Neutral Citation Number: [2010] IEHC 520

THE HIGH COURT

JUDICIAL REVIEW

2009 477 JR

BETWEEN

J. A., B. A. (A MINOR), R. A. (A MINOR) AND E. A. (A MINOR) SUING THROUGH THEIR NEXT FRIEND AND MOTHER J. A.
APPLICANTS

AND

MINISTER FOR JUSTICE AND LAW REFORM

RESPONDENT

JUDGMENT of Mr Justice Ryan delivered the 15th December 2010

1. This is an application for leave to bring judicial review proceedings to challenge the Minister's refusal to revoke deportation orders dated the 9th of April, 2009, made in respect of the applicants. The hearing of the leave application took place on the 5th November, 2010. Mr. Saul Woolfson B.L. appeared for the applicants and Ms. Helen Callanan B.L. for the respondent.

2. The first applicant is the mother of the second, third and fourth applicants. The mother and her eldest two children were born in Nigeria. Her youngest child, the fourth applicant, was born in Ireland in October 2005 but does not qualify for Irish citizenship. The first applicant applied for asylum on arriving in the State in August 2005. The Refugee Applications Commissioner issued a negative recommendation and this was affirmed by the Refugee Appeals Tribunal. The applicants then applied in turn for subsidiary protection and leave to remain but again they were unsuccessful and deportation orders were made in respect of them. The Minister subsequently agreed to revoke the deportation orders and reconsider the applicants' claim for subsidiary protection and leave to remain when it came to light that the decisions contained an error of fact. Having reconsidered and, once again, refused the applicants' claim, the Minister made new deportation orders in respect of the applicants on the 9th April, 2009.

3. By the time of the new deportation orders, the applicants had changed solicitors. Later on the day that the orders were made, the new solicitor sent a letter to the Minister in support of the application for permission to remain in the State. This letter was not, of course, an application to revoke the deportation orders (which, as far as the solicitor knew, had yet to be made) but the Minister considered it as such. The parties are agreed that this leave application be treated as a challenge to the Minister's refusal to revoke the deportation orders.

4. The solicitor's letter of the 9th April made a number of representations, including the following:

- The applicants would suffer discrimination if returned to Nigeria on account of their status as a female headed household;

- The first applicant would encounter discrimination on account of her being a woman and would be at risk of sexual violence, which is endemic in Nigeria;

- The children applicants would be exposed to substandard education and healthcare;

- The children applicants would be at risk of cruel, inhuman and degrading treatment by way of corporal punishment, which is still practised in Nigerian schools;

- The applicants would be at risk of discrimination on account of them being perceived as outsiders if they were to relocate within Nigeria;

- Corruption in Nigeria is systemic and this impacts on the provision of basic services and the extent of corruption is in itself a violation of Nigeria's obligations under the UN Convention on the Rights of the Child;

- The deportation of the applicants would amount to a breach of their rights, in particular those arising under Articles 3 and 8 of the European Convention on Human Rights.

Appended to the solicitor's letter were some 21 country of origin information documents, running to approximately 250 pages in total.

5. In a decision communicated to the applicants by way of letter dated the 17th April, 2009, the Minister declined to revoke the deportation orders. A file analysis dated the 14th April, 2009, sets out the reasoning for the decision. The analysis begins with a summary of the applicants' asylum history followed by a brief synopsis of the representations made by the applicants' solicitor in the letter of 9th April, 2009. Under the heading of non-refoulement, the document states as follows (emphasis added):

> "The applicant has not provided any information that would indicate that she or her children are at real risk because of her potential status as a perceived outsider or non-indigene. *The applicant's statement is general in nature and she has not provided any information that shows she has suffered because of her status as a perceived outsider or non-indigene*. The applicant's statement is general in nature and she has not provided any information that shows that she has suffered because of her status as a perceived outsider or non-indigene or is likely to suffer if returned to Nigeria because of this. *This is likewise for her claim that as a woman / single mother she will be subjected to discrimination in Nigeria also*."

6. The document refers to country of origin information and reaches a number of conclusions, including the following:

• The Nigerian constitution enshrines the right to life, liberty and dignity of the person. Each of these rights would be particularly relevant to the first applicant's fear of being treated poorly due to being a single mother.

• There is a functioning police force in Nigeria and the first applicant could seek to be protected by them if she deemed necessary. It is also evident that there are avenues of complaint for those who may feel their complaint needs to be investigated.

• There is an independent and fair judiciary in Nigeria. While unfair detention can happen, it is unlikely to happen to someone for the sole reason of their being a single parent.

• A number of human rights organisations operate in Nigeria and any number of these would be available to help the first applicant with any needs she may have.

• While it is clear that corruption occurs globally, including in Nigeria, it is also evident that the Nigerian government are making efforts to stamp corruption out of the state.

• While it is evident that there is still progress to be made in terms of women's rights, it is also clear that women have the opportunity to gain employment, participate in politics, gain state protection when necessary and to internally relocate if they so desire. There is nothing to suggest that a single parent family would be ostracised from the community and there are a variety of women's groups available to provide support to a single parent.

• Nigeria has signed up to and ratified a great number of instruments that seek to protect the rights of the child and to educate the child. It is evident that there is basic education available to all children in Nigeria.

• Nigeria is ably equipped to deal with medical issues and provide treatment and medication to those in need. There are a number of hospitals in Nigeria, as well as training hospitals.

• Freedom of movement is allowed in Nigeria and people returning to the country as failed asylum seekers will not be targeted by the authorities in a malicious manner.

• Women who are fleeing violence, or women with no relatives or social network, can find assistance and shelter in Nigeria. The first applicant could expect to be helped by any one of a number of non-governmental organisations to find employment, accommodation or just to gain general assistance and support in being a single mother on returning to Nigeria.

7. The document then goes on to state that, in accordance with the case law of the European Court of Human Rights, in principle non-nationals subject to expulsion cannot claim any entitlement to remain in the territory of a contracting state in order to continue to benefit from medical, social or other forms of assistance provided by the expelling state. The document says that the deportation of the applicants is not contrary to s. 5 of the Refugee Act 1996, s. 4 of the Criminal Justice (UN Convention against Torture) Act 2000 and it does not breach the applicants' private and family rights under Article 8 of the European Convention on Human Rights. Accordingly, it concludes that there is no reason to revoke the deportation order.

8. The applicants submit that the Minister made only selective use of country of origin information. The information he referred to was sourced by him and he had no regard to the reports submitted by the applicants' solicitor, save and in so far as these were mentioned in the reports sourced by the Minister himself. Accordingly, it is argued, the Minister's conclusions do not bear a rational nexus to the objective information available and are therefore unreasonable and irrational. The applicants further assert that the Minister failed to consider adequately the submissions made on their behalf, in particular the claim that they were at risk of cruel, inhuman and degrading treatment if returned to Nigeria.

The Court's Assessment.
9. The obligation to establish substantial grounds before obtaining leave to seek judicial review (s. 5 of the Illegal Immigrants (Trafficking) Act 2000) does not apply to these proceedings. Therefore, the burden on the applicants is the lesser one of an arguable case: *G v. Director of Public Prosecutions* [1994] 1 I.R. 374.

10. The inquiry that the Minister is required to make in an application to revoke a deportation order is limited. In *O.A.D. v. Minister for Justice* (Unreported, High Court, 3rd May, 2006) [2006] I.E.H.C. 140 O'Neill J. summarised the position as follows:

> "It is clear that the nature and extent of the inquiry which is appropriate in this later phase of the process, thus described, is significantly more restricted than for example in the asylum phase. Likewise the extent of review of the later phase is undoubtedly more restrictive than in the earlier phase."

11. In the asylum process, the question is whether the applicant is a refugee, as defined in the legislation. When it is determined that the person is not a refugee, the spotlight shifts to immigration concerns, which are subject to obligations on the Minister as to non-refoulement and the UN Convention against Torture. As an application moves through the immigration processes including consideration of deportation, there is a narrowing of focus. The principal consideration of the case is when the Minister is deciding whether to make a deportation order. If an order is made and the proposed deportee applies to have it revoked the Minister is not obliged to reconsider the case *de novo* as if he had not made any order. Although he must of course be mindful at all times of his non-refoulement and torture obligations, he is concerned essentially with changed conditions and circumstances since he made the order. The nature of the consideration that the Minister must undertake in the context of a s. 3(11) application was summarised by Cooke J. in the case of *M.A. v. Minister for Justice* (Unreported, High Court, 17th December, 2009):

> "When an application to revoke is made to the Minister under s. 3(11) of the Act, the Minister has, in effect, two duties. He is required to consider carefully and fairly the reasons that are put forward for revocation; and he must also verify that since the deportation order was made, no change of circumstance has occurred, either so far as concerns the applicant or the situation in the country of origin, which would bring into play any of the statutory prohibitions on the return of a failed asylum seeker to the country of origin ... in dealing with an application to revoke, the Minister is not obliged to embark on any new investigation or enquiry; nor is he obliged to enter into any exchange of observations and replies or into any debate with the applicant or the applicant's legal representatives or even perhaps to supply any extensive narrative statement of his reasons for refusal. Once it is clear to the court that the Minister has properly discharged those two functions, a decision to refuse to revoke a valid order of deportation will not be interfered with."

12. In the recent case of *H.I. v. Minister for Justice* (Unreported, High Court, 23rd November, 2010) Cooke J. held as follows:

> "[I]n the absence of any material change in the circumstances of the applicant or in the conditions prevailing in the country to which the deportation will take place, the Minister is under no obligation to reopen or re-examine any of the matters dealt with during the asylum process or at the time of the making of the order."

13. In the absence of significant changes of circumstances in the country of return or in their own personal situations, applicants are not entitled to make an entirely new claim at the eleventh hour. In *Akujobi v. Minister for Justice* (Unreported, High Court, 12th January, 2007) MacMenamin J. added another element when he held at para. 43 of his judgment:

> "Thus, an applicant making representations to the Minister for leave to remain on humanitarian grounds is obliged to actively put his or her best case forward in such representations. To address the second issue directly any such application under s. 3(l 1) to revoke a deportation order made having considered such representations, must advance matters which are, truly materially different from those presented or capable of being presented in the earlier application. There must be, in the words of Clarke J. in *Kouyape* `unusual, special, or changed circumstances'. Furthermore, the test in law must include one further test which is as to whether the material was capable of being presented earlier. To omit this latter aspect might have the effect of actually encouraging delay in the making of an application for humanitarian leave to remain..."

14. The representations made to the Minister under s.3(6), in support of the request for permission to remain, repeated the specific claim that the first applicant feared being targeted as a journalist who possessed information regarding assassinations authorised by the Nigerian government. That was rejected at each stage of the asylum process. In addition, submissions were made in relation to refoulement, Convention rights and humanitarian considerations. The Minister rejected this case and made the deportation orders. It was at this stage that the applicants' new solicitor presented a 250 page dossier on conditions generally in Nigeria.

15. The file analysis in respect of the s. 3(11) application and its assessment of the documentary information as to conditions in Nigeria are undoubtedly open to criticism. However, the Minister was entitled to come to the conclusion that the material was general in nature and not specific to the applicants. It would not therefore change the Minister's decision. Moreover, there was no evidence in the dossier to suggest any significant changes in the circumstances of the applicants or in conditions in Nigeria. Although the analysis document engaged with the issues raised and made a number of findings rejecting them, the Minister was not required to take this extra step. It was sufficient for the Minister to conclude that the new information submitted to him did not disclose any change of circumstances or other exceptional consideration.

16. In the circumstances, no statable case has been made out that the Minister failed in the proper exercise of his function under s. 3(11) of the Refugee Act, 1999

17. In the result, the applicants have not made out an arguable case. The application for leave is refused.