Neutral Citation [2016] IEHC 462

THE HIGH COURT

JUDICIAL REVIEW

[2015 No. 233 J.R.]

BETWEEN

S.A.

APPLICANT

AND

MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 29th day of July, 2016

1. The applicant was born in Algeria in 1971. He was engaged in military service there in the years 1996 to 1998. He claimed that this included anti-terrorist work in contact with an organisation known as G.I.A. He then left the army and returned home, where he says he encountered difficulty with Islamists, for which there was a lack of State protection.

2. He left Algeria in 2000, and ultimately arrived in the State in or around 23rd July, 2001, when he sought asylum.

3. His asylum application was refused by the Refugee Applications Commissioner on 7th May, 2002. This refusal was not appealed. A deportation order was made against him in March, 2004 (shortly after the commencement of the European Convention on Human Rights Act 2003 on 31st December, 2003).

4. Five months after the making of the deportation order, we have the wearyingly predictable feature of the applicant's marriage to a young Hungarian woman. The woman concerned left the State in 2008 and has no contact with the applicant. There are no children of the marriage. I have been told very little about that marriage. The marriage certificate does not record the presence of any relative of the bride as a witness and she appears to have been given away by an associate of the applicant's.

5. On 8th January, 2007, the applicant made a claim for residence based on his marriage to an EU national. This was refused on 16th October, 2008. He appears to have applied for a review of this decision in May, 2010, which was also rejected.

6. In December, 2011, the applicant was charged with a criminal offence and it was deemed appropriate not to execute the deportation order pending the outcome of the criminal process, he was convicted of this offence in May, 2012. The respondent wrote to the applicant on the 23rd March, 2012, referring to the applicant's failure to comply with the deportation order and offering to pay for his flight to his country of origin.

7. On 12th June, 2012, he applied for revocation of the deportation order under s. 3(11) of the Immigration Act 1999.

8. Various submissions were made in support of this application on 31st January, 2013, 20th January, 2014 and 4th December, 2014.

9. On 15th December, 2014, the applicant brought a first set of judicial review proceedings in which he claimed a declaration and an injunction that he should be permitted to remain in the State pending a decision on his s. 3(11) application. On that date, Mac Eochaidh J. granted leave and an injunction to that effect. A notice of motion seeking these reliefs was issued on 18th December, 2014. Those proceedings were compromised and the Minister appears to have agreed to make a decision on the application. On 23rd March, 2015, an officer of the Minister recommended that the application for revocation be refused. This was duly approved by more senior officers and notified to the applicant on 20th April, 2015. This development led to the institution of the present, second, set of judicial review proceedings on 7th May, 2015.

10. On 11th May, 2015, an order was made by Mac Eochaidh J. granting leave in this case and granting an injunction up to 6th July, 2015, which I am was informed was subsequently to continue, by agreement, until the determination of the proceedings.

Procedural Issues

11. During the hearing, Mr. Colm O'Dwyer S.C. (with Mr. Ian Whelan B.L.) for the applicant sought leave to amend his statement of grounds to include a claim that there was no settled intention to deport the applicant. Mr. Karl Monahan B.L. (with Mr. David Conlan Smyth S.C., who also addressed the court on the issue of the delay in executing the deportation order) for the respondent helpfully indicated that there was consent to that amendment which I, therefore, permitted.

12. The respondent has delivered a statement of opposition but as of the opening of the hearing this contained positive factual assertions but had not been verified by affidavit. Without objection from the applicant, I gave Mr. Monahan liberty to file a verifying affidavit for the statement of opposition as required. The form of the affidavit ultimately filed, sworn by Mr. Conor Nelson, an officer of the Minister, is fairly formulaic. It verifies that the averments insofar as they concern the deponent are true and other averments, he believes to be true. However, it is opaque from the statement as to which averments actually concern Mr. Nelson. The value of a formulaic affidavit of this kind (if any) is significantly less than the value to be attached to a more narrative affidavit that makes clear the precise evidential status of each of the propositions being advanced in a particular pleading. In fairness to the respondent, the primary inspiration for the use of such formulaic one-line pleadings may lie with the wording of the amendments introduced by the Rules of the Superior Courts (Judicial Review) 2011, which I might venture to suggest are not altogether satisfactory in this respect, but those rules should be taken as laying down a bare-bones minimum and do not prevent parties from doing better than a one-line formula. Judicial review pleadings (including a statement of opposition) should preferably be verified by a narrative affidavit rather than by a "one-line" affidavit of verification.

13. I also permitted a further affidavit from the respondent about the delay in deporting the applicant, and permitted further submissions on this issue in the interests of fairness to all parties and having regard to the fact that I allowed the applicant to amend his pleadings on this issue during the hearing itself.

14. Mr. O'Dwyer in a very able argument has challenged the s. 3(11) decision under a number headings which I will deal with in sequence.

Is the decision invalid by reason of a lack of reference to country of origin information on which the applicant relies?
15. In submissions of 4th December, 2014, the Minister's attention was drawn to information from the Immigration and Refugee Board of Canada contained in a publication on the "Refworld" website (a UNHCR online database of asylum-related materials) on 11th August, 2014. The applicant now complains that this material was not adequately considered.

16. Reference to country of origin information either expressly or impliedly by referring to an applicant's submissions, which include such information, constitutes adequate consideration, in the absence of positive evidence, to show that the matter was not, in fact, considered; see my decision in *R.A. v. Refugee Appeals Tribunal* [2015] IEHC 686 (Unreported, High Court, 4th November, 2015) and *G.K. v. Minister for Justice, Equality and Law Reform* [2002] 2 I.R. 418 (Hardiman J.).

17. The Canadian material is mentioned on p. 3 of the Minister's considerations in this case. This constitutes adequate consideration for the purposes of judicial review.

Is there a factual error regarding the Minister's consideration of the most up-to-date information?
18. Having referred to the Canadian material, the official preparing the Minister's consideration of the application then goes on to say that she has had regard to the "*most up to date*" country of origin information, which is specified as material from the U.K. Border Agency, the U.S. State Department and the International Organization for Migration (I.O.M.).

19. Having done so, she then states that this material constitutes "*some of*" the most up to date information on the subject.

20. It would seem that on one view, the Canadian material is more up to date than the material relied on by the Minister if only in the limited sense that the Canadian report includes an academic letter dated 21st July, 2014, although that letter does not appear to add very much, if anything, to a statement of the law in Algeria as of 2009. It does not purport to give an account of practice since then. Therefore, even if the Canadian material was technically more up to date, no real error has been demonstrated.

21. In any event, taking the document as a whole, I do not read it as an assertion that the U.K., U.S. and I.O.M. material is an exclusive statement of the most up to date information.

22. Furthermore, the Minister is under no obligation to give priority to information based on the date of its generation. Important matters such as the source of the information are also potentially decisive. Taking the material as a whole there is no error in the phrase "*some of the most up to date information"*, which I take to be the operative phrase but if I am wrong about that, any error is harmless in the circumstances.

Did the Minister fail to consider the current risk to the applicant under s. 5 of the Refugee Act 1996?
23. While Mr. O'Dwyer has formulated this challenge in a number of ways, including whether the Minister asked the right question (and it perhaps needs to be repeated that multiple reformulations of the same point add little to a case: *Babington v. Minister for Justice, Equality and Law Reform* [2012] IESC 65 (Unreported, Supreme Court, 18th December, 2012) *per* MacMenamin J. (Fennelly and Clarke JJ. concurring) at paras. 7 to 8), the essence of this challenge is that the Minister relied on information dealing with the situation in Algeria in 2004 when the deportation order was made, rather than the new situation after a change in Algerian law in 2009 which allows for punishing individuals who returned to the State without proof of having had an exit visa. Some of the country of origin information is supportive of the proposition that a six-month penalty of imprisonment is available for such an offence although there is precious little in the way of evidence as to the practical application of this as against returned failed asylum seekers.

24. The Minister's analysis can certainly be criticised in terms of a lack of specificity to the applicant's objection – there is no real discussion of the question of the absence of an exit visa – but nonetheless the U.S. State Department material and the I.O.M. material are rationally capable of supporting the conclusion that there is no significant risk to returned asylum seekers in the applicant's situation, which of necessity include those who do not have an exit visa.

25. In any event, it is unclear as to whether the lack of an exit visa would be likely to be a problem in practice. The country of origin information is ambiguous. It is not clear if the 2009 law is retrospective or whether any threat is theoretical or actual. There is limited, if any, evidence as to how, in fact, the law is applied. Furthermore, given that the applicant left Algeria years ago and on a different passport, it is hard to see how he could realistically be proceeded against, in any event, given that even if there was such a thing as a exit visa in 2000, any evidence of that might not be currently available to him as it was on a previous passport. Mr. O'Dwyer suggests that this makes him more vulnerable to prosecution. I would rather consider that it makes it less likely that Algerian authorities would do something as absurd as prosecute people for failing to have an exit visa in circumstances where such visa could not be available to them due to it having been on a previous passport or even where such a visa was not issued due to the exit from the country having been effected prior to the law on exit visas in 2009. Of course, public authorities sometimes do absurd things, but there is no evidence that the Algerian authorities make a practice of so acting.

26. The applicant relied on a number of cases relating to the need for specificity in dealing with claims in the asylum context including *T.G. v. Refugee Appeals Tribunal* [2007] IEHC 377 (Unreported, High Court, Birmingham J., 7th October, 2007); *D.V.T.S. v. Minister for Justice, Equality and Law Reform* [2007] IEHC 305 (Unreported, High Court, Edwards J., 4th July, 2007); *M. v. Refugee Appeals Tribunal* [2007] IEHC 300 (Unreported, High Court, Edwards J., 18th July, 2007); *Muia v. The Refugee Appeals Tribunal* [2005] IEHC 363 (Unreported, High Court, Clarke J., 11th November, 2005); and Case C-277/11, *M.M. v. Minister for Justice, Equality and Law Reform*, 22nd November, 2012 at para. 88. However, it seems to me that these cases are of very limited assistance to the applicant, dealing as they do with the analysis of asylum claims rather than with the exercise of the executive power to remove illegal immigrants.

27. Article 21(1) of the Asylum Qualification Directive 2004/83/EC, and of the recast Asylum Qualification Directive 2011/95/EU (not applicable to Ireland: see recital 50) provides that member states "*shall respect the principle of non-refoulement in accordance with their international obligations*". Those obligations include arts. 32 and 33(2) of the Geneva Convention on the Status of Refugees, art. 2 of the Convention against Torture, art. 3 of the ECHR, and art. 7 of the International Covenant on Civil and Political Rights. The stipulations of art. 21 of the Qualification Directive are directed to *refoulement* of recognised refugees (see Hailbronner and Thym, *EU Immigration and Asylum Law* (2nd ed. 2016) at p. 1257). Article 7 of the Asylum Procedures Directive 2005/85/EC, and art. 9 of the

recast Asylum Procedures Directive 2013/32/EU (not applicable to Ireland: see recital 58) limits expulsion of applicants during the application process, and art. 9(1)(a) of the Return Directive 2008/115/EC (which does not apply to Ireland: see recital 27) prohibits *refoulement* of persons refused protection. The consideration of *refoulement* in the context of the return by Ireland of a failed asylum seeker is therefore not a matter of EU law.

28. The courts have been reluctant to allow wide-ranging challenges to the purely domestic question of the making of a deportation order, and indeed the revocation of such orders. In *Kouaype v. Minister for Justice, Equality and Law Reform* [2011] 2 I.R. 1 at p. 11, Clarke J. said that it would require very special circumstances to challenge a deportation order unless there was a failure to consider s. 5 of the 1996 Act, or the Minister could not reasonably have come to the view she did, or did not afford the opportunity to make submissions, or fail to consider such submissions. A similar approach was also taken in *P.E. v. Minister for Justice, Equality and Law Reform* [2007] IEHC 238 (Unreported, High Court, Hedigan J., 16th May, 2007); see also *U.I. v. Refugee Appeals Tribunal* [2007] IEHC 72 (Unreported, High Court, Murphy J., 23rd January, 2007). In determining a s. 3(11) application, the Minister need only consider the submissions made and any change of circumstances that would bring into operation any relevant legal bar to deportation (such as s. 5 of the 1996 Act).

29. In *I.D. v. Minister for Justice* (Unreported, *ex tempore*, High Court, 16th December, 2014) Mac Eochaidh J. granted an interlocutory injunction restraining deportation to Algeria of a failed asylum seeker, commenting at para. 15 that the Refugee Appeals Tribunal had decided a particular case that there was a risk of mistreatment of returned asylum seekers.

30. That Tribunal decision, reference No. 1545424-ASAP12, was also submitted by this applicant to the Minister. However, an examination of the decision establishes that it is virtually valueless as a precedent. It merely asserts that there is a risk of mistreatment of asylum seekers being returned to Algeria, rather than explaining why that is so. The decision is made by reference to country of origin information which is neither set out expressly nor identified by implication.

31. Mr. Monahan makes the separate point that because the Minister is bound to accept a decision of the Tribunal, there is no right of recourse against a favourable decision. He therefore submits it is "*unfair*" to use such a decision against the Minister. It might be taking that logic too far to say that Tribunal decisions could never be relied on as against the Minister but in any event, they can only be relied on for what they are worth and in this case, that is not very much.

32. The upshot of the foregoing in the present case is that the applicant has not demonstrated any real basis for contending that in the practical and concrete circumstances of his own case, he faces a risk of *refoulement* by reason of the application to his circumstances of the 2009 exit visa law. There is therefore no invalidity in the failure of the decision to expressly consider this issue. Failure to consider (still less to expressly consider) an issue is not normally a basis to quash a decision if the applicant has not demonstrated a real basis for a risk of breach of his or her legal rights by reason of that issue (see by analogy my judgment in *S.I. v. Minister for Justice and Equality* [2016] IEHC 112 (Unreported, High Court, 15th February, 2016) paras. 29 to 46).

Should the decision be quashed for failure to have regard to s. 3(6) of the Immigration Act 1999?
33. Mr. O'Dwyer submits that the decision to refuse to revoke the deportation order should be quashed because the Minister has failed to have regard to the list of factors set out in s. 3(6) of the Immigration Act 1999. It is clear that there was minimal, if any, consideration of most of these issues and indeed the only reference to s. 3(6) was in the context where it is recorded that that section had been previously considered at the time of the deportation order in 2004.

34. However, s. 3(6) only applies "*in determining whether to make a deportation order*". By its terms, it does not apply to a revocation decision. It is not a legal requirement to review the s. 3(6) factors at the s. 3(11) revocation stage.

35. Having said that, the Minister is required to consider the s. 3(11) submissions. Therefore if an applicant raises as a major point the need to consider one of the s. 3(6) factors, the Minister should have regard to that submission. In the present case, apart from issues relating to the applicant's time spent in the State which are best considered under the heading of ECHR rights, the main point made was in relation to a job offer to the applicant.

36. This was considered at p. 10 (of the considerations) but essentially on the basis that the applicant was unlawfully in the State and therefore not entitled to work. Mr. O'Dwyer submits that this is a catch-22, and that s. 3(6) requires consideration of the "*prospects of employment*", which must be predicated on an assessment of those prospects in the event that the applicant were to be granted permission to remain. However, it is not unlawful for the Minister to consider the actual prospects of an applicant as opposed to his hypothetical prospects. A deportation order may, in certain circumstances, be made against a person who has an entitlement to work. Section 3(6)(f) cannot therefore be interpreted as necessarily premised upon an assumption that the employment prospects concerned must be addressed on the basis of how they would stand if the person had an entitlement to engage in employment. There is, therefore, no error under this heading either.

Is the decision invalid by reason of a failure to consider ECHR rights?
37. Mr. O'Dwyer submits that the decision is invalid because of the absence of reference, in the decision, to the ECHR rights of the applicant, in particular his rights under art. 8 to a private and family life.

38. It is clear from *Sivsivadze v. Minister for Justice and Equality* [2015] 2 I.L.R.M. 73 (Supreme Court, Murray J. (Hardiman, Clarke, O'Donnell and MacMenamin JJ. concurring)), that s. 3(11) is not confined to a change of circumstances. The approach taken in *M.A. v. Minister for Justice, Equality and Law* (Unreported, High Court, Cooke J., 17th December, 2009) was that the Minister was obliged under s. 3(11) to consider carefully and fully the reasons put forward by an applicant for the revocation and to verify that no change in circumstances had occurred to bring into play the statutory prohibitions on deportation. This was followed in *Irfan v. Minister for Justice, Equality and Law* [2010] IEHC 422 (Unreported, High Court, Cooke J., 23rd November, 2010) para. 7 and this point was also made by MacMenamin J. (Laffoy and Charleton JJ. concurring) in *P.O. v. Minister for Justice and Equality* [2015] IESC 64 (Unreported, Supreme Court, 16th July, 2015) at para. 16.

39. It is equally clear from *Sivsivadze* at para. 83 and *P.O.* at para. 15 that if a breach of rights under the ECHR would occur, that is a factor that should be considered in the context of s. 3(11) application.

40. The applicant's marriage was ephemeral at best, and such reality as it had (if any) was long gone by the time of the s. 3(11) application. No basis for a claim of "family life" arises.

41. *Mendezabal v. France* (Application no. 51431/99) European Court of Human Rights, 17th January, 2006, emphasises that the ECHR does not guarantee a right to enter and reside in a state where an individual is not a national, and that states have the right to control the entry, residence and deportation of any such non-nationals.

42. As regards private life, the applicant relies on *A.A. v. United Kingdom* (Application no. 8000/08, European Court of Human Rights, 20th September, 2011). Mr. A.A. was the prototypical Strasbourg applicant, a Nigerian child-rapist who successfully prevented his removal from Britain by a unanimous decision of the court (the British judge included) to the effect that his right to a "*private life*" included his ties to the community in which he lived, and would be infringed by his removal. However, what distinguishes this case from *A.A.* and similar cases, including *Sisojeva et al. v. Latvia* (Application no. 60654/00, European Court of Human Rights, 15th January, 2007) and *Rodrigues De Silva and Hoogkamer v. the Netherlands* (Application no. 50435/99, European Court of Human Rights, 31st January, 2006), is that he was a settled migrant, who had had permission to be in the U.K. for a substantial period of time.

43. This applicant is not a settled migrant. In the present case, almost all of the applicant's sojourn in the State has been unlawful. The only short period when he was not here unlawfully was a period of highly conditional and precarious residence pending the determination of his asylum claim. It is clear that where an applicant's status is "*precarious*", his or her art. 8 rights are minimal, if they exist at all (see *e.g. Nnyanzi v. U.K.* [2008] 47 EHRR 18; *C.I. v. Minister for Justice, Equality and Law Reform* [2015] 2 I.L.R.M. 483 (Finlay Geoghegan J.); *P.O. per* MacMenamin J. at para. 26; and my decision in *Li v. Minister for Justice and Equality* [2015] IEHC 638 (Unreported, High Court, 21st October, 2015) at para. 65(ii). As I held in *Li,* where an applicant's status is beyond precarious and is actually without any legal basis, the art. 8 rights that can be built up during that period attract virtually no weight.

44. The Minister did, in fact, consider in some detail the mental health services available in Algeria. On that basis it cannot be said that there was a complete failure to consider the private life of the applicant. There is no express reference to the ECHR. However, such omission is not fatal unless it can be shown that there was some sufficiently substantial right in existence that should have been considered but was not. Clearly the period of time in the State itself was considered, during all of which he was either illegal or precarious. Given that any matters going to art. 8 rights of the applicant are of minimal or no weight, there is no basis to quash the decision by reason of failure to narratively consider those rights.

Should deportation be restrained by reason of a lack of continuing intention to deport?
45. Mr. O'Dwyer submits that if the Minister makes a deportation order she must have a concluded intention to deport an applicant, and that this concluded intention must also exist at the time of affirming a deportation order by refusing a s. 3(11) application. Reliance is placed on the decision in *B.F.O. v. Governor of Dóchas Centre* [2005] 2 I.R. 1 (Finlay Geoghegan J.), which was a detention case, which I considered in *F.I. v. Maher* [2015] IEHC 639 (Unreported, High Court, 21st October, 2016) at para. 7. It is submitted that the basis of *B.F.O.* is that the intention formed at the time of making the deportation order continues unless displaced.

46. It may be necessary to clarify whose intention is in issue. The Minister, by making a deportation order, and indeed by refusing to evoke it, expresses an intention that a particular individual should leave the State. Actual enforcement of that order requires a decision by the Garda Commissioner or a member on her behalf. That separate decision involves practical questions such as availability of travel documentation, capacity to locate an applicant, and so on. At one level, as far as detention of an applicant is concerned, there must be a coincidence of intention. The Minister must intend that the person be deported as expressed through the making of a deportation order and indeed the failure to revoke it. The Garda Síochána must intend to give effect to that order, and, if that requires detaining the applicant, the intention must be that it can be given effect to within the statutory period of eight weeks for such detention. The Minister's intention can be inferred from the existence of the order, unless that is displaced by sufficiently weighty considerations. The Garda intention to implement the order can likewise be assumed from the existence of that order, unless displaced by similar considerations.

47. The mere passage of time is not such a consideration and does not displace the Minister's intention that the applicant should leave the State (see *Sivsivadse* at para. 58). The mere failure to compel the applicant to do so does not negative the intention. The primary onus of complying with a deportation order rests on the applicant himself. The very terms of the order require the applicant to leave the State. It is only if he fails to do so that the question of forcible removal arises, but an absence of such forcible removal does not in any way dilute the legal effect of the order. Mr. O'Dwyer states that "*the applicant is unable and unwilling to leave the State"* and in particular cannot afford to do so. If he was merely unable to leave the State, one could look more closely at the question of whether any inaction by the Minister had contributed to leaving him in limbo. But given that he is also "*unwilling*", he is disentitled from making any argument predicted upon inability.

48. Statutory instruments or statutory decisions do not lapse simply because they have not been fully enforced. One can contrast the position under s. 3(8) where the order lapses if not executed within 3 months where there is consent to deportation.

49. The act of refusing the s. 3(11) application constitutes confirmation that it is the Minister's intention that the applicant leave the State, but that confirmation is not legally necessary. The order speaks for itself. No further proof of an intention to actually execute the deportation order either imminently or at all is required in order to defend a challenge to the s. 3(11) refusal. *B.F.O.* and *F.I.* dealt with situations where there was some possible impediment to *Garda enforcement* of the deportation order. In *F.I.*, I indicated that the receipt by the court of positive evidence as to intention could in principle be relevant to resolving the issue. By contrast there is no requirement for positive evidence of the *Minister's intention* that the person be deported in the absence of some exceptional circumstance well above and beyond the passage of time. There is no such circumstance here but in any event I now have positive affidavit evidence of the Minister's ongoing intention.

50. Having said that of course, one cannot be entirely happy with a situation where a deportation order remains unexecuted for over a decade. A request was made to the Algerian Embassy for assistance on 25th November, 2014, and at one stage shortly following this, the Embassy appeared to be co-operating with some urgency to assist in effecting the deportation. The injunction originally granted by Mac Eochaidh J. on 15th December, 2014 may have contributed to knocking on the head such enthusiasm to co-operate as might then have existed, because the Minister now says that she is still awaiting a final response from the Algerian authorities. One might be forgiven for finding it difficult to entirely shake off the question as to whether this applicant or indeed many other applicants who have held up deportation by legal means or otherwise are ever going to be deported, or as to whether the court is in fact unwittingly being conscripted into a gigantic system of moot hearings, without anything changing on the ground as a result.

51. Whether I am, in fact, dealing with a moot in deciding on this challenge to the deportation order one way or another is not ultimately a question I can really get involved in, other than by saying that the applicant has not displaced the presumption that the ministerial intent to deport continues.

Is the decision to affirm the deportation order invalid by reason of failure to consider the effect of the lapse of time on the proportionality of deportation?
52. The applicant belatedly sought to recharacterise the delay claim as a claim that the Minister failed to consider the proportionality of the deportation having regard to the lapse of time, or that the lapse of time rendered the deportation disproportionate. These multiple reformulations of the point are without merit. The Minister clearly did consider the lapse of time in the sense that she was

well aware of it from the decision. And an assessment of proportionality is primarily a matter for the decision-maker unless a clear error can be shown, which is not the case. The applicant's belief that if he defies his legal obligation to leave the state for long enough, that obligation will dissolve because it will somehow become disproportionate, and therefore unlawful, for the State to require him to leave, is completely misconceived.

53. This argument seems to me to be simply another way of stating the art. 8 submission. A lapse of time in and of itself does not confer rights on an applicant, and nor is it something that the Minister is obliged to consider. A lapse of time without more does not in and of itself render deportation disproportionate. Therefore there was nothing under this heading for the Minister to consider. There is no resulting invalidity.

Discretion and the nature of the social contract with an asylum seeker.
54. By ratifying the Geneva Convention of the Status of Refugees, the State has essentially offered a social contract to asylum-seekers. The essential terms of that contract include that the State will consider any asylum claim properly made, subject to the possibility of transferring that application to another more appropriate country for consideration. Furthermore, the State will permit the claimant to remain pending the determination of the claim. However, on the rejection of such a claim, the invitation to be in the State is withdrawn, and it is an inescapable term of that social contract that the failed asylum seeker is then under a duty to leave.

55. Human rights are not there to be supplied in practically unlimited quantities, to be consumed without consequence. Rights are meaningless without corresponding duties. The presence of persons in the State without an entitlement to be here clearly imposes real economic and social costs on Irish citizens and lawful residents. Whether a particular individual should be permitted to remain in the State is generally a matter for the Minister for Justice and Equality, subject to EU law and other limited legal obligations.

56. Some failed asylum seekers are only too happy to repudiate, as soon as possible, the legal basis for their original presence in the State, and to conceive of the rejection of their refugee claim as only the first leg of a long march towards eventual residence. In the case of the present applicant, his lawful presence in the State was confined to the period between his asylum claim on 23rd July, 2001, and the refusal of that claim on 7th May, 2002, a period of less than ten months. Judicial review being a discretionary remedy, it seems to me that the circumstances in which the court should come to the aid of an applicant who has repudiated the implied contract offered to him on arrival, and has disregarded the law of the State thereafter, must necessarily be limited. Such discretion may not arise if the decision made is clearly outside jurisdiction but apart from that, conduct of the applicant generally, including a disregard of legal obligations by the applicant, may be a factor.

57. In terms of conduct, if a particular applicant were shown to have entered into a marriage solely to defeat the immigration system (and on the basis of the meagre material before me I am not making any particular finding in this regard in relation to this applicant in these proceedings) that would also be a discretionary factor to be taken into account. I appreciate that love is, of course, blind; but it is nonetheless disturbing to note how frequently applicants become regarded as "a good catch" shortly after being served with deportation orders or otherwise finding themselves on the wrong side of immigration law. Such sham marriages are not a victimless wrong. They are not simply a subversion of the law of the State but also a breach of the rights of the other party, because it is doubtful that any consent could be truly informed given the circumstances in which such marriages are entered into and the level of legal complication for the other party as well the innocent third parties that can be unleashed downstream that is almost certainly not explained to or understood by such a party. Marriages of convenience may result in a breach of the rights of others with whom the other party to the "marriage" may subsequently enter into purported marital relationships with, without their having been made aware of the previous sham marriage (which may well never have been dissolved), as well as the children of such unions, whose legal position may be significantly affected.

58. In the interests of the human rights of those involved, there is a clear duty on the State not only to take huge efforts to prevent such bogus marriages in future, but also to review previous such marriages that took place prior to the commencement of the Civil Registration (Amendment) Act 2014, so as to ensure that any immigration advantages (whether as to residence or knock-on applications such as citizenship or family reunification) secured by those whose marriages are administratively determined to have been likely to have been bogus, and by those whose rights and interests are dependent on or derivative from them, are rooted out and revoked.

Injunction
59. As the application is being dismissed, I will discharge the interlocutory injunction.

Leave to appeal
60. I held in *K.R.A. v. Minister for Justice and Equality (No. 1)* [2016] IEHC 289 (Unreported, High Court, 12th May, 2016) that s. 5 of the Illegal Immigrants (Trafficking) Act 2000 applies to a challenge to a refusal of a s. 3(11) order and I will give the parties an opportunity to consider any applications in this respect.

Summary of principles involved
61. Before concluding I will endeavour to set out a summary of the principles discussed above:

(i) judicial review pleadings (including statements of opposition) should preferably be verified by a narrative affidavit rather than by a "one-line" affidavit of verification;

(ii) reference to country of origin information either expressly or impliedly by referring to an applicant's submissions which include such information constitutes adequate consideration in the absence of positive evidence to show that the matter was not in fact considered;

(iii) the Minster is under no obligation to give priority to information based on its date of generation as there may be more important considerations, such as the source of the information;

(iv) it would require very special circumstances to challenge a deportation order (or a failure to revoke an order) unless there was a failure to consider s. 5 of the 1996 Act (or any legal bar to deportation), or the Minister could not reasonably have come to the view she did, or did not afford the opportunity to make submissions, or fail to consider such submissions;

(v) failure to consider (still less failure expressly to consider) an issue is not a basis to quash a decision if the applicant has not demonstrated a real basis for a risk of breach of his or her legal rights by reason of that issue;

(vi) the Minister is not required to consider s. 3(6) of the Immigration Act 1999 at the revocation stage;

(vii) because the applicant has spent his time resident in the State either unlawfully or in a highly conditional state of residence, any rights under art. 8 of the ECHR that he may wish to assert are either non-existent or of minimal weight, and a s. 3(11) decision is therefore not invalid for failure to refer to such rights;

(viii) the Minister's continuing intention to deport the applicant is to be inferred from the order itself, reinforced (although reinforcement is not legally necessary) by the refusal to revoke it; such an inference can be negatived by sufficiently weighty considerations but the mere passage of time or the failure to compel the applicant to leave the State does not displace that inference;

(ix) no proof of an intention to actually execute the deportation order is required in order to defend a challenge to an order or a decision not to revoke it.

Order

62. For the foregoing reasons, I will order:

(i) that the application be dismissed;

(ii) that the injunction restraining deportation of the applicant be discharged with effect from the oral pronouncement of this judgment; and

(iii) that the matter be adjourned to enable any application for leave to appeal, which must be accompanied by the text of any proposed questions and supporting written submissions.