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THE HIGH COURT

JUDICIAL REVIEW

[2006 No. 29 J.R.]

BETWEEN
E.P.I., N.A.I. (A MINOR SUING BY HER MOTHER AND NEXT FRIEND E.P.I.), J.T.I. (A MINOR SUING BY HER MOTHER AND NEXT FRIEND E.P.I)

APPLICANTS

AND
THE MINISTER FOR JUSTICE EQUALITY AND LAW REFORM

RESPONDENT

Judgment of Mr. Justice Feeney delivered on the 30th day of January, 2008

1.1 On the 20th January, 2005 the three applicants arrived in the State and on the following day the first named applicant, who is a Nigerian, applied for refugee status in respect of herself and her two Nigerian born daughters, namely the second and third named applicants. The first named applicant completed a questionnaire which she submitted to the Office of the Refugee Applications Commissioner on the 31st January, 2005. On the 18th February, 2005 the applicant was interviewed and on the 24th February, 2005 the Office of the Refugee Applications Commissioner recommended that neither the first named applicant nor her daughters should be declared eligible for refugee status. By letter of the 3rd March, 2005 the first named applicant was notified of such recommendation and was provided with a copy of the Section 13 Report prepared and completed by the Office of Refugee Applications Commissioner.

1.2 A notice of appeal was submitted on behalf of the three applicants in respect of the said recommendation dated the 24th day of March, 2005. Thereafter an oral hearing was conducted on the 28th April, 2005 and on the 22nd June, 2005 the Refugee Appeals Tribunal affirmed the recommendation of the Refugee Applications Commissioner. The applicants were informed of the decision of the Refugee Appeals Tribunal by letter dated the 30th June, 2005. The decision of the Refugee Appeals Tribunal applied to all three applicants.

1.3 On the 13th September, 2005 the Department of Justice, Equality and Law Reform wrote to the applicants informing them that the Minister proposed making deportation orders and affording each of the applicants certain options including the option to make written representations within fifteen days. Separate representations were made on behalf of each of the three applicants, the first representation being received by the Department on the 17th October, 2005. A written examination of the file relating to all three applicants was carried out under s. 3 of the Immigration Act 1999 and s. 5 of the Refugee Act 1996 by two officers of the Department on the 17th and 18th November, 2005. On the 21st November, 2005 it was recommended that the Minister sign deportation orders in respect of all three applicants.

1.4 Deportation orders in respect of each of the three applicants were signed on the 23rd day of November, 2005 and a letter enclosing copies of the deportation orders and notifying the applicants of the requirement to report to the Garda National Immigration Bureau was sent to the applicants on the 29th November, 2005.

1.5 Additional representations were sent to the Department under cover of letters dated the 17th November, 2005 and the 29th November, 2005, both of which were received on the 30th November, 2005. By letter dated the 3rd December, 2005 the Refugee Legal Service acting on behalf of the applicants wrote to the Garda National Immigration Bureau seeking additional time for the applicants to consider their legal position and advising that the solicitor dealing with the case was away until the 8th December, 2005. The applicants failed to present themselves to the Garda National Immigration Bureau on the 5th December, 2005 as required and on the 8th December, 2005, Officers from the Bureau attended at the applicants' residence in Sligo. The first named applicant disappeared and "went into hiding" and the second and third named applicants were taken into care on the 8th December, 2005. On the 15th December, 2005 the second and third named applicants were made subject of interim care orders pursuant to s. 17(1) of the Child Care Act 1991 in the Sligo District Court.

1.6 On the 12th January, 2006 the first named applicant was apprehended by the Gardaí and she was placed in Mountjoy Women's Prison. On the following day a notice of motion seeking an extension of time within which to bring judicial review proceedings concerning the deportation orders was issued. On the 18th January, 2006 a notice of motion and statement of grounds seeking leave to apply for judicial review issued in the Central Office returnable for the 23rd January, 2006 and on that date an undertaking was given on behalf of the respondent not to deport the first named applicant pending the determination of the judicial review proceedings. The first named applicant was also granted conditional release from detention.

1.7 The High Court heard an application seeking an extension of time within which to bring judicial review proceedings and also seeking leave to apply for judicial review in November, 2006 and on the 10th November, 2006 Mr. Justice McKechnie in an ex tempore judgment extended the time within which to bring the judicial review proceedings and granted leave to apply by way of judicial review. The grounds in respect of which leave was granted are contained in the amended statement of grounds dated the 12th December, 2006.

1.8 As indicated above the first named applicant is the mother of the second and third named applicants who are her Nigerian born children. The second born applicant was born on the 18th December, 2000 and the third named applicant was born on the 17th August, 2002. The first named applicant married the father of those two children on the 6th November, 1999 and the father remains in Nigeria. The first named applicant identified that her first born daughter Elizabeth Izevbekhai was born on the 11th February, 1993 and died on the 15th July, 1994 as a result of blood loss which was described as being possibly the result of a traditional female circumcision. It was diagnosed that such had been performed on that child.

1.9 The applicants herein seek an order of *certiorari* quashing the deportation orders made by the respondent on foot of the decision to deport the applicants made on the 23rd November, 2005. The grounds upon which relief is sought are set out in the post leave amended statement required to ground application for judicial review dated 27th March, 2007.

1.10 The essential grounds upon which the applicants rely are firstly:

That the manner in which the respondent scrutinised the applicants cases was in breach of his obligations under article 3 of the European Convention on Human Rights and Article 40 of the Constitution and s. 4 of the Criminal Justice (UN Convention against Torture Act 2000) and in breach of the Minister's duty to act fairly and comply with fair procedures and was in breach of his alleged duty to weigh fairly all relevant material. It was contended on behalf of the applicants that on the facts of this case there was an

obligation on the Minister to identify at least in a general way the principal reasons as to why he concluded that none of the applicants were at risk of being subject to torture if returned to Nigeria and that absent the identification of the principal reasons leading to the conclusion that the applicants should be deported, that the respondent had acted in breach of his duties and legal obligations.

Secondly it was argued that there is additional material and evidence available which this Court should examine and consider and take into account and assess. Having considered such material the Court should, in a case involving alleged ill treatment under Article 3, assess the evidence and determine of its own violation if there is a real risk that the applicants or any of them will be subject to treatment contrary to Article 3 of the European Convention on Human Rights. It is argued that the Court is obliged to assess that issue in light of all material placed before it and if necessary material obtained of its own motion, including material which was not before the Minister or considered by him.

2.1 The Health Executive Service are a notice party to these proceedings, having been joined as such notice party by order of the High Court made the 20th February, 2006.

2.2 What is sought to be quashed by way of *certiorari* herein is the deportation orders made by the Minister and in particular the decision to deport the applicants made on the 23rd November, 2005. Following the initial submissions made to the Minister, further submissions were received dated the 15th November, 2005 and the 29th November, 2005 both of which were received on the 30th November, 2005. Thereafter what is loosely described as a reconsideration of the matter took place and a further document was prepared in which those two further representations were considered. The opinion arrived at in that "briefing note" dated the 8th December remained unchanged from the original recommendation to affirm the deportation orders. It was common case between the parties that the reconsideration in the "briefing note" dated the 8th December, 2005 was not relevant to the proceedings before this Court, nor were the submissions received on the 30th November, 2005. What is for consideration by this Court is the respondent's decision to deport the applicants made on the 23rd November, 2005 and the relief sought herein relates to that decision and the order of *certiorari* sought is in respect of such decision.

3.1 What is central to this Court's consideration is the process leading to the Minister's assessment which resulted in him signing the deportation orders of the 23rd November, 2005. The reasons for the Minister's decision were communicated in a letter from the Department dated the 29th November, 2005. In this case the Minister was considering submissions made pursuant to s. 3 of the Immigration Act 1996. The submissions included a claim that the prohibition of refoulement would prevent the applicants from returning to their home country and in particular relied upon the first named applicant's belief that the danger which caused her and her children to flee from Nigeria still existed and that she and her daughters were "certain to face death" should they be returned to Nigeria. It was contended that if the first named applicant was returned to Nigeria with her two daughters, that her daughters would face the same fate as had befallen the first applicant's eldest daughter who had died following female genital mutilation. It was contended that for the Minister to make an order for deportation in respect of the applicant or her daughters would be inappropriate and in disregard of the provisions of s. 5 of the Refugee Act 1996.

3.2 Prior to the Minister making his decision, two examinations of the file under s. 3 of the Immigration Act 1999, as amended, were carried out. An examination was carried out by a clerical officer dated the 17th November, 2005 and by an executive officer dated the 18th November, 2005. Those examinations including a recommendation in the document dated the 18th November, 2005 were before the Minister at the time that he determined to make the deportation orders on the 23rd November, 2005.

3.3 In considering the principles which the Court should apply to the Minister's assessment, this Court has the benefit of a number of previous decisions. The Supreme Court reviewed the nature and extent of the Minister's role when considering an applicants claim pursuant to s. 5 of the Refugee Act 1996. That decision is *Baby O v. the Minister for Justice* [2002] 2 I.R. 169. In that case it was submitted on behalf of the second named applicant that the consideration of an application for leave to remain in Ireland on humanitarian grounds necessarily involved the determination by the Minister as to whether or not s. 5 of the 1996 Act had been satisfied and that fair procedures required the Minister in arriving at such a decision to give reasons for holding that s. 5 had been satisfied.

A similar situation arises in this case where there has also been submissions in writing made on behalf of an applicant in support of an application for leave to remain in Ireland on humanitarian grounds notwithstanding the failure of the applicants' application for refugee status. The Supreme Court considered the precise point as to whether or not in considering such an application that the requirement of fair procedures obliged the Minister in arriving at such a decision to give reasons for holding that s. 5 had been satisfied. Keane C.J. having considered that matter determined (at p. 183) as follows:

> "I am satisfied that this submission is also without foundation. Section 5 of the Act of 1996, does not require the first named respondent (the Minister) to give any notice to a person in the position of the second named applicant that he proposes to make a decision under the section: it simply requires the first respondent to satisfy himself as to the refoulement issue before making a deportation order. In this case, representations having been made to the first named respondent as to why the second named applicant should not be deported, she was informed that:
>
> > 'the Minister has satisfied himself that the provisions of s. 5 (Prohibition of Refoulement) of the Refugee Act, 1996, are complied with in your case'.
>
> I am satisfied that there is no obligation on the first named respondent to enter into correspondence with a person in the position of the second named applicant setting out detailed reasons as to why refoulement does not arise. The first named 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."

A similar factual situation arises in this case and the limited nature of the Minister's obligations as identified by Keane C.J. is the *Baby O*. case is equally applicable herein. The Minister's obligation was to consider the representations made on behalf of the first named applicant and to notify her of his decision and there is no obligation on the Minister to set out detailed reasons as to why refoulement does not arise or enter into any correspondence. It was contended on behalf of the applicants herein that there is, at least in a general way, an obligation on the Minister to identify the principal reasons as to why refoulement does not arise. That contention is inconsistent with the approach identified by Keane C.J. in the *Baby O*. case.

3.4 Further as pointed out by Keane C.J. in the *Baby O*. case (at p. 184):

> "Consideration by the first named respondent (the Minister) of refoulement in this case necessarily involved the consideration by him of whether there were substantial grounds for believing that the second named applicant would be in

> danger of being subject to torture within the meaning of s. 4(1) of the Criminal Justice (United Nations Convention against Torture) Act 2000."

A similar position existed in this case and it follows that the determination by the Minister necessarily involved the consideration and conclusion by him that there were no substantial grounds for believing that the applicants would be in danger of being subjected to torture within the meaning of s. 4 of the Act of 2000.

3.5 The Supreme Court also considered in the *Baby O*. case as to whether or not the Minister should take into account what was said to be a changed circumstances which should have led him to revoke the deportation order pursuant to s. 3(11) of the Immigration Act 1999. The Supreme Court (Keane C.J.) determined (at p. 184) that:

> "It was entirely a matter for the first named respondent (the Minister) to determine whether the circumstances relied on were such that he was obliged to revoke the deportation order already made. I am satisfied that neither the High Court nor this Court on appeal had any jurisdiction to interfere with the first named respondent's determination that the change of circumstances referred to would not justify him in revoking the deportation order."

It is clear from that part of the judgment that a procedure exists pursuant to s. 3(11) of the Immigration Act 1999 which permits an application to be made to the effect that there are changed circumstances which would lead the Minister to revoke a deportation order already made. It is for the Minister to consider such an application and to determine whether the circumstances relied on are such that he is obliged to revoke a deportation order already made.

3.6 The statutory limitations on the Minister's power to make a deportation order are dealt with in s. 5 of the Refugee Act 1996 and s. 3 of the Immigration Act 1999. Section 5 of the 1996 Act provides:

> "5(1) A person shall not be expelled from the State or returned in any manner whatsoever to the frontiers of territories where, in the opinion of the Minister, the life or freedom of that person would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion.
>
> (2) Without prejudice to the generality of subsection (1), a person's freedom shall be regarded as being threatened, if, *inter alia*, in the opinion of the Minister, the person is likely to be subject to a serious assault (including a serious assault of a sexual nature)."

That section expressly identifies the circumstances in which refoulement would be prohibited, thereby placing a restriction on the power of the Minister to make a deportation order if the Minister is of the relevant opinion.

Section 3 of the 1999 Act deals with deportation orders and is subject to the provisions of s. 5 of the 1996 Act. Section 3 of the 1999 Act permits the Minister, subject to s. 5 of the 1996 Act and subject to other provisions within s. 3 to make a deportation order in a number of circumstances. The relevant circumstance to this case is the entitlement of the Minister to make a deportation order in respect of a person whose application for asylum has been refused by the Minister. (See s. 3(2)(f) of the 1999 Act.)

Section 3(6) of the 1999 Act provides that in determining whether to make a deportation order in relation to a person, the Minister shall have regard to a number of factors listed in that sub-paragraph in eleven separate paragraphs. Those factors include not only the age of the person or persons involved, the duration of residence within the State and the family and domestic circumstances of such person or persons but also humanitarian considerations so far as they appear or are known to the Minister. The Minister is also obliged to have regard to any representations duly made.

Thus as pointed out by Clarke J. in *Kouaype v. the Minister for Justice, Equality and Law Reform and Another* (Unreported, High Court, Clarke J., 9th November, 2005) in general terms there are two statutory prerequisites to the making of a deportation order.

> (1) the Minister is required to be satisfied that none of the conditions set out in s. 5 of the 1996 Act are present and
>
> (2) the Minister is also required to consider the humanitarian and other factors set out in s. 3(6) of the 1999 Act in so far as they appear or are known to him.

In this latter context it follows that the Minister is required, *inter alia*, to have regard to any representations on those matters which are made by or on behalf of the person concerned. It is also important to the overall context, as pointed out by Clarke J (at page 4 of his judgment):

> "…that the reasons on which the Minister is prohibited from making a deportation order under s. 5 of the 1996 Act are virtually identical to the basis upon which a person qualifies for refugee status in Irish law."

3.7 It is appropriate to note that the reason upon which the first named applicant sought asylum in respect of herself and her two daughters was that the second and third named applicants were at grave risk of having female genital mutilation perpetrated against them if they were returned to Nigeria. That was the matter under consideration in the three applicants' applications for asylum which were refused. During that process the first named applicant expressly raised the issue of the death of her first daughter and the circumstances giving rise thereto. The first named applicant claims in relation to her first daughter and the circumstances surrounding her death were not disputed and were not central to the basis upon which the applicants' applications were refused. The applicants' applications for asylum were rejected on the basis that the Tribunal found that on the present evidence that there was no substantiation of the alleged risk to the applicant or of her children when considered objectively. The history was not disbelieved but rather, on a forward looking test, it was deemed that it had not been demonstrated that there was a reasonable degree of likelihood of a well founded fear of persecution in the future. Against that background the submission of or the obtaining of additional evidence to support or confirm the circumstances of the death of the first daughter would be of limited significance. The Tribunal in arriving at its decision was aware of the earlier death of the first named applicant's first child. That was one of the factors available for consideration by the Refugee Appeals Tribunal prior to arriving at its decision.

3.8 A central issue between the parties in this case is the suggested obligation on the Minister at least in a general way to identify the principal reasons giving rise to his decision to make deportation orders in these cases. It is for that reason that it has been necessary to identify the statutory regime applicable to the Minister in relation to making of a deportation order as opposed to the process which the Refugee Applications Commissioner or the Refugee Appeals Tribunal is engaged in when deciding on whether or not to make a recommendation to the Minister as to the refugee status of a party who has applied for it. A similar legal issue was considered by Clarke J. in the *Kouaype* case. Clarke J. undertook a detailed review of the case law at part 4 of his judgment

commencing on page 5 and having reviewed those authorities including the *Baby O.* case, concluded at paragraph at 4.10 (on page 9) as follows:

> "It is clear, therefore, that the Supreme Court in *Baby O* was also of the view that the obligations upon the Minister when considering making a deportation order are different from those which arise in the case of the statutory bodies charged with the task of determining whether to recommend that a person be granted refugee status."

Clarke J. went on to state at paragraph 4.11 (on page 10):

> "Having regard to all of the above it seems to me that the role of the Court in reviewing that aspect of the decision of the Minister to make a deportation order which requires the Minister to be satisfied that the provisions of s. 5 of the Act of 1996 do not apply to the case under consideration is, in all cases but in particular in cases where the applicant concerned has already been the subject of a decision to refuse a declaration of refugee status, necessarily significantly more limited than the role of the Court in considering the determination of the statutory bodies in respect of the refugee process itself."

3.9 This Court must recognise the limited nature of its role in reviewing a decision of the Minister to make a deportation order and adopts the statement by Clarke J. (at paragraph 4.12 in the *Kouaype* decision that:

> "In the absence of unusual, special or changed circumstances or in the absence of there being evidence that the Minister did not consider the matter specified by s. 5 in coming to his opinion, it seems to me that it is not open to the Court to go behind the Minister's reasoning. It should, in addition, be noted that the decision concerned is that of the Minister. It may well be that, as a matter of practice, the Minister will obtain reports and recommendations from officials within his department. However it is likely (and would appear to be the case on the facts of these proceedings) that the Minister will have before him (when making his decision), all the relevant materials including the evidence which was before the statutory bodies and the decision of those bodies."

3.10 The two examinations of the file which were carried out resulting in the reports dated the 17th November, 2005 and the 18th November, 2005 make it clear that the full file and history of these applicants' claims for asylum were considered. The examination of these files particularly in relation to s. 5 of the Refugee Act 1996, as amended, demonstrates that the basis identified for consideration was that the first named applicant had claimed that she left Nigeria to avoid female genital mutilation being performed on her daughters against her will by her husband's family, and that she did so in circumstances where her eldest daughter had died following female genital mutilation. It was also clear that the applicants' account of her family history was not called into question but rather the basis for rejecting the claim for refugee status was the lack of evidence that the applicant was genuinely at risk, and that it was not enough for the applicant to truly believe herself and her children to be in jeopardy but rather that there must be objective facts to provide a concrete foundation for the concern which induces her to seek refugee status.

3.11 In the case of *Kozhukarov and Ors. v. The Minister for Justice Equality and Law Reform and Ors*. (Judgment of Mr. Justice Clarke delivered the 14th day of December, 2005). It was pointed out that it was possible that there maybe cases where a person would, quite properly, be refused refugee status but would nonetheless be entitled to require the Minister to refrain from deporting them under s. 4 of the 2000 Act (see p. 7 of the judgment). In that judgment Clarke J. identified at paragraph 2.4 (at p. 6):

> "It seems to me that there are strong grounds for arguing …that, in addition to the matters identified in *Kouaype*, it is also, in principal and provided that the appropriate facts can be established, open to a party to seek to challenge the making of a deportation order (or in an appropriate case a refusal to revoke a deportation order) where it can be shown that there are substantial grounds for arguing that the making of (or refusal to revoke) such an order would be in breach of any other legal obligation on the part of the Minister (that is to say an obligation other than those imposed by s. 5 of the 1996 Act or s. 3(6) of the 1999 Act."

That addition to the matters identified in *Kouaype* is potentially applicable to the facts of this case. However an examination of the facts of this case demonstrate that the applicants herein are not within the category of persons who could be identified as having been properly refused refugee status but would nonetheless be entitled to require the Minister to refrain from deporting them under s. 4 of the 2000 Act. The reason for this is that the very basis upon which the applicants herein sought refugee status is the same basis relied upon them as requiring the Minister to refrain from deporting them under s. 4 of the 2000 Act. The facts herein, therefore, are not within the additional ground identified by Clarke J. in the *Kozhukarov* case. Inherent within the decision in that case was the possibility of there being different matters which the Minister would be required to consider from the matters which properly led to the refusal to grant refugee status.

4.1 The applicants in this case place considerable emphasis on additional material which it is claimed was properly available for consideration. In particular a medical report from a doctor who treated the first named applicant's deceased daughter. There was also a medical certificate identifying the deceased child's cause of death. However consideration of the overall factual position in this case demonstrates that this information does not provide or support a significant change in material circumstances. That follows because the consideration by the Refugee Appeals Tribunal and the information considered by the Minister and his officials both took place against a background where the first named applicant's claim in relation to the death of her first daughter was well known and where that account was not in dispute.

4.2 Subsequent to the *Baby O*. decision in the Supreme Court Clarke J. considered its application to the decision-making process carried out by a Minister who is engaged in deciding whether to make a deportation order. Earlier in this judgment I have set out certain references from the judgment of Clarke J. in the *Kouaype* case. Clarke J. concluded at paragraph 5.1, as follows:

> "For all the above reasons it seems to me that the grounds upon which a decision by the Minister to make a deportation order in the case of a failed asylum seeker, can be challenged are necessarily limited."

Clarke J. thereafter set out a list of the very special circumstances which would be required for such a review whilst identifying that such a list was not exhaustive. Four matters were identified by Clarke J., the first being that the Minister did not consider whether the provisions of s. 5 applied. That does not arise in this case as there is express consideration of such provisions. The second matter identified was that the Minister could not reasonably have come to the view which he did. That does not arise in this case as the view which the Minister formed was consistent with the view arrived at by the Refugee Appeals Tribunal based upon the same factual matrix. The third ground relates to a situation where an applicant was not afforded statutory entitlement to make representations on the so called humanitarian grounds. In this case the first named applicant made representations and they were considered and no representations had been received on behalf of the other named applicants by the date of the consideration. The fourth and final

matter identified as the potential special circumstances by Clarke J. is that the Minister did not consider any such representations made within the terms of the Statute or the factors set out in s. 3(6) of the Act of 1999 and again an examination of the reports prepared for the Minister and forwarded to him demonstrate that that was not the case herein. I have also already dealt with a further matter identified by Clarke J. in *Kozhukarov* as a potential special circumstance.

4.3 This Court adopts and follows the view taken by Clarke J. in the *Kouaype* and *Kozhukarov* judgments as to the scope of the review available in respect of a decision by the Minister to make a deportation order subsequent to a failed asylum application. On the facts of this case none of the matters canvassed would have advanced the applicants' case and such matters could neither be categorised as a material change of circumstances, nor could such matters cause the situation to arise where it could be contended that the Minister could not reasonably have come to the view which he did. The Minister was entitled to have regard to the fact that the applicants were failed asylum seekers and that they had failed to establish a well founded fear of persecution either before the Office of the Refugee Applications Commissioner or on appeal to the Tribunal. This Court is satisfied that an examination of the "additional evidence" referred to at paragraph 62 of the verifying affidavit does not in fact materially alter the factual matrix.

4.6 This Court has already identified the limited scope of review available in respect of a decision by the Minister to make a deportation order subsequent to a failed asylum application. The verifying affidavit and the pleadings herein contended that there was a failure to correctly assess the country of origin documentation. That point was not pursued in argument before the Court. In fact an examination of the report of executive officer, Audrey G. Walsh, dated the 18th November, 2005 demonstrates a detailed examination of country of origin information relevant to the applicants' failed claim for asylum.

4.7 The narrow view as to the scope of review available in respect of a decision by the Minister to make a deportation order subsequent to a failed asylum application, recognises that the decision-making process carried out by the Minister is not an inquisitorial process. An inquisitorial body has obligations in relation to fair procedures and a requirement to bring to the attention of a party, whose rights may be affected, matters of substance and importance which the inquisitorial body may regard as having the potential to affect its judgment. However the Minister is not carrying out an inquisitorial process. In this case his decision does take place subsequent to a failed asylum application. The claim that there was reliance on undisclosed materials in breach of fair procedures does not arise herein. The requirement to disclose relevant documentation to asylum seekers and their legal representatives extends to bodies such as the Office of the Refugee Applications Commissioner and the Refugee Appeals Tribunal but does not extend to the exercise of a Ministerial discretion. There is no requirement for the Minister to enter into correspondence based on country of origin information and this is clear from the judgment of Keane C.J. in the Baby O. case (see page 183). The Court is satisfied that there was no obligation on the Minister either in a general way or in any way to identify any reasons giving rise to his decision to deport. The claim that the Minister had such obligation is rejected.

5.1 The applicants placed reliance on a decision of the European Court of Human Rights (E.C.H.R.) in the case *N. v. Finland* judgment of the 26th July, 2005 (Final, 30th November, 2005). In particular reliance is placed by the applicants on the contention that in determining whether substantial grounds have been shown for believing that a real risk of treatment contrary to Article 3 exists, that the courts should follow the approach identified in the *N. v. Finland* case. In that case the E.C.H.R. held at paragraph 160 as follows:-

> "The Court's examination of the existence for risk of ill treatment in breach of Article 3 must necessarily be a thorough one in view of the absolute character of this provision and the fact that it enshrines one of the fundamental values of the democratic societies making up the Council of Europe. In determining whether substantial grounds have been shown for believing that a real risk of treatment contrary to Article 3 exists, the Court will assess the issue in the light of all the material placed before it and, if necessary, material obtained of its own motion. The assessment of the existence of the risk must be made on the basis of information concerning the conditions prevailing at the time of the Court's consideration of the case, the historical position being of interest insofar as it may shed light on the present situation and its likely evolution."

That quotation was relied upon by counsel for the applicants to support an argument that this Court should review the so called additional material and come to its own view as to whether or not there are substantial grounds for believing that the applicants are at real risk.

5.2 Having considered that decision, this Court is satisfied that the quotation relied upon by the applicants has no applicability to this Court. That quotation identifies the European Court of Human Rights own procedures and is not and cannot be an authority that this Court, in considering a judicial review, must transform itself into a fact finding body. In this jurisdiction there is in place an extensive statutory regime. Part of that statutory regime is an entitlement to seek judicial review. The jurisdiction of the Court is limited to a review of decisions made and is not and cannot be part of an appeal process making factual determinations.

5.3 The extensive statutory regime in Ireland does provide a process for dealing with real and significant alterations in the risk facing a person subject to a deportation order. The statutory regime permits of the re-admission to the asylum system pursuant to s. 17(7) of the Refugee Act 1996, as amended. Under that section a person to whom the Minister has refused to give a declaration may not make a further application for a declaration under that Act without the consent of the Minister. It is, however, open to a person to seek the consent of the Minister to make a further application for a declaration under the Act based upon a real and significant alteration in the factual position concerning the risk of ill treatment in breach of Article 3 of the European Convention on Human Rights.

5.4 There is also statutory provision contained in the section dealing with deportation orders in the Immigration Act 1999 at s. 3(11) to the effect that the Minister may by order amend or revoke an order made under that section. In effect this provision allows and permits a revocation of a deportation order. The statutory regime within this country provides for situations where there is a real or substantial alteration in the risk of ill treatment. That is done so by means of statutory provisions, identified above, and not by means of this Court embarking on an assessment of new material placed before the Court. The portion of the judgment relied upon by the applicants in this case from the *N. v. Finland* case has no application to the statutory regime within this jurisdiction and does not and cannot be relied upon to permit this Court to depart from its limited function of judicial review.

6.1 In the light of the conclusions and determinations outlined above, this Court is satisfied that the applicants have failed to establish any basis for judicial review and the Court therefore refuses the relief sought.