This judgment is circulated in redacted form to avoid identification of the parties

Neutral Citation Number: [2007] IEHC 238

THE HIGH COURT

JUDICIAL REVIEW

[2005 No. 670 J.R.]

BETWEEN

P. E. A MINOR SUING BY HIS PASTOR AND NEXT FRIEND P. I. A.

APPLICANT

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENT

Judgment of Mr. Justice Hedigan delivered on the 16th day of May, 2007.

1. This is an application made for judicial review of the deportation order that issued in the applicant's case. He was granted leave by the High Court to apply for an order of *certiorari* on two grounds:

> (i) The Minister made a decision to deport the applicant without considering his age and the true effect of deportation upon him.
>
> (ii) That there was ambiguity in the submissions made to the Minister as to the applicant's age.

2. The applicant's case is that he was deemed to be an adult for the purposes of his asylum claim. The case that was made on behalf of the applicant was that the Minister was required to consider the applicant's age under s. 3(6)(a) of the Immigration Act 1999. It was argued that he did not do this because he could not do it because the evidence was contradictory or ambiguous or wrong. It was submitted to the court that the report to the Minister which is exhibited at p. 52 of the applicant's book of documents where it dealt with s. 3(6)(a) of the Act stated:

> "He is seventeen years old at the time of writing this submission. However it was determined by an authorised officer of the office of the Refugee Applications Commissioner that having regard to s. 8(5)(a) of the Refugee Act 1996 as amended Mr. Emmanuel should for the purposes of his asylum claim be treated as an adult because he had a physical appearance and level of maturity of a person older than his stated age."

3. I note that it was not apparently reported to the Minister that the applicant at the time of this interview for age assessment had indicated that he had been in school for twelve years and had started school at the age of six.

4. Because of this ambiguity it is pleaded on behalf of the applicant that the Minister should have caused an enquiry to be made. For their part the respondents submit that the power of the Minister to deport a person is not dependent on their having reached the age of majority, nor does a different procedure apply to persons who are under eighteen years of age. They also plead that there is no evidence that the consideration of an application for leave to remain would have been any different having regard to the question of whether the applicant was a minor or an adult. I accept this submission on the part of the respondents, I further accept their submission that while it is accepted that the Minister is required to have regard to the age of the applicant, this requirement is limited to the facts as they appear or are known to the Minister. He is not required to carry out any investigation under that subsection. The Minister noted that the Commissioner had found that the applicant was an adult but also that the applicant maintained that he was seventeen years of age at the time of the making of the deportation order. It seems to me that the information before the Minister at the time of the making of his decision on the deportation order in relation to the age of the applicant was that he was either seventeen or eighteen. There is nothing in the Act that appears to require the Minister to treat persons of a specific age in a different manner but merely to take account of their age. This may be whether they are very young or very old or any other age that may be relevant to the circumstances in the case. It seems to me that the duty of the Minister in this regard is simply to take account of the age of the person in respect of whom a deportation order is proposed to be made whatever that age is. How he does so is a matter for himself. I have been referred to and I adopt the statement of the law in this regard made by Clarke J. in *Kouaype v. The Minister for Justice, Equality and Law Reform and Others* (Unreported, High Court, 9th November, 2005):

> "The weighing of the various matters which might legitimately be taken into account under the section and which have been loosely described as 'humanitarian grounds' is, in accordance with those authorities, entirely a matter for the Minister. In the absence of evidence that the Minister did not give the person concerned an opportunity to make submissions in accordance with the statute or did not consider those submissions, it does not seem to me that that aspect of the Minister's decision is reviewable by the courts."

5. And further, in *Hamurari v. The Minister for Justice, Equality and Law Reform* (Unreported, Clarke J., High Court, 9th November, 2005) what he also held that:

> "The judgment which the Minister makes on those factors, and the weight he attaches to each of them, is, to a very considerable extent, a matter within the complete discretion of the Minister, and is not a matter on which the court should attempt to second-guess the Minister."

6. It seems to me that the Minister in this case on the basis of the report prepared for him dealt with the applicant on the basis that he was either seventeen or eighteen years of age. I can find nothing wrong with that approach on the part of the Minister and so can find no ground on which to challenge the Minister's decision as requested by the applicant. The application therefore must be refused. There must be an order for costs in favour of the Minister.