Neutral Citation [2016] IEHC 677

THE HIGH COURT

JUDICIAL REVIEW

[2013 No. 415 J.R.]

BETWEEN

ANIL KUMAR

APPLICANT

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENT

JUDGMENT of Ms. Justice Faherty delivered on the 17th day of November, 2016

1. This is an application for leave to apply for judicial review of a deportation order made against the applicant by the respondent on 10th May, 2013. In these telescoped proceedings, the applicant seeks, *inter alia*, an order of certiorari quashing the decision.

Background

2. The applicant is an Indian national who has been resident in the State since 31st December, 2004, when he arrived on a student visa. He commenced his studies on 10th January, 2005. He was a registered student until 14th September, 2012. His studies commenced with a three year BA (Hons.) in Business Management Degree in Dublin Business School. However, after the first year, due to inability to pay his fees, he changed to study at Ashfield College for a diploma in Hospitality Management. He attended Crumlin College for two years for an Accountancy Technician Ireland diploma. He then attended London College from 2009 to 2012 for a diploma in International Trade and Practice.

3. On 18th June, 2010, he applied for EU treaty rights on the basis of his marriage to an EU citizen, which had taken place on 10th May, 2010. By decision dated 21st December, 2010, the respondent refused this application.

4. Subsequently, on 22nd November, 2011, the applicant made an application to vary his permission in the State which was refused on 21st February, 2012.

5. By letter dated 29th May, 2012, he applied for residency on the basis of his marriage to an Irish citizen, which had taken place in Denmark on 8th May, 2012. Enclosed with the said application were Latvian divorce papers establishing that the applicant and his first wife (the EU citizen) had divorced on 31st January, 2012.

6. On 23rd October, 2012, the applicant's Irish citizen wife wrote to the respondent stating that her marriage to the applicant was not working out and that she was no longer residing with him. This was confirmed by the applicant's solicitors on 12th December, 2012.

7. On 23rd January 2013, the respondent advised the applicant that his application for residency based on his marriage to an Irish citizen was refused and further advised that it was proposed to make a deportation order in respect of him. The letter outlined the three options available to the applicant, including the making of representations as to why a deportation order should not be made. It was further explained that if no response was received within fifteen working days, it would be assumed that the applicant did not wish to return home voluntarily and that he did not wish to make written representations against the making of a deportation order and that in such circumstances, the respondent would proceed to consider the applicant's case on the basis of the information already on file.

8. On 18th February, 2013, under correspondence bearing the reference numbers referred to in the respondent's correspondence and headed "Applicant… temporary leave to study to June 2013", the applicant's solicitors wrote to the respondent requesting that the applicant be granted temporary leave to remain to enable him to finish his studies. It was explained that the applicant was continuing his studies at Beaufort College in Integrated Accountant Systems, Advanced Financial Accounting and Advanced Taxation and that he proposed to sit his final examination in May 2013. Documentary evidence of his enrolment at that college and that his fees were fully paid up for 2012/2013 was enclosed with the letter. The letter advised that the applicant "has already exceeded the 7 year time limit for students but instructs that he seeks permission to complete his studies until June 2013. He would like to avail of the post-study pathway. He has strong ambition to take the ACCA programme for which he will have four examination exemptions". The letter went on to state that "as a matter of equity, with respect, [the applicant] has pleaded that to deprive him of further study to June 2013 would be quite harsh. With success in the up-coming examinations he would be in far better and stronger circumstances to properly and effectively make an application for leave to remain. The facts demonstrate themselves for equitable consideration."

9. Following an outline of the applicant's educational history in the State, the letter continued: "in the circumstances we would appeal that the applicant is a candidate for special consideration for an extension of his study permit. He made a self application on 15th October by email … we also note that his previous solicitors … made a similar application on 9/11/12."

10. The letter went on to give particulars of the applicant's work at a named service station, and continued:

> "[The applicant] has been a very successful worker there and very much valued by his superiors and employers. He was trained to be a supervisor and is valued for any new position that will arise in the future. Each evening he offers himself as a trainee to do the tally after his shift. He makes the returns to head office … each day and each week. This is regarded by him and the company as training. He would have excellent prospects there if he was permitted to work more hours as a supervisor. He would like to be promoted as a supervisor".

11. Two letters from the applicant's manager were among the documents enclosed with the letter, together with a character reference from a customer of the service station.

The respondent was apprised that for a period the applicant was "distracted by love" from his studies. Reference was made to his applications for rights of residence which, it was stated, were "for the benefit of his wives in law, one who is a citizen of the State".

With regard to the more recent of these, the applicant's solicitors were "now instructed to confirm that [the applicant] is now separated from his [Irish] wife with no prospect of reconciliation. Taking our advices, having regard to the change of circumstances he belatedly redraws that application made due to unhappy differences, separation and irreparable damage to their marriage." The respondent was also advised that while the applicant's "economic experience undermined his qualification of ability to support his recent wife … he was always well able to support himself by his entrepreneurial spirit and his tenacity for work". It was stated that the applicant had no need of public funds and that he would not experience that need to depend on another for economic support.

12. The respondent was advised, as follows:-

> "Our client seeks to continue as a student and to continue working as a trainee accountant. He would however welcome a stamp for leave to remain in the future that would enhance his opportunities with his employer and for his career. We therefore respectively request that special consideration should be given to allow the applicant to remain until June 2013. In that regard we would respectively request that the Minister postpone his proposal to make a Deportation Order under s. 3 of the Immigration Act, 1999 (as amended). We respectively suggest that it would not be conducive to the common good to deport a young man who has recently separated from his wife as a matter of decent sensitivity and time to permit him to adjust to that change of circumstance. Our client would therefore seek to choose the same options now given but in June 2013, to enable him to respectively finish his business and student affairs in the State."

13. An examination of the applicant's file under s. 3 of the Immigration Act, 1999 was prepared and endorsed on 17th April, 2013. It recommended that a deportation order be signed in respect of the applicant. By letter dated 20th May, 2013, the applicant was notified of the deportation order dated 10th May, 2013. The applicant was required to leave the State by 6th June, 2013.

14. On 6th June, 2013, the within proceedings were commenced.

15. In summary, the grounds upon which the deportation order is challenged are as follows: Treating the submission the applicant made under cover of the letter of 18th February, 2013 as submissions under s. 3 (6) of the Immigration Act, 1999 was a breach of fair procedures. The application to postpone the proposal to deport was not considered in its own right, but rather from the point of view of whether or not to make a deportation order, in circumstances where the applicant was not given an opportunity, once his application to postpone was refused, to then to consider whether or not to leave the State voluntarily so as to avoid the making of a deportation order against him. (Ground 1) By not permitting the applicant to make an application for temporary leave to remain outside of the context of s. 3 (6), the respondent breached the applicant's constitutional rights to fair procedures, and/or to an effective remedy and/or to good administration. (Ground 2) The finding that the applicant's employment prospects were poor was irrational, having regard to his part-time employment status while a student and his actual current circumstances. (Ground 3) There was an absence of a clear determination as to why the deportation of the applicant was conducive to the common good, or any published principles and policies on this issue. (Grounds 6 and 7) The deportation order was solely concerned with whether there were reasons not to return him to India rather than whether the applicant's deportation was conducive to the common good. (Ground 8) Further, the deportation order is invalid on its face because it does not give the applicant a period of three months to leave the State, contrary to s. 3 (9) of the 1999 Act. (Ground 9)

Grounds 4 and 5 were not pursued in the applicant's written or oral submissions.

Was there an unfairness or other unlawfulness in the manner in which the respondent dealt with the applicant's entreaty that she postpone the proposal to deport the applicant? (Grounds 1 and 2)

16. The applicant submits that the respondent acted unfairly in failing to respond to his request that no decision on the proposal to deport him be made pending the completion of his studies and that he be given a temporary permission until June, 2013. He asserts that the letter of 18th February, 2013 set out in clear terms that it was a request that no decision or consideration in respect of his deportation take place until June 2013. It is submitted that the applicant could reasonably expect, given the unusual circumstances of his case and the fact that he had been lawfully resident in the State for seven years, that the respondent was considering his application to postpone her consideration under s. 3 of the Act until he completed his studies in June 2013, and that no deportation order would be made in the interim. It is thus submitted that the applicant was surprised that a deportation order was made and that no regard was had to his submission that the proposal be deferred. The unfairness arises not only by the respondent refusing to postpone the deportation decision for the few months as requested by the applicant, but, crucially, in the failure to advise him that she was not postponing the decision to deport.

17. In proceeding to make a deportation order without affording the applicant the opportunity of making representations pursuant to s. 3 (6) of the Immigration Act, 1999, the respondent acted unlawfully. It is argued that fair procedures required the respondent to, at a minimum, inform the applicant that she would not postpone the considerations and that he had to put in his s. 3 (6) representations immediately. It is further submitted that, in effect, the representations made on the applicant's behalf were merely representations as to what he might say in June, 2013, in response to the proposal to deport him. What the applicant sought was to make a representation which was not to be his final representation (because he would be in a better position later to make representations once his studies were completed). The applicant contends that while he had no substantive rights, he had a right to fair procedures and that, in effect, the applicant went looking for something that the respondent had the power to give, namely the deferral of his deportation.

18. The respondents submissions are: (a) the applicant is not entitled, by choosing to deviate from the three options letter, to unilaterally put a stay on any deportation decision that may be made and argues that such an approach would throw the immigration system into disarray; (b) the applicant cannot have it both ways and contends that if the contents of the letter of 18th February, 2013 are not to be regarded as representations under s. 3 of the 1999 Act, it clearly follows that the applicant did not avail of any of the options available to him within fifteen working days of the respondent's letter of 25th January, 2013. It is thus submitted that the respondent acted in line with the deportation process and was entitled to proceed with making of the deportation order; (c) if, as the applicant suggests, his letter of 18th February 2013 should have been accepted as an application for leave to remain rather than representations in response to a proposal to deport, effectively, the applicant is attempting to dictate to the respondent and to rearrange the immigration system in his favour; (d) by virtue of his arguments in the within proceedings the applicant is charting a fourth option in response to the proposal to deport him, which was not available to him.

Considerations

19. I am satisfied that the nub of the applicant's case with regard to grounds 1 and 2 is whether the respondent acted unfairly in proceeding to make a determination on the applicant's deportation in light of the contents of the 18th February, 2013 letter. The applicant makes the case that he was not afforded the opportunity to make representations as to why he should not be deported, and argues that the respondent acted unfairly in failing to consider his application for temporary leave to remain outside of the deportation process.

20. It is common case that the three options letter dated 23rd January, 2013, issued in the wake of the respondent's refusal of the applicant's application to remain in the State based on his marriage to an Irish citizen. This was the second application which the applicant made based on marriage. It is also the case that subsequent to the refusal of his EU Treaty rights application on 12th December 2010, the applicant applied to vary his student permission and this was refused on 21st February, 2012. It is common case that the applicant's permission to be in the State lapsed on 14th September, 2012 following which he made two applications to extend his student permit, on 15th October, 2012, and 9th November, 2012, respectively.

21. The basis for the proposal to deport which issued on 23rd January, 2013 was that the applicant had "no current permission to remain in the State" and was "a person whose deportation would, in the opinion of the Minister, be conducive to the common good." As required by s. 3 (a) of the 1999 Act, the respondent advised the applicant in writing of the proposal to deport and the reason for the proposal. Furthermore, as she is statutorily obliged to do, the respondent afforded the applicant three options: to leave the State voluntarily; to consent to the making of a deportation order; or to submit representations to why a deportation order should not be made. Specifically, the applicant was advised that if he chose option 3, his case would be decided in accordance with the provisions of s. 3 of the Immigration Act, 1999. Accordingly, in my view, the applicant was on enquiry from the contents of the letter that the process with which he was engaged was that pursuant to s. 3 of the 1999 Act.

22. In claiming that he was denied fair procedures, the applicant maintains, effectively, that the contents of his letter of 18th February, 2013 did not constitute representations under s. 3 (3) (b) of the Act but rather an application for temporary leave to remain. He also makes the case that there was no legal impediment to the respondent postponing the decision to deport him and granting him the requested leave to remain. He submits that had she done so, he would have completed his final examinations before any decision to deport him would have been made and that in those circumstances he might have had the opportunity to avail of the Graduate Pathway programme, such that he would be in an even stronger position to seek leave to remain in the State. He also asserts that had a response been received to his entreaty to defer a decision on his deportation, albeit in the negative, he might have reconsidered the options given to him and submitted further representations as to why he should not be deported or indeed that he might have left the State voluntarily.

23. On the issue of whether the respondent failed to afford the applicant an opportunity to make representations as to why he should not be deported, I find that the respondent did not fail in this regard. The process which the applicant was obliged to engage with was set out in the respondent's letter of 23rd January, 2013.

24. In his grounding affidavit, the applicant avers that it was made clear to the respondent that that the application being made by him on 18th February, 2013 was not an application under s. 3(6) of the 1999 Act. I am not satisfied that the clarity contended for by the applicant is evident in the letter of 18th February, 2013. In the first instance, notwithstanding that the letter is entitled "temporary leave to study to June 2013", I am satisfied that the respondent did not err in treating it as a reply to the three options letter which was furnished on 23rd January, 2013. The applicant's solicitors state that it is in reply to that letter. Furthermore, despite its heading, the letter of 18th February, 2013, clearly engages with the three options letter in entreating the respondent to postpone the contemplated deportation and in asserting, *inter alia*, that "it would not be conducive to the common good to deport a young man who has recently separated from his wife as a matter of decent sensitivity to time to permit him to adjust to that change of circumstance."

25. The applicant's principal representation in response to the three options letter was to seek a postponement of his deportation for the reasons set out in his letter. I do not perceive any impediment to the applicant, as of February, 2013, in making whatever further representations he wished. The nature of the response he chose to make was at the applicant's election. He sought the postponement of the proposal to deport and leave to remain in circumstances where it was acknowledged that his permission to be in the State had expired.

26. Insofar as the request to defer the deportation process is concerned, in circumstances where the respondent had already advised the applicant as to the reasons for the proposal to deport and invited the applicant to, *inter alia*, make representations on the said proposal, I accept the thrust of the respondent's argument that there is no facility for the *applicant*, outside of this process, to seek to suspend the deportation process underway under s. 3 (3) of the 1999 Act, at his volition. Clearly, however, the applicant was entitled to make whatever representations he wished in the context of the deportation process (including that the respondent defer his deportation for the reasons set out in his letter). He was entitled to due consideration of those representations by the respondent. It does not follow however that having made the representations he made, that the applicant was treated unfairly by the respondent's failure to inform him that she was not going to postpone the s. 3 (6) considerations or that, in the words of the applicant's written submissions, the respondent was obliged to inform him that "he had to put in his s. 3 (6) representations immediately", in circumstances where the respondent had, as required by statute, previously put him on notice that she proposed making a deportation order. This is in circumstances where his representations for temporary leave to remain were in fact considered in the context of whether a deportation order should be made, as is evident from the consideration of file.

27. The nature of the entreaty made by the applicant was for "equitable consideration" of his circumstances as of January, 2013, and having regard to his history in the State to that point in time.

28. The factors which the respondent was obliged to consider are those set out in s. 3 (6) of the Immigration Act, 1999. It provides:

> " In determining whether to make a deportation order in relation to a person, the Minister shall have regard to—
>
> (a) the age of the person;
>
> (b) the duration of residence in the State of the person;
>
> (c) the family and domestic circumstances of the person;
>
> (d) the nature of the person's connection with the State, if any;
>
> (e) the employment (including self-employment) record of the person;
>
> (f) the employment (including self-employment) prospects of the person;
>
> (g) the character and conduct of the person both within and (where relevant and ascertainable) outside the State (including any criminal convictions);

(h) humanitarian considerations;

(i) any representations duly made by or on behalf of the person;

(j) the common good; and

(k) considerations of national security and public policy,

so far as they appear or are known to the Minister."

29. As is clear from the consideration of file as notified to the applicant in the letter of 20th May, 2013, all of the factors listed in s. 3(6) were taken into consideration. The applicant's entreaty to defer the making of a deportation order was taken into account under the umbrella of "humanitarian considerations". In effect, the entire of the applicant's representations were considered under this and other relevant headings. It was certainly within the remit of the respondent following a consideration of the factors set out in s. 3(6) to permit the applicant to remain temporarily for the reasons he advanced. The respondent, however, was not bound to accede to this request as she was entitled to balance any humanitarian factors or indeed such other factors as may be personal to the applicant against factors which may not be personal to him, provided of course that the factors considered fell within the parameters of s.3 of the 1999 Act. Thus, I do not perceive the unfairness alleged by the applicant either that he was not afforded a hearing on his application to reside temporarily in the State pending the completion of his exams or that he was not given an opportunity to argue against his proposed deportation. In the course of his submissions, counsel for the respondent made the point that that had the respondent not taken the applicant's representations for leave to remain into account in the context of the proposal to deport him, there would have been a challenge of a different ilk before the court. In my view, this point is well made.

30. The respondent's counsel also makes the alternative argument that if as the applicant suggests the letter of 18th February 2013 was not intended to constitute representations under s. 3(6) of the Act that was the choice of the applicant. It is argued that in such circumstances the applicant does not meet the substantial grounds threshold to warrant intervention by this court. As I am satisfied that the letter of 18th February, 2013, engaged with the three options letter, it is not necessary to comment on this submission.

31. The applicant also asserts that it is not correct to say that he had one shot at making representations. I agree generally with this argument. However, the thrust of his contention is that notwithstanding the deportation process having been commenced, it remained within his remit to rearrange that process, including seeking its postponement, at his instigation. For the reasons already stated, I do not agree with this argument. However, it was certainly open to the applicant to make any such further representations as to why he should not be deported, for consideration by the respondent, as long as the matter remained under consideration. In the present case, no such further representations were made between the submissions of 18th February, 2013 and the issuing of the decision in May, 2013.

32. The applicant accepts that when faced with the proposal to deport letter he was not entitled to make representations on a different basis to the subject matter of the letter. He makes the case however that the representations which he made on 18th February, 2013 were not in respect of any different category of decision contemplated by the respondent but rather that they related to the postponement of the deportation decision and that if the deportation decision had been postponed the effect would have been the grant to of temporary leave to remain further to his request in this regard. Because the postponement would have had the effect of a grant of temporary permission, it is submitted that the applicant's request for temporary permission to remain was not properly considered in accordance with the provisions of s. 4 of the Immigration Act, 2004. In this regard, counsel for the applicant relies on the dictum of Humphreys J. in *Li and Wang v. Minister for Justice, Equality and Law Reform* [2015] IEHC 638:

> *"in deciding to grant or refuse (an extension of permission) the Minister must consider all the circumstances of the non-national as they appear at that time, including any family relationships and other matters as set out in s. 4 (10)".* (at para. 37)

It is thus submitted that the respondent was not permitted to ignore the applicant's submission for temporary leave to remain, as occurred in this case, particularly in circumstances where the making of a deportation order would have serious consequences for the applicant.

33. The respondent contends that insofar as the applicant maintains that the letter of 18th February, 2013 constituted an application for temporary permission under s. 4 of the Immigration Act, 2004 and that she was thus obliged to have regard to the factors set out in that Act, such a contention is without merit. It is submitted there is no obligation on the respondent to consider new applications for leave to remain in the middle of the deportation process, in particular where an applicant has already been notified of the intention to deport. Counsel for the respondent makes the case that if such an obligation arose, it would render the asylum and immigration system unworkable and that such an obligation would allow applicants to make repeated new applications for leave to remain each time they received a notice of intention to deport.

34. Subject to the respondent's obligation to consider all representations made by a proposed deportee, I find merit in the respondent's arguments. There was no obligation on the respondent to embark on a consideration of the factors set out in s. 4 (10) of the Immigration Act, 2004 in circumstances where the process in which the applicant was engaged was that under s. 3 of the 1999 Act. Furthermore, as I have said, it is not the case that his application for temporary leave to remain pending completion of his June exams was not considered by the respondent under s. 3(6) of the 1999 Act.

35. In all the circumstances, I am satisfied that the challenges on grounds 1 and 2 have not been made out.

Did the respondent act irrationally in concluding that the applicant's employment prospects were poor?
36. Ground 3 asserts:

> "The respondent was irrational in determining that the Applicant's employment prospects were poor in circumstances where he had been lawfully working pursuant to his student permissions and had been offered a full-time job if he was given a stamp 4 visa by his current part-time employer. Further, or in the alternative, the submissions in respect of his course of studies which he was to complete was disregarded as regards his employment prospects. Further or in the alternative, this aspect of this Applicant's application (without prejudice to the fact that the Applicant was not in fact making a s. 3 (6) application) was not considered on the basis of his own personal circumstances but was based on generalised non-specific considerations. Further, or in the alternative, it is tautologous to refuse the application for

permission to remain which, if granted, would permit the Applicant to continue his work, on the basis that he is not permitted to work while such an application is being considered. Further, or in the alternative, there was no evidence that the Applicant is likely to become a burden on the State but less and as such the determination that this was likely is irrational."

37. The applicant advances the following arguments: The respondent was obliged to look at his employment record and at his employment prospects. Such analysis was not embarked on in any proper manner. Pursuant to the relevant legislation, the respondent was required to consider, *inter alia*, the applicant's employment prospects and his period of duration in the State. Throughout his time in the State, the applicant was always employed. By the time of the proposal to deport him, he had acquired a lot of qualifications and wanted to stay in the State and contribute to the economy. It was thus not lawful for the respondent to state that the applicant's prospects were poor in circumstances where she had been apprised that he was in employment and had a job offer upon completion of his studies. What the respondent could have said was that the applicant's employment prospects were good but that she wanted to prefer others, e.g., EU nationals, over the applicant; that type of reasoning would, counsel submits, have been lawful. However, that was not the type of reasoning engaged in by the respondent. The central premise of the applicant's employment circumstances was that he had an unblemished work record and an offer of a job into the future. In considering the factors under s. 3 (6) of the 1999 Act, the respondent focused on the downturn in the economy and employment statistics. While it was open to her to do so, it was not open to her to fail to take the applicant's personal circumstances into consideration. Thus, the applicant did not get an individualised consideration, which he was entitled to under the legislation. While the respondent referred to the applicant's employment history, and the fact that he had an offer of full time employment in the State if he were given a stamp 4 visa, she went on the state that his prospects of gaining employment were poor. What the respondent was obliged to look at were the applicant's prospects of employment, not the long term security of such employment. The premise put to the respondent was that the applicant had good prospects. Thus, it didn't follow that the respondent could say that the applicant's prospects were poor. It cannot be correct to disregard the fact that the applicant, who had proved his ability and his employability, would be given a job immediately upon being granted status in the State. Accordingly, the respondent's conclusions do not flow from the premise before her. In this regard, counsel relies on the decision in *Meadows v. Minister for Justice* [2010] 2 I.R. 701.

38. On behalf of the respondent, it is submitted that there was no irrationality in the conclusion as to the applicant's employment prospects. The following arguments are advanced: The applicant's employment history was considered in its totality and the respondent formed the view that the applicant's employment prospects were poor based on the high levels of unemployment in the State at the relevant time. In such conditions, the decision-maker formed the view that the applicant had poor prospects of obtaining long term employment. Thus, the fact that the applicant maintains that he has good prospects is not sufficient unless the respondent's finding is totally without evidential support, which is not the case here. The conclusion reached cannot reasonably be said to be fundamentally at variance with reason and common sense. It is submitted that the applicant's argument does not meet the *Meadows* test as to irrationality. He does not fall within the circumstances under which the court can intervene to quash a decision of an administrative officer or Tribunal on the grounds of unreasonableness or irrationality, as set out by Henchy J. in the *State (Keegan) v. Stardust Compensation Tribunal* [1986] I.R. 642. It is also submitted the respondent's decision on the applicant's deportation accords with the test approved by Cooke J. in *S.O. v. Minister for Justice* [2010] IEHC 343. The respondent also relies on *F.R.N. v. Minister for Justice* [2008] IEHC 107.

Considerations
39. In the consideration of file, the decision-maker rationalised his conclusion as to the applicant's employment prospects in the following terms:

> "The statistics referenced above confirm that the State is currently experiencing an economic downturn with high unemployment and a consequential burden on the welfare and educational systems in the State. As a result of these facts, if [the applicant] is granted permission to remain in the State, his prospects of obtaining long term secure employment, notwithstanding that (1) it is submitted that he had been working since March 2005 at the [service station] as a Sales Adviser and (2) a letter has been submitted offering the applicant full-time employment at the same filling station if he is given Stamp 4 permission, would be poor the current economic climate, such that it is more likely that he may become a burden on the State".

Was this irrational? In Keegan, the test as to rationality is articulated as follows: "whether the conclusion reached in the decision can be said to flow from its premises. If it plainly does not, it stands to be condemned on the less technical and more understandable test of whether it is fundamentally at variance with reason and common sense." (at p. 658)

40. This test was approved *O'Keefe v. An Bord Pleanala* [1993] I.R. 39, and fashioned as follows in the context of when a court may intervene to quash a decision on grounds of unreasonableness or irrationality:

> *"1. It is fundamentally at variance with reason and common sense.*
>
> *2. It is indefensible for being in the teeth of plain reason and common sense.*
>
> *3. Because the court is satisfied that the decision maker has breached his obligation whereby 'he must not flagrantly reject or disregard fundamental reason or common sense in reaching his decision'."* (at p. 70)

This test has clearly survived Meadows, as is clear from the dictum of Murray J. in that case.

41. As for the present case, I am satisfied that the applicant's circumstances were considered in their totality, including his conditional job offer and the nature of his status at the time of the relevant consideration. The consideration of file noted the applicant's employment activity since March 2005 and noted that the applicant was "not permitted by law to work in the State" and went on to note "the substantial level of unemployment in the State" with reference to CSO statistics, as recited in the consideration of file. Contrary to what appears to be suggested on behalf of the applicant I am satisfied that the respondent was entitled to weigh the applicant's circumstances against the documented evidence of a downturn in the economy and the available unemployment statistics. The fact that she did so did not mean that the applicant did not get an individualised consideration. Clearly he did, as all the salient facts pertaining to him are recited in the consideration of file. While this court could well arrive at a different conclusion on the applicant's employment prospects, I am only entitled to intervene if persuaded that the respondent's conclusions on his prospects achieve the level of unreasonableness or irrationality articulated in *Keegan* or *O'Keefe*, as approved in *Meadows*. I am not so persuaded in this case. I am satisfied that the respondent recited verbatim and clearly considered the applicant's representations, including the letter from his manager dated 4th February, 2013, to the effect that the applicant "has been trained to work as a supervisor and is waiting for a position to become vacant" and that "[i]f his status changes from student to stamp 4, he will be offered full-time employment." The analysis of his employment prospects was then considered in the context of the larger issues at

play in 2013, namely the high unemployment and economic downturn. The respondent weighed the competing considerations and came to the conclusion she did, namely that the applicant's prospects of obtaining long term secure employment would be poor. The respondent did not ignore the information proffered by the applicant. It was weighed against the available data concerning general unemployment and adverse economic factors in the State. As is clear from the consideration of file, the decision-maker considered that these factors weighed more heavily. Contrary to the applicant's contention, I do not find that the decision-maker's conclusion did not flow from its premise, as I am satisfied that there was an evidential basis (the unemployment statistics) from which the decision-maker could conclude that the applicant's "prospects of securing long term secure employment…would be poor" and that "he may become a burden on the State." Counsel for the applicant argues that what the respondent was obliged to look at were the applicant's employment prospects as they stood, and not any other test such as what his long term prospects might be. I cannot agree that the respondent was confined to the limited interpretation which counsel seeks to put on the respondent's remit under s. 3(6)(f). The very use of the word "prospects" in s. 3(6)(f), to my mind, envisages a forward looking assessment such as that carried out by the respondent, provided that it is based, as it must be, on relevant objective factual information from which an assessment can be made.

42. The respondent exercises discretion under the 1999 Act, accepting of course that she cannot step outside the realm of reasonableness or rationality in the exercise of that discretion. In *F.R.N.*, Charleton J. had occasion to consider the nature of discretion vested in the respondent when considering the criteria set out in s. 3 (6) of the 1999 Act. He states:

> *"By virtue of s. 3(6) of the Immigration Act 1999, a person being considered for deportation, has a right to make representations and has a right in addition, that the Minister should consider these in accordance with the relevant legislation. They have, however, no right to stay in Ireland even though they might meet a preponderance of the relevant criteria. The broad ranging nature of the discretion vested in the Minister means that in considering the relevant criteria, he could decide that a particular principle loomed large in a particular case or that it was of little weight. In deciding not to make a deportation order, therefore, the Minister is acting more in the way of conferring a privilege upon a non-citizen within the State, whether or not they were a failed asylum seeker, as appears to be the situation in the vast majority of cases."* (at para. 21)

43. On the issue of the respondent's discretion, the *dictum* of Cooke J. in S.O. is also instructive:

> *"63. In conclusion the Court would respectfully cite the view expressed by Murray C.J. in his consideration of s. 3 (6) of the 1999 Act in the Meadows case. He said:*
>
> > *'In virtually every case there will be some humanitarian consideration and, unlike s. 5, even if he is of the opinion that there are humanitarian considerations which tend to support a claim that a deportee be permitted to remain, even temporarily, he is not bound to accede to such a request since he has to balance those considerations with broader public policy considerations which may not be personal to the person concerned. It is evident from the terms of the decision that he took all the relevant considerations into account but explained that 'the interests of public policy and the common good in maintaining the integrity of the asylum and immigration systems outweigh such features of your case as might tend to support your being granted leave to remain in the State'. This is quintessentially a discretionary matter for the Minister in which he has to weigh competing interests and only the Minister who has the responsibility for public policy in this area is in principle in a position to decide where that balance lies. One cannot rule out that there might be exceptional circumstances in which the principle of proportionality might arise but as a general rule the principle of proportionality would not arise for consideration in such cases and in any event the appellant has not shown that there is any basis for considering that there was any lack of proportionality in the decision taken by the Minister in this particular respect.'*

44. The applicant also submits that the respondent's approach was not consistent with the dictum of Cooke J. in *I.R. v. Refugee Appeals Tribunal* [2009] IEHC 351 where, *inter alia*, in the context of irrationality in decisions of the Refugee Appeals Tribunal, the learned judge noted that the decision must be based on correct facts untainted by conjecture. I am satisfied that the decision in the present case cannot be impugned on the basis that the respondent engaged in conjecture. All elements of the consideration under s.3(6) (f) had their basis in the factual matrix which presented to the respondent at the relevant time, including the applicant's background and prospects as made known to the respondent, together with more general data pertaining to economic factors affecting the State.

45. In all the circumstances, I am not persuaded that in the present case the conclusion reached on the applicant's employment prospects can be said to fly "*in the face of reason or common sense".*

The alleged unlawfulness of the decision having regard to the requirements of s. 3 (2) (i) of the Immigration Act, 1999, the absence of published principles and policies on the question of the common good and in failing to address whether the deportation of the applicant was conducive to the common good

46. Grounds 6, 7 and 8 state:

> "There is no evidence that the Respondent has made a determination that the Applicant is a "person whose deportation would, in the opinion of the Minister, be conducive to the common good" such as to satisfy s. 3 (2) (i) of the Immigration Act, 1999 and by reason thereof, the purported Deportation Order purported to be made under s. 3 (2) (i) is *ultra vires*." (Ground 6)
>
> "Without prejudice to the foregoing, there are no published principles and policies to which the Respondent to adhere in considering whether it is conducive to the common good to deport a person, particularly a person who has been lawfully resident in the State for a considerable period of time and who has been lawfully working and who has been offered a job if permitted to remain." (Ground 7)
>
> "The respondent failed to address the essential question in the making of the Deportation Order, namely whether the deportation of the Applicant was, in his opinion, conducive to the common good and instead considered only whether there was any reason to suggest that he should not be returned to India." (Ground 8)

47. The submissions advanced by the applicant in aid of these grounds are: With regard to ground 6, the applicant contends there are two problems with the respondent's determination that it is conducive to the common good to deport any person whose permission to be in the State has lapsed. First, if it was intended by the Oireachtas that the mere lapsing of permission to be in the State could merit deportation, it would have included "persons whose permission to remain has lapsed" as one of the specific reasons to make a deportation order in s. 3 (2) of the Act. By way of example, counsel points to s. 3 (2) (f) and (g) and (h) of the Act which

allows a deportation order to be made where a person has been refused refugee status, refused permission to land or contravenes a condition of his or her status, respectively. It is submitted that if the Oireachtas saw fit to set out specific instances in s. 3(2) which could lead to a deportation order, it clearly intended not to allow such a power where a person's status in the State had merely lapsed. Therefore, the phrase conducive to the common good in s. 3 (2) (i) cannot simply mean someone whose permission has lapsed. In aid of ground 7, it is submitted that there are no published principles or policies to which the respondent is to adhere in considering whether it is conducive to the common good to deport a person, particularly someone who has been lawfully resident in the State and lawfully working and who has been offered a job if permitted to remain. There is nothing to suggest that the decision to deport was made having regard for any clear set of guidelines or that there was anything considered other than the fact that the applicant did not, at the exact time of the proposed letter, have a current permission. It is submitted that there was no reference in the proposal to deport letter to the applicant's applications dated 15th October, 2012 and 9th November, 2012 for leave to remain, nor was there any consideration of his individual circumstances. It is submitted there was no clear reason for the assertion that deporting the applicant would be conducive to the common good. In aid of ground 8, counsel contends that the issue as to whether the applicant's deportation would be conducive to the common good does not appear to have been considered in the substantive considerations. There is no consideration as to the impact – good, bad or indifferent – his deportation would have on the common good. Thus, it cannot realistically be said that a person who has been lawfully in the State for seven years as a student, who has worked and has an offer of full-time employment and who has never caused any difficulty would be in any way harmful to the common good. Furthermore, the applicant was denied fair procedures insofar as the decision that his deportation was conducive to the common good was made prior to him making representations, and it appears to have been made solely based on the fact that he had no extant permission to remain. While it is accepted that the respondent has a wide discretion, she did not identify what circumstances which rendered it conducive to the common good for the applicant to be deported.

48. The respondents submissions are as follows: There is no merit in the arguments canvassed by the applicant with regard to the common good. The contention that a person without permission to be in the State is not a sufficient basis to warrant a deportation order and that the considerations with regard to the common good should have been more specific to the applicant is a tenuous one. The applicant was in the position to someone whose lawful permission to be in the State had expired and in respect of whom EU Treaty rights were not established. There were thus issues pertaining to the common good and the maintenance of the integrity of the immigration system for the respondent to consider. Accordingly, it was open to the respondent to advise the applicant of the proposal to deport him. Contrary to ground 7, there is no obligation requiring the respondent to publish principles and policies in relation to the common good. Determining whether the deportation of a person is in the common good is for the respondent to determine at her discretion and is assessed on a case by case basis. In this regard, counsel refers to the *dictum* of Costello J. in Pok *Sun Shun v. Ireland* [1986] IRLM 593:

> *"in relation to the permission to remain in the State, it seems to me that the State, through its Ministry of Justice, is to have very wide powers in the interests of the common good, control aliens, their entry into the State, and departure and their activities within the State."*

It is submitted that this was quoted by Finlay J. in *Mallak v. Minister for Justice, Equality and Law Reform* [2012] IESC 59. Accordingly, the respondent has a wide discretion in determining whether the making of a deportation order is in the common good. Counsel submits that in all the circumstances, the applicant has not established a legal basis for a challenge to the decision on grounds 6, 7 and 8.

Considerations

49. The first issue to be determined as regards the challenge to the decision on the "common good" grounds is whether the deportation order is *ultra vires* s. 3(2) (i) of the 1999 Act. I do not find that to be the case. The reason given by the respondent to the applicant in the letter of 23rd January, 2013 for the proposal to deport him was that it would be conducive to the common good to do so. Pursuant to s. 3(2) of the Act, this is one of the permitted bases for the making of a deportation order, subject to the prohibition on refoulement and the requirement on the Minister to, *inter alia*, consider such representations as may be made by the proposed deportee against the deportation. At the time of the proposal to deport, the applicant had no permission to be in the State. To my mind, this factor formed part of the factual matrix (together with the recent refusal of the applicant's application for residence based on marriage to an Irish citizen) which the respondent was entitled to look at the in the context of her proposal to deport. I note that an argument is made that the respondent did not address in the proposal to deport letter the applications to remain which the applicant made in October and November 2012. However, the proposal letter is not the subject of challenge before the court. The court has earlier in this judgment considered the challenge to the manner in which the application for temporary leave which was made on 18th February, 2013 was addressed.

50. The respondent duly upheld the common good of deporting the applicant from the State. In the letter of 20th May, 2013 advising the applicant of the making of the deportation order, the respondent specifically stated that "having had regard to the factors set out in s. 3 (6) …, including the representations received …, the Minister is satisfied that the interest of the public policy and the common good in maintaining the integrity of the asylum and immigration systems outweigh such features of [the applicant's case] as might tend to support [his] being granted leave to remain in this State." In the consideration of file, the decision- maker noted that it was "the interest of the common good to uphold the integrity of the … immigration procedures of the State". Subject to any questions of procedural fairness or irrationality, the respondent's consideration of the issue of the common good was entirely within jurisdiction.

51. I note that part of the argument advanced by the applicant in support of the claim that the respondent's actions were *ultra vires* the 1999 Act relate to the application made by the applicant for a renewal of his permission on the same or a different basis i.e. a renewed Stamp 2, or a Stamp 4. It is argued that it was thus artificial for the respondent to suggest that a person who was awaiting a decision on the renewal of his permission was unlawfully in the State. The applicant contends that it cannot be realistically asserted that such a person's deportation, while the application for renewal of permission was pending, was conducive to the common good. I do not find merit in this argument which, to my mind, is, in part, a reprise of the arguments in aid of grounds 1 and 2, which this court has already rejected for the reasons stated. Furthermore, insofar as it is alleged in written submissions that the finding that it was conducive to the common good was made without affording the applicant an opportunity to make representations, I reject this argument. His personal circumstances and his representations (including those touching upon the question of the common good) were in fact addressed under humanitarian considerations.

52. With regard to ground 7, I agree with the respondent that the absence of any published guidelines on what the respondent must adhere to in considering the question of the common good does not vitiate the decision. The applicant has not adduced any authority in law for this proposition.

53. The next question which arises is whether the respondent erred in law in failing to consider whether the deportation of the applicant was conducive to the common good, rather than considering only whether there was any reason not to return him to India.

Effectively, the argument that is canvassed on the applicant's behalf is that he was entitled to an individualised assessment as to whether it was in the common good to deport him.

54. I do not find authority for the applicant's contention in case law. In *Alli v. Minister for Justice, Equality and Law Reform* [2010] 4 I.R. 45, Clarke J. addressed the question of whether general policy considerations were sufficient to sustain a decision to deport. She states:

> *"[85] The judgments of the majority of the Supreme Court in A.O. & D.L. v. Minister for Justice [2003] 1 I.R. 1 dealt at length with what is meant by the requirement to identify a "grave and substantial reason associated with the common good". The applicants' argument in A.O. and D.L. v. Minister for Justice, which is quite similar to the applicants' argument in this case, was that the respondent could not cite the desire to maintain the integrity of the immigration system as his "grave and substantial reason" which required the deportation of the foreign national parents of Irish citizen children, and should instead identify reasons that are personal to the parents, i.e. a threat to national security or serious criminal wrongdoing. That argument was firmly rejected by the majority of the Supreme Court. Denham J. concluded at p. 62 that the respondent's reasons "will depend on the circumstances of each case but may include: (a) the length of time the family has been in the State; (b) the application of the Dublin Convention; and (c) the overriding need to preserve respect for and the integrity of the asylum and immigration system." Those were the three common reasons cited by the respondent in support of his decision to deport the non-national parents in A.O. & D.L. v. Minister for Justice."*

55. In *Asibor v. Minister for Justice, Equality and Law Reform* [2009] IEHC 594, Clarke J., again had regard to the question of "substantial reason associated with the common good", albeit again in the context of the deportation of parents of Irish citizen children:

> *"42. …The Court found in the Alli case that it was firmly decided by the Supreme Court in A.O. and D.L. that it is not the case that a reason specific to the applicant's circumstances must be identified, and that general policy considerations will suffice as a "substantial reason" provided that the Minister has carried out a fact-specific analysis in the applicants' case and has engaged in a proper balancing exercise.*
>
> *(43) As is clear from the above synopsis, the same "substantial" reason was identified in this case as in the Alli case i.e. that there is no less restrictive process than deportation which would achieve the legitimate aim of the State to maintain control of its own borders and operate a regulated system for control, processing and monitoring of non-national persons in the State. In the Alli case this Court rejected the applicants' arguments in relation to the sufficiency of this reason and it follows that the applicants' arguments in this case must also fail."*

56. I am satisfied that the aforementioned jurisprudence establishes that it is with the remit of the respondent to consider general policy requirements (including the common good) in making a deportation decision provided the applicant has been afforded fair and rational consideration of his personal circumstances and that these were properly balanced in the decision-making exercise. The court cannot lightly interfere in such a decision-making process. In the present case, I am satisfied that the conclusion arrived at with regard to the common good was open to the respondent in circumstances where, as required and as the case file demonstrates, the respondent engaged in a fact specific analysis of the applicant's case and in circumstances where the court finds no reason to impugn the balancing exercise engaged in by the respondent.

57. Counsel for the applicant further contends that the respondent's reliance on *Alli* may not be good law in light of the decision of the ECJ in *Ruiz Zambrano v.Office Nationale de l'Emploi(Case C-34/09) (Zambrano).* It is also submitted that *Alli* concerned a failed asylum seeker whose residence in the State was at all times precarious, unlike the applicant's situation, who was lawfully in the State for a significant period and who asked for the opportunity to seek leave to remain in those circumstances. I find that the issues in the *Zambrano* case have no bearing on the applicant's circumstances as his case does not involve the rights of EU citizen children or other EU family members. Thus, the argument that the *dictum* of Clark J. in Alli may have to be read in light of *Zambrano* does not arise for consideration as no question of the possible engagement of EU rights arises in this case.

58. There is one further aspect of the submissions regarding the common good which merit comment. In aid of his argument that the underlying basis for the applicant's removal from the State was on grounds of public policy and the common good, counsel for the respondent cited Humphreys J. in *Li and Wang* who opined that s. 3 (1)(j) of the Immigration Act, 2004, which allows refusal for permission to land where "*the non-national's entry into, or presence in, the State could pose a threat to national security or be contrary to public policy*", was "*in the widest possible terms*" and that this provision of the 2004 Act "dovetails with s. 3(2)(i) of the Immigration Act 1999, which allows a person to be deported if the Minister is of opinion that their deportation is "*conducive to the common good*"." Humphreys J. went on to state: "*Having regard to the object, purpose and context of the two Acts I hold that "public policy" in the 2004 Act and "common good" in the 1999 Act are equivalent concepts."*

59. The applicant's counsel argues the respondent's contention that the common good and public policy are interchangeable concepts is not correct and that they are listed as discrete factors in s. 3(6) of the 1999 Act. That is certainly the case. For the record, I note that the 20th May, 2013, letter notifying the applicant of the making of the deportation order states that "the interest of public policy and the common good in maintaining the integrity of the asylum and immigration system outweigh such features of [the applicant's] case as might tend to support [his] being granted leave to remain in [the] State". As pointed out by counsel for the applicant, the consideration of file itself states that public policy did not have a bearing on the applicant's case.

60. I note from s. 4(3) of the Immigration Act, 2004 that one of the statutory reasons upon which the respondent may refuse entry into the State is on grounds 'public policy'. S. 4(3) does not refer to 'the common good'. S.3(2)(i) of the 1999 Act, on the other hand, states that a deportation order may be made in respect of a person 'whose deportation would, in the opinion of the Minister, be conducive to the common good'. In *Li and Wang*, Humphreys J. made the logical observation that the Act of 2004 and the Act of 1999 "*must cohere*" on the basis that" *it would be illogical for a person to be liable to permission refusal, but immune from deportation. Or indeed for a person to be liable to deportation but immune from a permission refusal. The 1999 Act does not allow deportation on any freestanding grounds not listed in that Act. Having regard to the object, purpose and context of the two Acts I hold that "public policy" in the 2004 Act and "common good" in the 1999 Act are equivalent concepts."*

61. I find that for the purposes of this case nothing turns on the approach adopted by Humphreys J. in *Li and Wang* or on any issue of any inter-changeability of public policy or common good considerations in the applicant's case since what is in issue here is whether the respondent erred in not addressing the question of the common good from a perspective particular to the applicant. The court has addressed this argument above.

62. In all the circumstances, the challenges based on grounds 6, 7 and 8 have not been made out.

Did the respondent err in failing to give the applicant three months notice of the intention to deport him?
63. Ground 9 asserts:

> "The Applicant has been lawfully resident in the State for a period in excess of five years and has been lawfully employed during that period. The Deportation Order, in failing to provide a period of three months in which to leave is in breach of s. 3 (9) the Immigration Act, 1999."

64. On behalf of the applicant, it is submitted that giving that he was lawfully resident in the State for a period in excess of five years and was lawfully employed during that period, the provisions of s. 3 (9)(b) applied to him. Counsel also submits that for the purposes of s. 3 (9) (b), the applicant has to be "ordinarily resident" somewhere and that in the applicant's case, his ordinary residence is in this State.

65. The respondent submits that the applicant has not made out a substantial ground under ground 9. Counsel contends that the obligation to provide persons with three months notice for deportation does not apply to the applicant as he was unlawfully in the State when he received the notification of intention to deport, his visa having expired some four months previously on 14th September, 2012. In this regard, counsel relies on *Robertson v. Governor of Dóchas Centre* [2011] IEHC 24.

Considerations
66. Section 3 (9) of the Immigration Act, 1999 states:

> "(9) (a) Subject to paragraph (b), where the Minister decides to make a deportation order under this section, the notice under subsection (3)(b)(ii) shall require the person concerned to present himself or herself to such person and at such date, time and place as may be specified in the notice for the purpose of his or her deportation from the State.
>
> (b) A person who is ordinarily resident in the State and has been so resident for a period (whether partly before and partly after the passing of this Act or wholly after such passing) of not less than 5 years and is for the time being employed in the State or engaged in business or the practice of a profession in the State other than—
>
> (i) a person who has served or is serving a term of imprisonment imposed on him or her by a court in the State, or
>
> (ii) a person whose deportation has been recommended by a court in the State before which such person was indicted for or charged with any crime or offence, shall not be deported from the State under this section unless 3 months' notice in writing of such deportation has been given by the Minister to such person."

67. What is meant by "ordinarily resident"? In *Robertson*, Hogan J. found that the applicant's residency did not qualify as "ordinarily resident" under s. 3 (9) (b) of the 1999 Act as it was not "lawful, regular and *bona fide*". Hogan J. put it thus:

> *"20. Her failure to make such a disclosure is tantamount to entering the State through deception and disguise. As Murngahan J. pointed out in Goertz, the concept of "ordinary residence" also involves an assessment of the character of that residence. Moreover, as Black J. noted in that case, the presumption against surplusage means that the word "ordinarily" was "intended to have, and must be given, some effective meaning." To my mind, in this statutory context, the phrase "ordinary residence" connotes a residency which is lawful, regular and bona fide. As Goertz itself illustrates, mere physical residence in the State is not in itself enough, since a residence which is irregular, covert or unlawful is not an "ordinary residence" in this sense."*

68. Counsel for the applicant maintains that the applicant's circumstances can be distinguished entirely from the decision in Robertson (who had entered the State under subterfuge) given that the applicant had lawful residence until it lapsed; accordingly s. 3 (9) (b) applied. I am not persuaded by this argument. The applicant's lawful residence in the State as a student expired on 14th September, 2012. This was also against a backdrop of two unsuccessful applications for rights based on two marriages and an application in 2011 to vary his student permission, which was likewise without success, as advised on 21st February, 2012. The rejection of his application for residence based on his marriage to an Irish national, as advised on 23rd January, 2013 would appear to be the trigger for the proposal to deport letter, the applicant's student permission having expired some months earlier. He was thus in the category of someone whose continued residence in the State lacked any legal basis. Accordingly, based on the interpretation afforded by Hogan J. to "ordinarily resident", with which I find no reason to disagree, the applicant cannot be said to be "ordinarily resident" in the State as of January, 2013. Mere physical presence in the State in excess of five years cannot suffice to bring the applicant within the ambit of s. 3(9) (b), nor can the fact of his employment in the State do so, when an essential component of what constitutes "ordinarily resident" is absent, namely the concept of a lawful residence or indeed, as in the applicant's case, a "lawful" employment as of the time of the issuing of the notice to deport.

69. Accordingly, ground 9 is not made out.

Alleged failure to specify a date for the applicant's deportation
70. The case is made on the applicant's behalf that the deportation order does not specify a date for him to leave by. Accordingly, it is submitted that the deportation order is bad on its face.

71. Counsel for the respondent submits that there is no merit in this argument and argues that the respondent has acted in accordance with her obligations under the 1999 Act. In this regard, counsel points to the deportation order. It states that the applicant is required "to leave the State within the period ending on the date specified in the notice served on or given to [him] under subsection 3 (b) (ii) of the said s. 3, pursuant to s. 9 (a) of the said s. 3 and to remain thereafter out of the State".

72. I am satisfied that the notice referred to in the deportation order is the letter which was sent to the applicant on 20th May 2013. It states, *inter alia*, that the applicant was "obliged to leave the State by 6th June 2013. Please advise this office of the travel arrangements that you make to comply with the Deportation Order." Having regard to the provisions of the Act, I am satisfied that the notice given to the applicant complies with the provisions of the Act. Accordingly, in my view, the fact that the deportation order itself does not have a date does not render it bad on its face.

Summary
The relief sought in the Notice of Motion is denied.