitute a

ground to quash the decision. It is not for the applicant to try to dictate the drafting of the decision or to invite the court to usurp the function of the Minister.

Did the Minister err in relying on the rights and freedoms of others as a ground for refusal?
41. An objection is raised as to the wording of the grounds of the decision, insofar as it relies on the economic well-being of the State and the rights and freedoms of others. It is not immediately apparent how the grant of a visa to the first named applicant would interfere with the rights and freedoms of anyone. Ms. Duggan submits that the latter part of the phrase is essentially referring to an economic test and that the two elements should be taken together. Again, I consider this to be a reasonable interpretation of the decision, albeit that it could have been clearer and more specific. To the extent that the first named applicant will be considered to be a drain on public resources, this will require her needs to be met through taxation which is a (lawful) interference with the property rights of others under art. 1 of protocol 1 to the ECHR. The wording is perhaps too roundabout to be entirely clear. But any lack of clarity does not amount to an illegality warranting *certiorari*.

Did the Minister apply an incorrect test regarding a wide margin of appreciation?
42. The decision states that the Minister enjoys a "*wide margin of appreciation*" in relation to immigration matters, whereas Mr. Lynn submits that the test in the Strasbourg case law is that of a "*certain*" margin of appreciation. However, it appears that the phrase "*wide margin*" does in fact appear in Strasbourg case law, see *Abdulaziz, Cabales & Balkandali v. United Kingdom* (Application nos. 9214/80, 9473/81, and 9474/81) (1985) 7 E.H.R.R. 471 at p. 497. I would reject this ground of challenge. Clearly, in immigration matters, which are classically at the core of the executive power of a State, there must be a wide discretion vested in the decision-maker in the absence of clear statutory provisions to the contrary, and the Minister's use of this phrase is hardly novel and certainly not erroneous.

Did the Minister err in making a finding of long elective separation?
43. Mr. Lynn complains that the decision included a finding that there was a long elective separation between the mother and the first named applicant, in circumstances where a previous visa application had been made in 2009. Mr. Lynn submits that this negatives any suggestion of an elective separation.

44. Two things may be noted about the 2009 application. Firstly, it came four years after the mother achieved lawful residence in the State. Secondly, no steps were taken to challenge that refusal, at least insofar as I was informed. In those circumstances, it seems perfectly reasonable for the Minister to have found that there was a long elective separation in this case.

Did the Minister improperly place reliance on the integrity of the immigration system?
45. Mr. Lynn submits that the Minister's reliance on the "*integrity of the immigration system"* is irrational or irrelevant because the mother is complying with the immigration system and should be commended for doing so. Ms. Duggan submits that, in context, "*integrity means consistency*". It is important that, in the interests of equality before the law, similar cases are, as far as appropriate, treated similarly, and clear policy statements can assist in this regard. There is nothing irrational, irrelevant or unlawful about the Minister seeking to promote the integrity of the immigration system in that sense, in the context of the present visa decision.

46. Furthermore the applicants are seeking to make a major virtue of the fact that they are complying with the law. But compliance with the law is the basic minimum required from all persons in the State or seeking to interact with it. It does not require a decision to be made in their favour as a *quid pro quo*. There is no unlawfulness in the Minister's decision.

Did the Minister misstate or misapply the test of best interests of the child?
47. The applicants criticise the core family rights elements of the decision both in terms of its addressing the child's best interests and in terms of the proportionality and constitutional rights elements of the decision. I will deal with these under separate headings

48. Dealing firstly with best interests, it is submitted that the test that the child's best interests be the paramount consideration was not correctly stated or not applied correctly or at all by the Minister. Instead, Mr. Lynn submits that the Minister incorrectly took the view that the child's best interests were "*a primary consideration*" as opposed to "*the primary consideration*" or "*of paramount importance*".

49. It is true that Lady Hale in *Z.H. (Tanzania) v. Secretary of State for the Home Department* [2011] 2 A.C. 166, saw some semantic difference between these three phrases, and of course there is a difference in terms of ordinary English. But that does not mean that there is necessarily a difference, or a significant difference, in terms of how those terms must be dealt with in law.

50. Reliance is placed on the decision of the European Court of Human Rights in *Jeunesse v. Netherlands* (Application no. 12738/10, European Court of Human Rights, 3rd October, 2014) at para. 109 (citing *Neulinger and Shuruk v. Switzerland* (G.C.) (Application no. 41615/07, European Court of Human Rights, 6th July, 2010) para. 135 and *X. v. Latvia* (G.C.) (Application no. 27853/09, European Court of Human Rights, 26th November, 2011) para. 96), whereby it was said that the best interests of the child were "*of paramount importance*". However, this phrase cannot be taken in isolation because it is immediately qualified by the court to the extent that "*alone, they cannot be decisive*" but must be attended by "*significant weight*".

51. Thus, it is clear that while the Strasbourg court has used the expression "*of paramount importance*" in the immigration context, this is clearly not equivalent to stating that best interests are "the paramount consideration" or "the primary consideration", given the clear qualifications attached by the court to that expression.

52. In cases such as *I.A.A. v. United Kingdom* (Application no. 25960/13, European Court of Human Rights, 31st March, 2016) at para. 46 and *Jeunesse*, at para. 118, the court engages in a detailed factual appraisal of the circumstances before it can form the view either that art. 8 is engaged at all or that there has been a failure to afford the appropriate significant weight to the best interests of the child.

53. Indeed, it would be surprising if not startling were the test being applied in Strasbourg to be significantly different from that clearly set out in art. 3.1 of the UN Convention on the Rights of the Child, which is that in actions concerning children of the primarily public law type specified in that article, "*the best interests of the child shall be a primary consideration*".

54. It is clear that a finding that the child's best interests are a primary consideration involves an acknowledgment that those interests may be outweighed by other factors (see *Z.H., per* Lady Hale at para. 33).

55. In taking the approach she did namely that the best interests were a primary consideration but could be outweighed by other important considerations, the Minister did not fail to adopt, or misapply, the correct test as required by the ECHR, reflecting art. 3 of

the UN Convention on the Rights of the Child. That correct test, regardless of the language used in particular cases, involves regarding the best interests of a child as a primary consideration where art. 8 rights are involved, but one which may be outweighed by other factors such as the integrity of the immigration system.

56. If which I do not accept, the correct test is not articulated in a precisely legally correct manner, that is not fatal as long as the correct test is applied in fact and in substance (*X.X. v. Minister for Justice and Equality* [2016] IEHC 377 (Unreported, High Court, 24th June, 2016) at para. 115), which I find is clearly the case for the reasons stated above.

Did the decision breach the applicants' constitutional rights or fail to correctly assess proportionality?
57. I turn now to the constitutional rights and proportionality arguments, which include a claim that the Minister struck the wrong balance. In *A.M.S. (Somalia) v. Minister for Justice and Equality* [2014] IESC 65 (Unreported, Supreme Court, 20th November, 2014), Clarke J. considered a proportionality assessment regarding family reunification for a recognised refugee. In that case, he held that the balancing exercise carried out by the Minister was clearly incorrect (para. 7.15) and that insofar as economic circumstances were taken into account regarding the wider implications of a decision, there should have been material in relation to those costs (para. 7.4).

58. However, that decision was in the context of the Refugee Act 1996, which includes express provision in s. 18 for promoting the family reunification of recognised refugees. No such strong statutory policy exists in the present case, or in the immigration sphere more generally (outside of specific EU law rights). In *Dos Santos v. Minister for Justice and Equality* [2015] IECA 210; [2015] 2 I.L.R.M. 483 at paras. 9 to 11, Finlay Geoghegan J. emphasised that Article 40.3 does not confer a right on a non-national to be in the State.

59. Even if, which I do not accept, there was a need for material on the costs of granting permission, I have already referred to the fact that the policy document does contain some quantification of the costs of individual decisions, and the Minister clearly had available to her a knowledge of the overall number of such decisions annually.

60. As regards the balancing exercise in this case, the essential submission of the applicants is that inadequate weight has been given to the rights of the child, including constitutional rights and in the art. 8 context. But it is well established that the weight of various factors is quintessentially a matter for the decision-maker (Birmingham J. in *M.E. v. Minister for Justice Equality and Law Reform* (Unreported, High Court, 27th June, 2008) para. 27 stated that *"[t]he assessment of whether a particular piece of evidence is of probate value, or the extent to which it is of probate value, is quintessentially a matter for the Tribunal member",* and *mutatis mutandis* for any decision maker).

61. The best interests of the child, together with all other relevant matters, were considered in the context of a proportionality assessment. It is also important to note that the child in this case is 16 and therefore at, or approaching, the age when independence, rather than dependence, is the key theme. That point is also clearly a factor in the *I.A.A.* case, where it was noted that children aged 13 years and upwards were "*not as much in need of care*" as younger children (para. 33).

62. For those reasons the claim under this heading fails. The constitutional and ECHR rights of the applicants were considered and weighed. The weight to be attached to various factors is quintessentially a matter for the decision-maker. The need for the Minister to allude to documentary material on economic impacts of the grant of an application only applies under s. 18 of the Refugee Act 1996 but in any event there was adequate such material in this case. The applicants are unhappy with the result but have not shown that the decision was disproportionate, particularly having regard to the fact that the child is no longer at a very dependent age.

63. To some extent, the applicants have advanced so many grounds of challenge that they may be said to be engaged in the "*forensic hoopla*" that Cooke J. referred to in *Lofinmakin v. Minister for Justice, Equality and Law Reform* [2011] IEHC 38 (Unreported, High Court, 1st February, 2011) at para. 8, "*in which a player has at once tossed large numbers of grounds in the air like rings in the hope that one at least will land on the prize marked* 'certiorari'". In the present case, there were four free-standing grounds for refusal, two of which were quite independent of the question of the applicants' constitutional rights or the correctness of the proportionality exercise (namely the lack of documentary evidence and inconsistencies in the material provided). So even if this leg of the claim had been made out, the present judicial review would still have failed.

Summary of principles involved
64. Before concluding I will endeavour to summarise some of the main principles discussed as follows:

(i) section 5 of the Illegal Immigrants (Trafficking) Act 2000 does not apply to a visa refusal;

(ii) it is lawful and indeed necessary for the Minister to obtain documentary proof in the form of a court order that the grant of a visa will not interfere with custody or access rights of another parent;

(iii) even if adequate reasons had not been provided, that difficulty could have been addressed in pre-action correspondence; the failure to send a pre-action letter in a case where issue is taken with reasons may go to the discretion of the court;

(iv) the applicant's submissions should, in the absence of evidence to the contrary, be regarded as having been considered if the decision-maker states that they were considered; narrative discussion is not generally required and would only arise in special circumstances (of which the present case is clearly not one);

(v) the Minister is entitled to adopt an approach that exceptional circumstances would be required to depart from her published policy document as to the grant of a visa;

(vi) the assessment of the strength of a claim is a matter for the Minister;

(vii) in immigration matters, which are classically at the core of the executive power of a State, there must be a wide discretion vested in the decision-maker in the absence of clear statutory provisions to the contrary;

(viii) the integrity of the immigration system is promoted by consistency in decision-making, and the Minister may lawfully take this into account in deciding on a visa;

(ix) the best interests of a child should be regarded as a primary consideration where art. 8 rights are involved, but one which may be outweighed by other factors such as the integrity and consistency of the immigration system;

(x) if in a particular decision the correct test is not articulated in a precisely legally correct manner, that is not fatal as long as the correct test is applied in substance;

(xi) the weight to be attached to various factors is quintessentially a matter for the decision-maker;

(xii) the need for the Minister to allude to documentary material on economic impacts of the grant of an application only applies under s. 18 of the Refugee Act 1996 but in any event there was adequate such material in this case; and

(xiii) where a decision is based on a number of independent grounds each capable of supporting the result, the decision will not be quashed if any one or more grounds stand unaffected by any error in any impugned grounds.

Order

65. For the foregoing reasons, I will order that the application be dismissed.