Neutral Citation: [2014] IEHC 108

THE HIGH COURT

JUDICIAL REVIEW

[2009 No. 1193 J.R.]

IN THE MATTER OF REFUGEE ACT 1996 (AS AMENDED),

IN THE MATTER OF THE IMMIGRATION ACT 1999 (AS AMENDED),

IN THE MATTER OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000 (AS AMENDED), AND

IN THE MATTER OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS ACT 2003, SECTION 3(1)

BETWEEN

S. J.

APPLICANT

AND

THE REFUGEE APPLICATIONS COMMISSIONER, THE REFUGEE APPEALS TRIBUNAL, THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, ATTORNEY GENERAL AND IRELAND

RESPONDENTS

AND

THE HUMAN RIGHTS COMMISSION

NOTICE PARTY

JUDGMENT of Mr. Justice McDermott delivered on the 7th day of March, 2014

1. This is an application for an order amending the statement of grounds in an application for leave to apply for judicial review together with an extension of time.

2. The applicant, S.J., is the husband of A.G. who was originally the second named applicant in these proceedings. Both are Nigerian nationals who arrived in Ireland on 8th August, 2008. They made applications for asylum on 11th August. S.J. claimed that he feared the Nigerian authorities and his partner's father. His partner at the time, A.G., also outlined her fear of her father on account of her wish to marry S.J.. They were married in the state on 4th March, 2009.

3. The office of the Refugee Applications Commissioner recommended that the applicants should not be declared refugees and in s. 13 reports in respect of each, made adverse credibility findings concerning their alleged fears of persecution which were determined not to be well founded. The recommendations in both cases were appealed to the Refugee Appeals Tribunal on the basis of a challenge to the adverse credibility findings. The Tribunal issued decisions affirming the recommendations of the Commissioner on 4th June, 2009, following an oral hearing on 19th May. Subsequently, an application was made for subsidiary protection on 13th August, 2009, which was refused for reasons set out in a determination of 8th October and notified to the applicants by letter dated 19th October. An application under s. 3 of the Immigration Act 1999, for leave to remain in the state was also made and following the refusal of subsidiary protection a deportation order was made in respect of the applicant on 28th October, based on an examination of file of 5th October, notification of which was furnished on 3rd November.

4. By notice of motion dated 13th November, 2009, the applicant sought leave to apply for judicial review by way of *certiorari* for orders quashing the deportation order, the refusal of subsidiary protection, a direction made pursuant to s. 12(1) of the Refugee Act 1996, and orders quashing the decisions of the Refugee Applications Commissioner and the Refugee Appeals Tribunal. A number of declarations were sought, including a declaration that the direction dated 11th February, 2003, made pursuant to s. 12(1) of the Refugee Act, as amended, by the Minister for Justice, Equality and Law Reform (the Minister) was incompatible with Article 23 of Council Directive 2005/85/EC and that the Refugee Act 1996, as amended, was incompatible with Article 39 of the same Directive and further, a declaration that the Minister had failed to provide the applicant with an effective remedy before a court or tribunal within the meaning of Article 39. A further declaration was sought pursuant to s. 5(1) of the European Convention on Human Rights Act 2003, that the rule of law governing the scope of judicial review relating to asylum and deportation decisions as set out in *O'Keeffe v. An Bord Pleanála* [1992] 1 I.R. 39 was incompatible with the European Convention on Human Rights and failed to provide an effective remedy for the purposes of Article 13 of the Convention.

5. The original statement of grounds relied upon contained fifteen grounds. Ten of these grounds (Grounds 1 – 8 inclusive and Grounds 13 and 14) are unstateable and unarguable because of the decision of the European Court of Justice in *H.I.D., B.A. v. Refugee Applications Commissioner, Refugee Appeals Tribunal & Ors* Case-175/11 (judgment, 31st January, 2013), and are no longer being pursued.

6. The balance of the relief claimed is in respect of the refusal of subsidiary protection and the deportation order. The court notes that the applicant's wife, who was a co-applicant in the original proceedings, returned voluntarily to Nigeria and the proceedings brought by her were struck out by consent on 8th July, 2013.

7. In the application as originally framed on behalf of the applicant, a challenge was made to the refusal of subsidiary protection on the ground that:-

> "The third named respondent lacked power to refuse the applicants subsidiary protection and thereafter to make the deportation orders in respect of the applicants because the applicants were not persons whose application for asylum had been lawfully refused within the meaning of s. 3(2)(f) of the Immigration Act 1999."

It is clear that had this challenge proceeded on that sole ground, it had to fail as being unstateable or unarguable because it depended on a successful challenge to the recommendations of the Refugee Applications Commissioner and the Refugee Appeals Tribunal now withdrawn following the decision in *H.I.D., B.A.*

8. The applicant indicated an intention to proceed with the challenge to subsidiary protection as outlined in legal submissions of 16th October, 2013. It was made clear in those submissions that Grounds 1 – 9 of the statement of grounds were not being pursued. A hearing was sought in relation to the remainder of the grounds on 2nd December, 2013. A telescoped hearing date of 26th February, 2014, was assigned and the case was called over in the normal way on 17th February.

9. The court notes that at para. 4 of the outline submissions on behalf of the applicant delivered on 16th October, 2013, it was claimed that:-

> "4. In determining the subsidiary protection applications, the Minister placed total reliance upon the adverse credibility findings previously made by the Refugee Appeals Tribunal. If necessary, the applicant seeks to amend the statement of grounds to reflect this aspect. This procedure also undermined the legality of the deportation decision."

10. A notice of motion did not issue seeking an amendment to cover this issue until 19th February, 2014. On 17th February the respondents were contacted by telephone and informed that the applicant wished to rely on the judgment of Hogan J. in *M.M. v. Minister for Justice, Equality and Law Reform* delivered on 23rd January, 2013, which dealt with the point and to adjourn the hearing of the case pending the outcome of a Supreme Court appeal in that matter. The respondent refused to consent to any application for an adjournment on that basis. An application was made to the court (MacEochaidh J.) as a result of which the applicant was directed by the court to bring an application to amend the statement of grounds, if he wished to do so, within 48 hours.

11. The applicant now seeks an amendment of the statement of grounds in the following terms:-

> "16. The Minister, in determining the subsidiary protection application of the applicant, erred in law in failing to provide the applicant with an effective hearing in that reliance was placed on the adverse credibility findings previously made by the Refugee Appeals Tribunal and no independent and separate adjudication was made on the applicant's claim.
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> 17. The deportation decision was vitiated by the unlawful procedure adopted in determining the subsidiary protection application."

12. The applicant contends that following a general direction given by this Court to applicants to present a short summary of the case, including any changes in jurisprudence since the proceedings were instituted, the applicant submitted a form identifying this new ground on 16th October, 2013, to the court stating in short form that it was intended to rely on recent developments in the jurisprudence of the European Court of Justice in respect of subsidiary protection and, in particular, relating to the use of credibility findings previously made by the Refugee Applications Commissioner or Refugee Appeals Tribunal when determining subsidiary protection. Furthermore, the grounding affidavit states that a motion to amend the grounds was not brought on the advice of counsel as follows:-

> "3. I am advised by counsel that no motion to amend was sought at that time, particularly because an earlier judgment of Mr. Justice McDermott in *J.A. v. Refugee Appeals Tribunal & Ors* [2013] IEHC 244, wherein the applicant was permitted to amend the proceedings to include the *M.M.* point, was appealed to the Supreme Court on 7th June, 2013. Counsel was of the view that the issuance of a motion seeking the amendment of the within proceedings may be premature while both the *J.A.* and *M.M.* decisions await consideration by the Supreme Court. In arriving at this view, counsel was primarily conscious of the need to avoid the occurrence of unnecessary costs. I say the delay in bringing the motion to amend had nothing to do with the applicant and everything to do with the views expressed by counsel."

In addition, it was claimed that the Minister would not suffer any prejudice by allowing the amendment to include the M.M. point, particularly as the respondent had ample opportunity since 16th October, 2013, to consider his position.

13. The Minister objects to the proposed amendments and submits that the applicant now seeks to make a new case challenging the subsidiary protection decision, some four years and four months after it was made and over one year after the judgment of Hogan J. in *M.M.*. Apart from the brief reference in legal submissions on 16th October, 2013, to the possibility of such a point being raised, the matter was never taken any further. The matter was not raised at the list to fix dates or in any correspondence thereafter. The applicant sought and the respondent was happy to agree that the case should proceed by way of a telescoped hearing and only sought to initiate an amendment to the grounds on 17th February, days in advance of the hearing. In addition, the respondent complains that the applicant has not sworn an affidavit grounding this motion to amend the pleadings and does not make any complaint as regards the substantive assessment of his subsidiary protection application in 2009. There is no legal challenge to the previous asylum decisions of the Refugee Appeals Tribunal.

14. In *Muresan v. Minister for Justice, Equality and Law Reform* [2004] 2 ILRM 364, an application was made to amend a statement of grounds four months after an initial application and an extension of time was sought under s. 5 of the Illegal Immigrants (Trafficking) Act 2000, for that purpose. The only explanation given for the delay in the filing and serving of the motion seeking the proposed amendments was that new counsel had been retained shortly before the hearing who advised that additional reliefs and grounds ought to be included as part of the applicant's claim on the basis of the documents then available. These documents were the same as those available when the initial motion issued. Finlay Geoghegan J. refused the application holding that an applicant seeking leave to amend an application for leave to apply for judicial review by adding new reliefs which either sought to challenge a different decision to that already challenged, or which could amount to a new cause of action in respect of the decision already challenged, was in effect making a new application, although by way of amendment. Therefore, the applicant had to satisfy the court that there was good and sufficient reason for extending the period within which the application could be made in accordance with section 5. In that case, a change of counsel was not held to be a good and sufficient reason to extend the time. However, the court accepted that in certain circumstances a clear oversight or error by lawyers acting for the applicant could amount to good and sufficient reason for extending the period. In this case the applicant contends that there is a good and sufficient reason in that the legal basis underpinning the new ground came about after the initial application and was a result of a radical change in the jurisprudence applicable to applications for subsidiary protection in the *M.M.* case.

15. The question as to whether an amendment will be granted, notwithstanding inordinate delay because of new or potentially new jurisprudence, has been considered in a number of cases relied upon by the respondent. In *M. (I.M) v. The Minister for Justice, Equality and Law Reform* [2011] IEHC 309 Cooke J. refused an application to amend the grounds to encapsulate the point arising under Article 4(1) of the Qualification Directive which had been referred to the European Court of Justice in the *M.M.* case and stated:-

> "The point is one which could well have been raised in the proceedings as originally brought. It might also have been raised by way of a formal application to amend at any time during the years in which the case was pending. The fact that it appears to be inspired by argument raised by other legal representatives in another case and in the (High Court) judgment…does not alter the position that there has been exceptional delay in raising it and it would be wholly unfair to impose upon the respondent the obligation to deal with it at this stage."

In that case the application was brought before the court informally at the very last moment at the outset of a hearing of an application for leave to apply for judicial review.

16. In *Afolabi v. the Minister for Justice, Equality and Law Reform* [2012] IEHC 192, Cooke J. again refused an application to amend on the basis of recent case law stating that it would be manifestly unfair to the respondents to permit such an application to succeed when made for the first time informally by letter given a matter of days before the hearing of the case after papers had been lodged and written legal submissions exchanged. Furthermore, the court rejected the application because it was not occasioned by any change of events or circumstances affecting the applicants themselves but "purely the happenstance of forensic inspiration provided to the legal representatives of the applicants" by the intervention of a High Court judgment.

17. In *Guo v. the Minister for Justice, Equality and Law Reform* (Unreported, High Court, 28th April, 2010) Herbert J. refused an attempt to rely upon a new substantive ground of challenge nineteen months after the institution of proceedings. He stated that:-

> "If an amendment of the type sought were to be permitted every time leave was granted in some other application on some consideration which it could be claimed was also applicable to the instant case, judicial review applications would become interminable and the great remedy for an alleged abuse of due process would itself become such an abuse."

18. The applicant relies upon the decision of the Supreme Court in *Keegan v. An Garda Síochána Ombudsman Commission* [2012] IESC 29, which was an appeal against a refusal by the High Court to amend a statement of grounds for judicial review against the making of a decision by the respondent to conduct an investigation under An Garda Síochána Act 2005. The proposed new ground, if granted, amounted to an arguable case. Fennelly J. in considering the *Muresan* case noted that Finlay Geoghegan J. acknowledged that "uncertain facts, clear oversights or errors by lawyers…may amount to good and sufficient reason for extending the period under section 5(2)."

However, there was no such clear error in the case before her. Fennelly J., while noting that the courts expressed reluctance to grant amendments without good reason, stated as follows:-

> "32. Strict imposition of time limits is mitigated by the power of the court to permit an application outside the permitted time, provided the court is persuaded that there is good reason for the delay and that no other party is adversely or unfairly prejudiced.
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> 33. Once an applicant has obtained an order granting leave to apply for judicial review, he is confined to the grounds permitted. He may not argue any additional grounds without leave of the court.
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> 34. If he applies for an amendment of his grounds within the judicial review time limit, he should, obviously, at least in normal circumstances, have no difficulty obtaining the amendment. If he applies for an amendment outside the time, he will have to justify the application. He will have to explain his delay, just as in the case of a late applicant. the court will expect him to give reasons to explain his failure to include the new proposed ground in his original application.
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> 35. On the other hand, it is difficult to see why an applicant for an amendment of grounds should have to satisfy a more exacting standard in explaining delay than is imposed on an ordinary late application. He may say that the additional ground is based on material of which he was unaware when he was making his original application. On occasion, the respondent reveals a new ground of argument in its answer to the application…The applicant may offer a different explanation. There is no reason, in logic, to impose on an applicant a criterion of newly discovered fact to justify an application to amend, when an application for an extension of time is not subject to any equivalent condition. This is not to say that the applicant's knowledge of the facts is irrelevant. In some cases…discovery of new facts may be an explanation for the omission to include a ground. In other cases the applicant may have been aware at all relevant times of the facts relevant to the new ground and this will weigh in the balance against him, without being necessarily conclusive.
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> 36. None of this is to take away from the fact that an application for an amendment of his grounds for judicial review must explain his failure to include the proposed new ground in his original application. The cases show that the courts are reluctant to admit new grounds which amount to advancing an entirely new cause of action…or a challenge to a different decision as in Muresan. The nature of the decision under attack may also be relevant. If it is one which benefits the public at large or a large section of the public, a challenge may have corresponding disadvantages for a large number of people. This may explain why special and stricter statutory rules have been introduced in cases of public procurement, planning and development and asylum and immigration. The courts will have regard to the public policy considerations which have prompted the adoption of such rules.
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> 37. Amendments may be more likely to be permitted where…it does not involve a significant enlargement of the applicant's case. To the extent that leave has already been granted, the public interest in the certainty of a decision is already under question. An additional ground may not make any significant difference, particularly if it is based as in the present case on a pure matter of law. A court might take a different view, if the new ground were likely to give rise to further exchange of affidavits relating to the facts.
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> 38. For the purposes of the present application, it is not in dispute that the proposed new ground meets the test of being arguable. If it were to succeed it would mean that the respondent had no jurisdiction…consequently the additional ground is a significant one and raises an entirely new ground in law. To that extent it substantially enlarges the original grounds. On the other hand, the appellant would be deprived of a serious argument, if it were prevented from advancing it."

19. The court then considered the explanation offered on behalf of the appellant for the failure to include that ground on the original application for leave. In the grounding affidavit supplied, it was simply averred that the point was overlooked by the legal representatives of the appellant. Having considered the *Muresan* decision, the court noted that Finlay Geoghegan J. accepted that an oversight or error by an applicant's lawyer might depending on the facts provide a sufficient explanation. Fennelly J. accepted the learned judge's conclusion that where a client might be significantly prejudiced if he could not explain delay or failure to include a ground by reference to such an error, the amendment might be appropriate. However, he also noted that she was rightly sceptical where new lawyers had merely taken a different view of the law. The learned judge noted that the additional ground would, if successfully argued, enable the appellant to prevent an inquiry potentially leading to serious disciplinary penalties. There was no change in the nature of the relief sought, nor was there any prejudice to the respondent in allowing the applicant to raise the point which was a pure question of law. There were also other facts in the case, namely a failure by the respondents to keep the appellant informed of other significant matters which counterbalanced the appellant's delay. It was considered unjust to visit on the appellant the consequences of what his lawyers frankly admitted to have been their error.

20. The applicant invites the court to apply these principles in allowing the amendment in this case and also relies upon this Court's decision in *J.A. v. Refugee Appeals Tribunal & Ors* [2013] IEHC 244, in which liberty was granted to the applicant to amend the grounds upon which he sought to challenge a refusal of subsidiary protection. As in this case, that application arose following the decision of the High Court in *M.M. v. Minister for Justice, Equality and Law Reform* [2013] IEHC 9 which followed the decision of the European Court of Justice in *M.M. v. Minister for Justice, Equality and Law Reform, Ireland and the Attorney General [*2012] EUECJ C-227/11 (22nd November, 2012). In J.A. the court granted liberty to amend the grounds at the leave stage in respect of an application which required only an arguable case to succeed.

21. In *J.A*. the applicant had, as part of his initial application seeking leave to apply for judicial review, challenged the subsidiary protection decision on the same ground as that which gave rise to the reference to the European Court of Justice in *M.M.*, namely a claim that the Minister failed to cooperate with the applicant in assessing the relevant elements of the claim in breach of the minimum standards mandated by Article 4(1) of Council Directive 2004/83/EC. The amendment sought and granted in *J.A*. arose directly from the answers given by the European Court of Justice in response to the reference and, in particular, the court's consideration of the right of a foreign national to be heard in the course of an examination of his subsidiary protection application. The court stated in that regard:-

> "However, in the case of a system such as that established by the national legislation at issue in the main proceedings, a feature of which is that there are two separate procedures, one after the other, for examining applications for refugee status and applications for subsidiary protection respectively, it is for the national court to ensure observance, in each of these procedures, of the applicant's fundamental rights, and more particularly of the right to be heard in the sense that the applicant must be able to make known his views, before the adoption of any decision that does not grant the protection requested. In such a system the fact that the applicant has already been duly heard when his application for refugee status was examined does not mean that that procedural requirement may be dispensed with in the procedure relating to the application for subsidiary protection."

The court rejected the applicant's argument concerning the interpretation of Article 4(1) of the Qualification Directive and held that the duty of cooperation did not require the decision maker to supply the applicant with a draft of any possible adverse decision for comment prior to its formal adoption. It is noteworthy that the applicant in *J.A.* challenged the substance of the subsidiary protection decision unlike the applicant in this case whose original challenge could only have succeeded if the substantive challenge to the decision of the Refugee Appeals Tribunal and the Commissioner succeeded as part of a domino like affect. There was no challenge to any other aspect of the subsidiary protection decision in this case.

22. The amendment now sought is based squarely on the consideration by Hogan J. in *M.M*. in a judgment delivered on 23rd January, 2013, of the issue raised in the passage which I have quoted from the European Court of Justice's decision, which itself, might be regarded as relating to a matter ancillary to the question posed. Hogan J. stated:-

> "31. The judgment (of The European Court of Justice) specifically emphasises the fact that the asylum and subsidiary protection procedures presently contained in Irish law are distinct and different. The logical corollary of this is that under our bi-furcated system the subsidiary protection application must be considered distinctly and separately from the asylum application. This in turn means that the Minister must decide the subsidiary protection issue without any reliance on the prior reasoning contained in the asylum application insofar as this otherwise may be taken effectively to preclude an applicant for subsidiary protection re-opening certain issues at that stage or inasmuch as it creates any quasi-estoppel arising as against such an applicant by reason of a failure to challenge an adverse asylum application in separate judicial review proceedings, at least in the absence of an effective hearing where the applicant was given an opportunity afresh to re-visit these issues; where matters were expressly put to the applicant by the decision-maker and where the decision-maker independently made a fresh decision on the applicant's credibility and other relevant issues."

Hogan J. found that in rejecting a specific claim of serious harm made by the applicant in *M.M*. "the Minister relied entirely on the reasons advanced by the Refugee Appeals Tribunal to reject the credibility of these claims and he made no separate distinct findings of his own on these crucial questions" and granted relief.

Conclusion

23. The applicant in this case contends that as a matter of fairness he ought to be allowed to proceed to amend his grounds to include a challenge based on *M.M*. because the determination made in respect of his subsidiary protection application relied heavily on findings of credibility made by the Refugee Appeals Tribunal. That is so. However, the challenge to the subsidiary protection decision was not based on a challenge to the substantive decision, but only on the procedural consequences of a successful challenge to the Tribunal decision which was ultimately withdrawn. The applicant now seeks to ground this challenge on a different substantive basis arising out of the decision in *M.M*.. No attempt was made to argue the point at issue in the reference in *M.M*. at any stage. It did not form part of the original grounds as in *J.A*.. The case made in respect of the referred point in *M.M*. was lost and the point now advanced in the proposed amendment emerged as an ancillary point, but neither point was ever previously relied upon by the applicant.

24. In *M.M*. the High Court referred the principal point to the European Court of Justice on 1st June, 2011. The court delivered judgment on 22nd November, 2012, and Hogan J. delivered his judgment on the matter on 23rd January, 2013. The applicant is guilty of inordinate and in excusable delay in initiating the proposed amendment in respect of a decision made on 8th October, 2009. I am not satisfied that any reasonable explanation has been offered for this delay. It is clear that the referral point was widely known to be available for the duration of the referral, but nothing was done. The suggestion that the applicant refrained from initiating a motion to amend because of the pending appeals against the decision of Hogan J. in *M.M*. and *J.A*. is an insufficient explanation for the failure to

apply at a much earlier stage. The time limits for judicial review are set to ensure prompt application to the court and are much shorter than those generally applicable to limitation periods in other matters. In this case the applicant delayed until days in advance of a substantive High Court hearing in which the application for leave to apply for judicial review was to be heard on a "telescoped" basis. I am not satisfied that such an application at such at a late stage should, in the circumstances, be granted. The respondent in consenting to a telescoped hearing was facilitating the court and the applicant by ensuring as speedy a determination of the case as possible and unless there is a reasonable explanation, an application for amendment of grounds should not be granted in those circumstances.

25. Furthermore, the initial application for leave to apply for judicial review initiated in January, 2009 did not contain a challenge to the credibility findings of the Refugee Applications Commissioner or the Refugee Appeals Tribunal. It was based on a challenge to the lawfulness of the procedures governing asylum applications under European law. The challenge to the subsidiary protection refusal was dependent entirely on the success of that challenge.

26. No complaint was advanced at that time concerning the procedures governing subsidiary protection in the state or as applied in that decision. Unlike the *J.A.* case, in this case the applicant never challenged the application of the Qualification Directive at any stage during the course of the Article 4(1) challenge in the High Court in *M.M.*, the referral to the European Court of Justice, following the delivery of the judgment of the European Court of Justice or, indeed, that of the High Court. There is no evidence that the applicant ever had an intention to challenge the subsidiary protection refusal on any basis other than that outlined in the original grounds. When the hopelessness of that position became apparent, it was decided at a late stage in the day to make an opportunistic application to amend the grounds.

27. Furthermore, in *J.A.* the court was also satisfied that the applicant had established a stateable ground upon which to challenge the substantive subsidiary protection decision on the basis that the Minister had failed to consider the core basis of his application for subsidiary protection namely, his fear that as a person convicted of a criminal offence and sentenced to life imprisonment, he was in danger of a threat to his life and/or torture, inhuman or degrading treatment if returned to Bangladesh to serve the sentence. That fear was not addressed in the decision. The court concluded that this matter should have been fully addressed in the subsidiary protection decision, particularly in the light of the emphasis in the *M.M.* judgment upon the separate nature of the procedure required when considering subsidiary protection in this jurisdiction. The court also considered that the applicant had established an arguable case that the Minister had failed to apply the principles in *M.M.* in considering this core aspect of the application and that it was appropriate in the interests of justice to grant leave to amend the grounds, notwithstanding the passage of time. I am, therefore, satisfied that the circumstances of this case are entirely distinguishable from *J.A.*.

28. I am un-persuaded by the explanation offered for failing to issue a notice of motion set out at para. 3 of the affidavit already quoted. An applicant is obliged to initiate any proposed amendment at the earliest possible opportunity having regard to the strict time limits that apply in respect of judicial review, and that the nature of such proceeding require a clear and focused statement of grounds relevant to the facts of the case to be advanced at the earliest possible opportunity.

29. To allow an amendment in this case would, in effect, allow the applicant to advance an entirely new cause of action. It clearly entails a significant enlargement of the applicant's case. Although the nature of the relief sought remains unchanged by the proposed amendment, it completely transforms the nature of the challenge to a substantive attack on the subsidiary protection decision. To do so at this stage would be unfair to the respondent.

30. I am not satisfied to extend the time for the bringing of this application or to permit the amendment of grounds requested for the reasons set out above and because it is not, in the circumstances, in the interests of justice to do so. I am satisfied that this application is opportunistic in nature and of the type referred to by Herbert J. in *Guo* which would encourage applicants to seek amendments every time leave was granted in some other application on some other consideration which could be claimed to be applicable to the instant case. I refuse the application.