Neutral Citation: [2013] IEHC 422

THE HIGH COURT

JUDICIAL REVIEW

[2011 No. 1007 J.R.]

BETWEEN

A.A.A. AND J.A. (AN INFANT SUING BY HIS MOTHER AND NEXT FRIEND A.A.A.) AND E.A.A. (AN INFANT SUING BY HER MOTHER AND NEXT FRIEND A.A.A.) AND S.A.A. (AN INFANT SUING BY HIS MOTHER AND NEXT FRIEND A.A.A.)

APPLICANTS

AND

THE MINISTER FOR JUSTICE AND EQUALITY, IRELAND AND THE ATTORNEY GENERAL

RESPONDENT

JUDGMENT of Mr. Justice McDermott delivered on the 10th day of September, 2013

1. The first named applicant and her two children, the second and third named applicants, arrived in Ireland on 17th July, 2007; she applied for refugee status on her own behalf and on behalf of the children who were born on 12th March, 1998, and 1st June, 2001, respectively, in Nigeria. The fourth named applicant, also a Nigerian national, was born in Ireland on 1st December, 2007. An application was also made on his behalf for refugee status by his mother. These applications were all refused by the Refugee Applications Commissioner and on appeal by the Refugee Appeals Tribunal. Subsequently, the applicants applied for subsidiary protection which was refused on 5th June, 2011. They also applied for humanitarian leave to remain in the State pursuant to s. 3 of the Immigration Act 1999, which was also refused and deportation orders were signed in respect of each of the applicants on 27th September, 2011. No legal challenge by way of judicial review was made in respect of the decisions of the Refugee Applications Commissioner or the Refugee Appeals Tribunal. However, a wide ranging application for leave to apply for judicial review in respect of the refusal of subsidiary protection and the making of the deportation orders was mounted. In a reserved judgment, Cooke J., on 17th May, 2012, refused leave to apply for judicial review in respect of the subsidiary protection decision made by the first named respondent but granted leave to the applicants to apply for orders of *certiorari* to quash the deportation orders made against each of the applicants on the sole ground that:-

> "The deportation orders are invalid by reason of the first named respondent not having personally considered whether the State's non-refoulement obligations would be breached by the deportation of the applicants."

In the meantime, the applicants were deported in accordance with the orders made by the first named respondent following the refusal of an application for an interlocutory injunction restraining deportation on 13th December, 2011.

2. The reasons for granting leave to apply for judicial review were set out by Cooke J. at paras. 28 to 31 of the Court's judgment as follows:-

> "28. Of the grounds raising general issues of law, there remains No. 4 in which two arguments are sought to be made namely, that the deportation orders have not been signed personally by the first named respondent and secondly, that the Minister has not personally addressed the issue as to whether the non-refoulement prohibition in s. 5 of the Refugee Act 1996, is applicable in these cases. The first limb of this ground has been considered by Hogan J. in a judgment of 2nd November, 2011, in *LAT & Ors v. Minister for Justice* in which he concluded in paras. 15 and 16 as follows:-
>
> > '(15) While I accept that the decision to deport is often a complex one which has significant implications for the individual who is the subject matter of the order, I am not satisfied that it is of such intrinsic importance to the community at large that the decision can be made only by the Minister personally. It must also be recalled that the Minister for Justice has many onerous obligations. It cannot be suggested that the Oireachtas must have intended that he alone should personally take the decision to deport a given individual in every single case, since that would mean that he had responsibility for potentially hundreds of such decisions in any given year.
> >
> > (16) It follows therefore, that this is also a case governed by Carltona principles and that the nominated civil servant remains free to make the decision in question.'
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> 29. The challenge to the deportation orders is governed by s. 5 of the Illegal Immigrants (Trafficking) Act 2000, so that a substantial ground for the grant of leave must be shown. A ground must in the words of Carroll J. in *McNamara v. An Bord Pleanála* [1995] 2 I.L.R.M. 125, be "arguable, weighty and must not be trivial or tenuous". She added "a ground that does not stand any chance of being sustained (for example, where the point has already been decided in another case) could not be said to be substantial". That is the position in relation to the first limb of this ground having regard to the above judgment of Hogan J.
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> 30. Counsel for the applicants, on the other hand, argues that a distinct issue arises in relation to the prohibition of refoulement under s. 5. Relying particularly upon the judgment of Murray C.J. in the *Meadows* case above, he submits that the decision to be taken under s. 5 is arguably a personal one restricted to the Minister. He points particularly to the passage in which Murray C.J. refers to the Minister's position when he has before him factual material suggesting that deportation would expose the individual concerned to one of the risks referred to in s. 5:-
>
> > 'On the other hand if such material has been presented to him by or on behalf of the proposed deportee, as the case here, the Minister must specifically address that issue and form an opinion. Views

or conclusions on such issues may have already been arrived at by officers who considered a proposed deportee's application for asylum, at the initial or appeal stages, and their conclusions or views may be before the Minister, but it remains at this stage for the Minister and the Minister alone in the light of all the material before him to form an opinion in accordance with s. 5 as to the nature or extent of the risk, if any, to which a proposed deportee might be exposed. This position is underscored by the fact that s. 3 envisages that a proposed deportee be given an opportunity to make submissions directly to the Minister on his proposals to make a deportation order at that stage. The fact that certain decisions have been made by officers at an early stage in the course of the application for refugee status does not absolve him from making that decision himself.'

31. While this passage does not, as counsel for the Minister argues, exclude the application of the Carltona principle, the issue which is raised is undecided and clearly of considerable importance, particularly in view of the recent apparent change in practice within the Department to delegate to his officers entirely the functions of analysis and assessment, the formulation of the recommendations in the 'examination of file' note, the approval of deportation and the formal signing and sealing of the deportation order. There is thus no personal involvement on the part of the Minister in any aspect of the deportation process under s. 3 of the 1999 Act, in these cases. The present deportation orders are stamped 'deportation approved' by, it would appear, the 'Runai Aire' or Secretary of the Department. Having regard to the emphasis laid by Murray C.J. upon the statement that it is for 'the Minister alone' to form the opinion required by s. 5, the court is satisfied that leave should be granted to seek judicial review of these deportation orders on this issue."

Statutory Provisions

3. Section 3(1) of the Immigration Act 1999, provides that:-

> "Subject to the provisions of s. 5 (Prohibition of Refoulement) of the Refugee Act 1996, and the subsequent provisions of this section, the Minister may by order (in this Act referred to as "a deportation order") require any non-national specified in the order to leave the State within such period as may be specified in the order and to remain thereafter out of the State."

4. Section 5 of the Refugee Act 1996, provides in respect of prohibition of refoulement that:-

> "(1) A person shall not be expelled from the state or returned in any manner whatsoever to the frontiers of territories where, in the opinion of the Minister, the life or freedom of that person would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion.
>
> (2) Without prejudice to the generality of subsection (1), a person's freedom shall be regarded as being threatened if, *inter alia*, in the opinion of the Minister, the person is likely to be subject to a serious assault (including a serious assault of a sexual nature)."

The Deportation Orders

5. In this case, the deportation orders were signed and sealed by Mr. Noel Waters on 27th September, 2011, and each is in the following form:-

> **"Immigration Act 1999**
>
> **Deportation Order**
>
> WHEREAS it is provided by subsection (1) of s. 3 of the Immigration Act 1999 (No. 22 of 1999) that, subject to the provisions of s. 5 (prohibition of refoulement) of the Refugee Act 1999 (No. 17 of 1996) and the subsequent provisions of the said s. 3, the Minister for Justice and Equality may by order require a non-national specified in the order to leave the state within such period as may be specified in the order and to remain thereafter out of the state;
>
> WHEREAS (named applicant) is a person in respect of whom a deportation order may be made under subsection (2)(f) of the said s. 3;
>
> AND WHEREAS the provisions of s. 5 (prohibition of refoulement) of the Refugee Act 1996, and the provisions of the said s. 3 are complied with in the case of (named applicant);
>
> NOW, I, Noel Waters, on behalf of the Minister for Justice and Equality, in exercise of the powers conferred by subsection (1) of s. 3, hereby require you the said (named applicant) to leave the state within the period ending on the date specified in the notice served on or given to you under subsection (3)(b)(ii) of the said s. 3, pursuant to subsection (9)(a) of the said s. 3 and to remain thereafter out of the state.
>
> GIVEN UNDER the official seal of the
>
> Minister for Justice and Equality
>
> this 27th day of September, 2011
>
> Noel Waters
>
> (A person authorised by the Minister for Justice and Quality to authenticate the Official Seal of the Minister)"

Background

6. The first named applicant claimed in the application for refugee status that while living in Port Harcourt, Nigeria, with her husband and three children in March, 2007, four men called to their home. They were foreign oil workers employed locally and claimed that they were being pursued by militants who were then conducting a campaign of extortion and kidnapping against the oil companies in

the Niger Delta and Port Harcourt area. Her husband hid the oil workers in a hole in the ground in their kitchen – a basement like structure. A number of hours later, a number of militants called and were informed by her husband that he had not seen the workers. Three days later, the first named applicant claimed that her husband moved the men from the basement and helped them to escape. The militants returned and accused her husband of helping the workers to escape and demanded a sum of Stg. £20,000 to compensate them for the lost kidnap ransom which they otherwise would have obtained. Her husband was given one week to produce this money and the matter was reported to the Police who did not assist. Armed militants returned a number of days later, beat her husband and kidnapped him and her eldest son, neither or whom she has seen since. She claimed that a number of days later, the militants returned, and demanded money as ransom for her husband and child and threatened and raped her. Ultimately, the Refugee Appeals Tribunal rejected the application made by the applicants on the basis that the first named applicant lacked credibility because of fundamental inconsistencies in her narrative of the events alleged to have occurred in Nigeria.

7. The first named applicant's application for leave to remain pursuant to s. 3 of the Immigration Act 1999, made on her own behalf and that of the children was set out in letters dated 3rd and 4th May, 2011. It was claimed that the applicants would be subjected to a risk of death and/or torture or inhuman or degrading treatment if returned to Nigeria. It was submitted that the children would be subjected to a risk of child trafficking because they would be forced to live in poverty and this contention was supported by country of origin information indicating a significant level of child trafficking amongst the very poor. It was submitted that the applicants' lives were at risk because of continuing militant activity in the Niger Delta and Port Harcourt areas. It was further submitted that there could be no recourse by the applicants to State protection because the Nigerian Police were corrupt, unwilling to enforce the law or offer protection. In many instances, the country of origin information indicated that Nigerian Police had been involved in gross abuses and breaches of the criminal law and human rights.

8. The submissions made on behalf of the applicants together with extensive country of origin information were considered by a number of civil servants before the deportation orders were signed. On 2nd June, 2011, Ms. Ann Dillon, an executive officer, completed an "examination of file", a large section of which was devoted to the consideration of the issues arising under s. 5 of the Refugee Act 1996, as amended (prohibition of refoulement). She referred to extracts from a United States State Department Human Rights Report 2009 dated 15th July, 2010, a United Kingdom Home Office Report of 2nd April, 2011, and other material in respect of the inadequacy of policing in Nigeria. She concluded that while there may be problems within the Nigerian Police it was still the case that there was a functioning police force in Nigeria to which recourse could be had by the applicants.

9. The examination of file also addressed the response of the authorities to numerous kidnappings that had occurred in the Port Harcourt and Niger Delta areas and described the considerable security efforts that had been made to reduce the threat of abduction from militants in those areas. In that regard, Ms. Dillon concluded as follows:-

> "I have considered all the facts of this case. Country of origin information confirms that there is a functioning police force and judicial system in Nigeria and I am satisfied that the state protection is available to A.A.A and her children in Nigeria. Accordingly, I am of the opinion that repatriating A.A.A. and her children to Nigeria is not contrary to s. 5 of the Refugee Act 1996, as amended in this instance."

10. The "examination of file" concludes with a recommendation which states that the applicant's case and that of her children:-

> "was considered under s. 3(6) of the Immigration Act 1999, as amended, and under s. 5 of the Refugee Act 1996, as amended. Refoulement was not found to be an issue in this case. In addition, no issue arises under s. 4 of the Criminal Justice (UN Convention against Torture) Act 2000. Consideration was also given to private and family rights under Article 8 of the European Convention on Human Rights (ECHR).
>
> Therefore, on the basis of the foregoing, I recommend that the Minister makes a deportation order in respect of the applicant and her children."

11. This recommendation was further considered by Ms. Dolores M. O'Gorman, Higher Executive Officer, on 7th June, 2011, who, having considered the case, recommended that the Minister make the deportation orders in respect of the applicants. The matter was then further considered by the "Runai Aire" and the examination of file was then stamped "Deportation Approved".

12. On 27th September, 2011, the deportation orders in the terms already quoted were made by Mr. Noel Waters against the applicants requiring them to leave the State within a specified notice period and to remain thereafter out of the State. It is clear, therefore, that the Minister for Justice and Equality was not involved personally in the consideration of or the making of the decisions to deport the applicants, nor did he personally make, sign or seal the deportation orders.

The Carltona Principle

13. The central point in issue in this case is whether the "opinion of the Minister" must be personally formed by him/her under s. 5 of the Refugee Act 1996, as amended. The applicants claim that the Minister must personally form the opinion as to whether the life or freedom of a person facing expulsion from the State "would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion": that includes a consideration under subs. (2) of whether that person "in the opinion of the Minister. . . is likely to be subject to a serious assault (including a serious assault of a sexual nature)".

14. It is well established that a Minister cannot personally carry out all of the functions given to him by statute and that ministerial functions may be carried out by members of the Civil Service even though the Minister remains responsible for those decisions. In *Carltona Limited v. Commissioner of Works* [1943] 2 A.E.R. 560, Lord Greene M.R. stated the principles as follows:-

> "In the administration of government in this country the functions which are given to Ministers (and constitutionally properly given to Ministers because they are constitutionally responsible) are functions so multifarious that no Minister could ever personally attend to them. To take the example of the present case, no doubt there have been thousands of requisitions in this country by individual ministries. It cannot be supposed that this regulation meant that, in each case, the Minister in person should direct his mind to the matter. The duties imposed upon Ministers and the powers given to Ministers are normally exercised under the authority of the Ministers by responsible officials of the department. Public business could not be carried on if that were not the case. Constitutionally, the decision of such an official is, of course, the decision of the Minister. The Minister is responsible. It is he who must answer before parliament for anything that his officials have done under his authority, and, if for an important matter he selected an official of such junior standing that he could not be expected competently to perform the work, the Minister would have to answer for that in parliament. The whole system of departmental organisation and administration is based on the view that Ministers, being responsible to parliament, will see that important duties are committed to experienced officials. If they do not do that, parliament is the place where complaint must be made against them."

15. These principles were adopted and applied in *Tang v. Minister for Justice* [1996] 2 ILRM 46, in which the circumstances and activities of proposed deportees were considered by two Clerical Officers of the Department of Justice who made recommendations to an Assistant Principal Officer who decided to refuse permission to the applicants to remain in the State. The Assistant Principal Officer did not refer the matter to anybody else for consideration and, notably, did not report the matter to the Minister for Justice for a determination. It was submitted that the Assistant Principal Officer had no authority to act on behalf of the Minister in the consideration of the application or to make any decision to refuse it. It was submitted on behalf of the Minister for Justice, relying on the decision in *Carltona*, that the power and function of the Minister in regard to applications of that nature did not necessarily have to be exercised by the Minister.

16. The Supreme Court accepted the quoted extract from the judgment of Lord Greene M.R. in *Carltona* as embodying the principles applicable to the case. Hamilton C.J. stated:-

> "I am satisfied that this represents an accurate statement of the law as regards the powers of the Minister in relation to the granting or refusal of permission to aliens to remain in the state.
>
> Having regard to the extensive powers conferred on the Minister (in) the Aliens Act 1935, and the regulations made thereunder, it cannot be supposed that it was the intention of the legislature that the Minister personally should exercise these powers.
>
> The duties imposed upon the Minister and the powers given to the Minister can be and are normally exercised under the authority of the Minister by responsible officials of the Minister's department.
>
> In this particular case, the powers were exercised by…an assistant principal officer in the Department of Justice with particular responsibility for the immigration and citizenship division of the department and in reaching her decision on the applicant's application was acting on behalf of the Minister.
>
> In the execution of this responsibility, she was obliged to act in a fair and proper manner and in accordance with fair procedures."

The court was satisfied that the decision made by the assistant principal officer was made on behalf of the Minister in the exercise of the discretion conferred on the Minister by the Aliens Act 1935, and the regulations made thereunder.

17. Counsel on behalf of the applicants submit that the decision to be taken under s. 5 of the Refugee Act 1996, as amended, is one for the Minister personally because of the importance of the decision within the immigration and asylum process relating to the protection of the life and person of the applicants. In addition, it is claimed that since s. 5 requires the Minister to form an opinion which requires a determination of policy as to the effectiveness of the police and judicial authorities in Nigeria in the protection of their citizens, that in the absence of such a policy decision, which could be implemented by officials in the particular circumstances of a case, the Minister is obliged to personally form an opinion regarding an individual application and to give a reasoned decision or rationale for any conclusion reached under section 5.

18. Counsel on behalf of the respondents submits that under the *Carltona* principle, officials in a department act in the name of the Minister, who is a corporation sole and not his delegate. It was further submitted that the principle should not be limited unless the Minister's power to devolve or delegate a decision was limited by an express provision requiring the Minister to exercise the power in person. It was further submitted that there was no distinction to be drawn between the powers which the Minister must exercise personally and those which can be exercised by an officer of the Minister's department: the nature of the decision does not alter the fundamental constitutional rule that absent legislation providing to the contrary, civil servants may act in the name of the Minister. The respondent did not accept that the use of the word "opinion" in s. 5 determined the issue in favour of the applicants.

19. The preponderance of the authorities cited in the course of argument supports the respondent's submissions that the *Carltona* principle is applicable to the determination of the prohibition of refoulement issue under section 5. Though the decision in *Tang* does not concern the making of a deportation order but the refusal of leave to remain in the State by a civil servant, the principles of *Carltona* were said to apply to that decision. In this case, the decisions to deport the applicants followed their applications under s. 3 of the Immigration Act 1999, for humanitarian leave to remain in the State and the consideration and refusal of those applications. The court is satisfied that the decision to be made under s. 5 is part of a decision making process in which the decision to deport is closely intertwined with the issues that arise under s. 5 and both decisions involved the consideration of important constitutional and European Convention rights: the court is not satisfied that the distinction which the applicants seek to draw between the nature of the decision under s. 5 of the Refugee Act 1996, as amended, and s. 3 of the Immigration Act 1999, is justifiable as a matter of logic, good administration or statutory interpretation. The court is satisfied, therefore, that the *Carltona* principle applies to the nature of the decisions under s. 3 and s. 5 and that the decision in *Tang* is ample authority for that proposition.

20. In *Devanney v. Shields* [1998] 1 I.R. 230, the Supreme Court considered the application of the *Carltona* principle to the appointment of a District Court clerk. It was submitted that the appointment of a District Court clerk had to be made by the Minister personally and that it was not a decision open to delegation. It was submitted by the Minister, on the basis of *Carltona*, that the functions given to Ministers were so multifarious that no Minister could ever personally attend to them and that the powers given to Ministers could normally be exercised under the authority of a Minister by responsible officials of the department, while the Minister remained accountable to the legislature. It was held by the Supreme Court that the *Carltona* principle was a common law constitutional power but one which was capable of being negatived or confined by express statutory provision. In doing so, the court relied upon the decision of the House of Lords in *Regina v. Home Secretary ex parte Oladehinde* [1991] 1 A.C. 254. It also determined that while the appointment of a District Court clerk was an important matter it was not more important than many of the decisions which fell to be made by civil servants, in the name of the Minister. Hamilton C.J. cited with approval the judgment of Lord Donaldson M.R. in the *Oladehinde* case in which he stated at p. 282:-

> "Woolfe L.J. held,…that the *Carltona* principle should be regarded as "an implication which is read into a statute in the absence of any clear contrary indication by parliament that the implication is not to apply". In this we think that he must be mistaken because it applies equally where the Minister's powers are derived otherwise than from statute: e.g. from prerogative powers. We think that the better view is that this is a common law constitutional power, but one which is capable of being negatived or confined by express statutory provision…" I accept the view of Donaldson M.R. that the principle outlined in *Carltona* is a common law constitutional power, but one which is capable of being negatived or confined by express statutory provision." (at p. 254)

21. Denham J. (as she then was), in applying the *Carltona* principle to the case, also stated:-

> "Although it is referred to as a principle and it has entered our law by way of common law, the *Carltona* principle is in fact a fundamental concept which enables democratic government to work. It enables Ministers to function efficiently in that he has to accept responsibility for complex modern government where a vast number of decisions have to be taken. It enables Ministers to remain responsible, and accountable to the legislature, whilst having responsible officials make many of the decisions. It is an eminently practical rule which has important constitutional implications – it retains accountability. Obviously the legislature can alter this situation and relationship by legislation. But the fundamental principle enables accountability in the legislature…
>
> The core of the *Carltona* principle is that as a matter of statutory construction responsible officials may exercise some of the statutory powers of a Minister. The officials would not consult him but may yet recite words such as "I am directed by the Minister". They are the alter ego of the Minister. They exercise devolved power. In this case the officials spoke of "delegation". I am satisfied that in the circumstances it is a form of authorisation by the Minister. In fact the officials were acting "as" the Minister in a form of devolved power.
>
> The fact that an official is authorised to authenticate by his or her signature orders made by the Minister does not itself create the (*Carltona*) power of the officer of the Department of Justice but rather among other factors is a recognition that there are situations when officials will authenticate orders. That is entirely consistent with the *Carltona* principle." (p. 261)

Denham J. described the application of the *Carltona* principle within the framework of the Constitution as "a thread in the fabric of the operation of the Constitution".

22. The court is satisfied that there are no words of limitation contained in s. 5 of the Refugee Act 1996, as amended, limiting the application of the *Carltona* principle to the consideration and making of a decision concerning non-refoulement, and that there is no legal basis, therefore, to exclude its application in accordance with the principles set out in the *Devanney* case.

23. In *LAT. & Ors v. the Minister for Justice and Equality & Ors* [2011] IEHC 404, it was claimed that a deportation order made pursuant to s. 3 of the Immigration Act 1999, must be made personally by the Minister for Justice and Equality. Hogan J. determined the case by reference to "a straightforward examination of the question of whether the structure, the context and the nature of the powers thereby conferred impliedly limit the scope of the *Carltona* doctrine". In that context, he dealt very succinctly with the issue (in the passage already quoted by Cooke J. in his judgment granting leave):-

> "15. While I accept that the decision to deport is often a complex one which has significant implications for the individual who is the subject matter of the order, I am not satisfied that it is of such intrinsic importance to the community at large that the decision can be made only by the Minister personally. It must also be recalled that the Minister for Justice has many onerous obligations. It cannot be suggested that the Oireachtas must have intended that he alone should personally take the decision to deport a given individual in every single case, since this would mean that he had responsibility for potentially hundreds of such decisions in any given year.
>
> 16. It follows, therefore, that this is also a case governed by *Carltona* principles and that the nominated civil servant remains free to make the decision in question. Of course, as I have already stressed, the Minister remains accountable to Dáil Éireann for all such decisions, both as a matter of constitutional law (in Article 28.4.1) and as a matter of political theory and reality."

The learned judge determined that the deportation decision was lawfully made in the name of the Minister by the civil servant given that the application of the *Carltona* principle cannot be said to have been impliedly negatived by the provisions of the 1999 Act. The deportation order in *L.A.T.* is in exactly the same terms and made by the same civil servant as that in issue in this case. As already stated, I see no reason to distinguish for this purpose, a decision under s. 5 of the Refugee Act 1996, as amended, from a decision under s. 3 of the Immigration Act 1999.

24. Hogan J. applied the same analysis to this issue in *F.L. v. Minister for Justice and Equality* [2012] IEHC 16, and it was also applied by this Court in *P.U.O. & Ors v. Minister for Justice and Equality & Ors* (Unreported, High Court, 6th November, 2012).

25. The applicants also relied upon the well known passage from the judgment of Murray C.J. (as he then was) in *Meadows v. The Minister for Justice* [2010] 2 I.R. 701:-

> "[79] Accordingly, before making a deportation order the first respondent is required to consider in the circumstances of each particular case whether there are grounds under s. 5 which prevent him making a deportation order. In cases where there is no claim or factual material put forward to suggest that a deportation order would expose the deportee to any of the risks referred to in s. 5 then no issue as regards refoulement arises and the decision of the first respondent with regard to s. 5 considerations is a mere formality and the rationale of the decision will be self evident.
>
> [80] On the other hand if such material has been presented to him by or on behalf of the proposed deportee, as the case here, the first respondent must specifically address that issue and form an opinion. Views or conclusions on such issues may have already been arrived at by officers who considered a proposed deportee's application for asylum, at the initial or appeal stages, and their conclusion or view may be before the first respondent but it remains at this stage for the first respondent and the first respondent alone in the light of all the material before him to form an opinion in accordance with s. 5 as to the nature or extent of the risk, if any, to which a proposed deportee might be exposed . . .the fact that certain decisions have been made by officers at an earlier stage in the course of an application for refugee status does not absolve him from making that decision himself."

26. The *Meadows* decision was delivered prior to the change in practice which was effected by the Minister for Justice in 2011, and resulted in the Minister no longer considering and making deportation orders personally. The Supreme Court was not considering the issue of whether the *Carltona* principle applied to the making of a deportation order or a decision in respect of refoulement. I interpret the extract from the judgment of Murray C.J. above as dealing with the fair procedures appropriate to the consideration of the issue under s. 5 by the decision maker. It was for the decision maker to form an opinion in accordance with s. 5 as to the nature or extent of the risk to which a proposed deportee might be exposed notwithstanding previous determinations made by others. I do not consider that passage to be authority for the proposition that the *Carltona* principle does not apply to a decision under section 5. As Hogan J. stated in *F.L.*:-

> "These comments cannot be understood outside of their proper context, as Murray C.J. was thereby seeking to emphasise

> that the Minister could not be absolved from making a decision concerning the applicant's status (and, specifically, whether she should have been deported, her pleas that she faced the threat of female genital mutilation notwithstanding) simply by reason of the fact that these issues had already been addressed by the Office of the Refugee Applications Commissioner or the Refugee Appeals Tribunal."

27. I am, therefore, satisfied that the *Carltona* principle applies to the decision to be made under s. 5 of the Refugee Act 1996, as amended. I am also satisfied that any such decision must be directed towards an assessment of the personal circumstances of the applicants and take into account all other relevant information in relation to the proposed country of rendition. The decision must be based on material submitted by the applicants and an assessment of country or origin information available to the decision makers. It is a decision to be taken in accordance with fair procedures as set out in the Meadows case.

28. I am, therefore, satisfied that the decisions considered and made in these cases were made lawfully notwithstanding that they were not made personally by the Minister for Justice and Equality. I, therefore, refuse these applications for judicial review.