Neutral Citation Number: [2006] IEHC 411

**THE HIGH COURT**
**JUDICIAL REVIEW**

**[2003 No. 624 J.R.]**

**IN THE MATTER OF THE REFUGEE ACT 1996 AND THE IMMIGRATION ACT 1999**

**BETWEEN**

**EHI SALU (A MINOR) SUING THROUGH HIS MOTHER AND NEXT FRIEND EDITH SALU**

**APPLICANT**

**AND**

**MINISTER FOR JUSTICE EQUALITY AND LAW REFORM AND OFFICE OF THE REFUGEE APPLICATIONS COMMISSIONER**

**RESPONDENTS**

**Judgment of Mr. Justice Feeney delivered on the 19th day of December 2006.**

1.1 The Applicant in this case is a minor who is a national of Nigeria. He was born on 28th day of February, 1992 and arrived in Ireland in mid February 2000. The Applicant's mother, the next friend herein, was already in Ireland having arrived on 28th December, 1998 and on arrival had made an application for a declaration of refugee status.

1.2 Edith Salu, the mother, was interviewed on 8th day of January, 1999 and completed the questionnaire in relation to the application for refugee status on 11th day of January, 1999. In that questionnaire and at the interview she indicated that she had two children who were with her husband and their father in Nigeria and the details on the questionnaire confirmed that one of those two children was Ehi Salu, the Applicant herein.

1.3 The application of the mother and next friend Edith Salu was dealt with under the Hope Hanlan procedures as the relevant provisions of the Refugee Act were not in force at that time. The central basis of Edith Salu's application for refugee status was a claim that she was in fear as a result of her refusing to join the Ogboni Society. Edith Salu indicated that she was a member of a trade union and had come under pressure to join the Ogboni which was a society which carried out rituals. Edith Salu claimed that the Ogboni carry out rituals and that you would be asked to bring a child or best friend who would be killed in a ritual.

1.4 Edith Salu's application for asylum was initially assessed by the first named Respondents on 11th January, 1999. That assessment raised issues concerning the details and information provided by Edith Salu and in particular in relation to the means and circumstances of her arrival in Ireland.

1.5 When Ehi Salu arrived in Ireland he made an application for refugee status. That application was made on 21st day of February, 2000. On making that application the Applicant was issued with an ASY/1 Form on 21st February, 2000. The reference number attached to the Applicant's application for refugee status was the same as his mothers except that there was a C at the end of the reference rather than a B. When the Applicant made his application on 21st February, 2000 he attended with his mother. The fact that the Applicant was accompanied by his mother when making his application on 21st February, 2000 was confirmed in the replying affidavit of Edith Salu sworn herein on 8th December, 2005. In February, 2000, the Applicant had his eighth birthday.

1.6 The details provided in support of the Applicant's application for refugee status on 21st February, 2000 were provided by his mother. The mother indicated that her son's date of arrival in Ireland was 14th February, 2000 and that he had arrived by air and indicated that a man had brought him and that she thought that his dad made the arrangements. The reasons for seeking asylum were identified at that time as "social". Ehi Salu was provided with the documents referred to in the ASY/1 Form including the questionnaire regarding application for refugee status.

1.7 On the same day that the Applicant applied for refugee status he was provided with a letter confirming that an application for refugee status had been made quoting the reference number. No questionnaire was ever completed. As and from the time of the Applicant's arrival he lived with his mother in this country.

1.8 As the relevant provisions of the Refugee Act 1996 (as amended) did not come into effect until 20th November, 2000, the Applicant's application would have been processed under the Hope Hanlan procedures. Those procedures contain no reference as to the practice to be followed in relation to applications from minors for refugee status.

1.9 Given that the Applicant was accompanied by his mother when he made his application for refugee status and in the light of the fact that his mother had already made an application the Applicant was assigned the same reference number as his mother in accordance with standard practice. This standard practice is confirmed in the affidavit of Martin O'Mahony sworn herein. The position in relation to accompanied minors as of 2000 is dealt with at paragraph 11, where he avers to the then process. This has since altered as a result of new procedures introduced in August 2002. In 2000 the position was that the Commissioner recognised the right of the minor Applicant to have his or her application for asylum separately considered if there was a request to do so made by either of the child's parents. It is confirmed in the said affidavit that if such a request was made a separate investigation of such application would have been carried out. The factual position in relation to this Applicant is that no request was made and no questionnaire regarding the Applicant's application for refugee status was completed or submitted.

1.10 On the 1st September, 2001 the Applicant's father applied for refugee status having arrived in Ireland on the previous day. In that application he identified that his wife Edith and child Ehi were in Ireland. In answer as to why he was seeking asylum the Applicant's father indicated that his wife was having problems in that she was being pressurised to join a secret cult known for fetish acts and human sacrifice and that that cult had tried to kidnap his son on his way to school and that it was decided that his wife and son should leave the country and seek refuge wherever they could. The father's application for refugee status was dealt with under the same reference number as his wife's and child's except the letter A was added to the end which is the letter used for fathers B being for mothers and subsequent letters such as C, D being for children.

1.11 On 12th July, 2002 the mother Edith Salu attended for a further interview as an Applicant for refugee status. That interview was carried out by a different interviewer from the original interview. During the interview she confirmed that she had two children one of them being in Ireland namely Ehi. As of the date of the interview Edith Salu confirmed that her husband was with her in Ireland and that he had applied for asylum and that that application had gone to appeal. The mother reiterated that she was seeking refuge because she was in fear of the Ogboni due to the fact that when you enter that cult they either use your child or your best friend for rituals. She also confirmed that she refused to join the society and that she had been attacked in August 1998 and it had been intimated that she would be killed if she did not join the society. She expressly stated that her fear was that if she had to return to Nigeria that she would be at risk of persecution from the Ogboni society and at the end of the interview she confirmed that there was nothing else that she wanted to add other than that she was still in fear of persecution and that Nigeria was a very corrupt country.

She also confirmed that her husband had come to Ireland for similar reasons and at the conclusion of the interview she again confirmed that she did not have anything else to say.

1.12 Following that interview a recommendation was made that the application for refugee status of Edith Salu should be refused and that she should not be declared a refugee. By letter dated the 16th August, 2002, Edith Salu was duly informed of the decision to refuse her application for refugee status and she appealed that refusal. The appeal was considered by the Refugee Appeals Tribunal and by letter dated 14th February, 2003 Edith was informed that the recommendation of the Refugee Applications Commissioner had been confirmed.

1.13 By letter 16th April, 2003 from the Department of Justice Equality and Law Reform Edith Salu was referred to her application "for a declaration as a refugee in accordance with s. 17 of the Refugee Act, 1996, as amended by the Immigration Act, 1999, and the Illegal Immigrants (Trafficking) Act 2000, for you and your child as named above. The Refugee Applications Commissioner following an investigation of your application under s. 11 of the Refugee Act 1996 (as amended), has recommended that you be refused a declaration as a refugee under s. 13 of the Refugee Act, 1996 (as amended). The Refugee Appeals Tribunal has affirmed this recommendation, in accordance with s. 16(2)(a) of the Refugee Act 1996 (as amended)." The said letter was headed reference Edith Salu Ehi Salu. That letter confirmed, as was the then practice, that a separate determination was not made in respect of an accompanied child in situations where there was no request for such separate determination nor had there been any separate grounds identified referable to child from those being put forward by the parent. That letter of 16th April, 2003 was written at a stage when no separate case had been made on behalf of the Applicant nor had any questionnaire being completed and at a time when no request for a separate determination had been made. The letter of 16th April, 2003 confirms the fact that the Applicant and his mother's applications for asylum were dealt with together and that no separate determination was made in respect of the Applicant.

1.14 By letter dated 5th June, 2003 Cathal O'Neill and Company Solicitors acting on behalf of the Applicant herein wrote to the Office of the Refugee Applications Commissioner arising from the contents of the letter of 16th April, 2003 which had been sent to Edith Salu. That letter claimed that the Applicant's application for a declaration of refugee status had not been investigated and/or decided and that Ehi Salu was not a person in respect of whom a declaration of refugee status could therefore be refused. By letter dated 16th July, 2003 in response to the 5th June, 2003 letter the Department indicated that Ehi Salu's application was dealt with using the standard procedure for family Applicants and confirmed that the procedure was that if a parent made a separate application on behalf of a child that the application would be investigated separately but that in the absence of such an application a child's application would be dealt with as part of the parents application. On receipt of that letter the judicial review proceedings herein were commenced.

2.1 An application for judicial review was commenced on the 8th August, 2003. The application for leave to apply by way of judicial review came on for hearing before the High Court on the 5th July, 2005 and leave was granted to the Applicant to apply by way of application for judicial review for the reliefs set forth in paragraph 4 of the statement of grounds. It was also ordered that the Application for an extension of time be deferred until the substantive hearing.

2.2 An explanation in relation to the delay in the institution of proceedings which were commenced outside the statutory period is provided in the affidavit of Cathal O'Neill sworn herein on the 29th June, 2005. In paragraph 4 of that affidavit he avers to the fact that on receipt of the letter of the 16th April, 2003, containing the proposal to make a deportation order in respect of the Applicant's mother and the Applicant and refusing a declaration of refugee status in respect of both of them that Cathal O'Neill acting as solicitor for the second named Applicant wrote on the 25th April, 2003, making representations which were without prejudice to the Applicant's rights. That letter expressly referred to the fact that judicial review proceedings were being contemplated and further referred to the Applicant's application for refugee status and asserted that that application had not been considered. Cathal O'Neill, acting as solicitor for the Applicant, avers that he then sought counsel's advice in relation to the legal position and following a consultation with the Applicant and his parents wrote a letter of the 5th June, 2003, to the second named Respondent. In that letter it was stated:

> "It is clear that the application for a declaration of refugee status of Ehi Salu has not been investigated and/or decided and he is not a person in respect of whom a declaration of refugee status could therefore be refused. Please now confirm by immediate return that you will proceed to investigate and consider our client's application for a declaration of refugee status. He has an absolute right to have his individual application investigated and considered. No steps or proposal in relation to his deportation can proceed until such time as his application for refugee status has been investigated, considered and decided."

That letter went on to state that if there was a failure within a period of 10 days to confirm that the second named Respondent would proceed with the investigation of the Applicant's application for refugee status that Cathal O'Neill and Company were instructed to institute proceedings by way of an application for leave to apply for judicial review without further notice.

2.3 The statutory position in relation to judicial review in applications such as this is covered by s. 5 of the Illegal Immigrants (Trafficking) Act 2000. Under s. 5(2)(a) an application for leave to apply for judicial review must be made within a period of 14 days commencing on the date on which the person was notified of the decision unless the High Court considers that there is good and sufficient reason for extending the period within which the application shall be made. In the light of the fact that there was a potential for separate issues to arise as between the Applicant and his mother, the court is satisfied that it was appropriate to seek and obtain advices from counsel subsequent to the receipt of the letter of the 16th April, 2003. The delay up to the 5th June, 2003, can be considered appropriate in that the obtaining of independent legal advice and consulting with the Applicant and his parents took some period of time. The court is satisfied that there is good and sufficient reason for extending the period within which the application should be made up to and including the date of the letter of the 5th June, 2003 and for a period thereafter to allow for a response thereto and thereafter for the institution of proceedings. The letter of the 5th June, 2003, indicated that the failure of a response within 10 days would result in the institution of proceedings. It is averred in the affidavit of Cathal O'Neill sworn herein, at paragraph 6 thereof, that it was deemed prudent, appropriate and sensible to obtain counsel's advice and to await a response to the letter of the 5th June, 2003, before instituting any proceedings. That approach was adopted notwithstanding the statement within the letter of the 5th June, 2003, that the absence of a response within 10 days would result in the institution of proceedings and also that counsel's advice has already been sought and obtained prior to 5th June, 2003. This court is satisfied that given that the Applicant was an infant and given the interconnection between his application and his mother's application and the requirement for the Applicant's legal position to be separately considered that there was good and sufficient reason for the delay in applying for judicial review up to the 5th June, 2003 and for a short period thereafter. It is correct to say that if a positive response had been received to that letter that there would have been no requirement for the institution of proceedings but a time limit of ten days was placed on the period which would be allowed to pass and this was done against the statutory time limit of 14 days and where instructions had been received to make an application for judicial review. Against that background proceedings should have issued in June, 2003 and certainly immediately on receipt of the letter of 16th July, 2003. What occurred after receipt of the letter of 16th

July, 2003, is dealt with in paragraph 7 of the affidavit of Cathal O'Neill wherein he avers that on receipt of the letter of the 16th July, 2003, he then obtained instructions to proceed to obtain further advices from counsel and following the furnishing of those advices and further consultations with both counsel and the Applicant's parents that instructions were given to counsel to proceed with the drafting of the application for judicial review and that due to the fact that this occurred towards the end of July and at the commencement of August, which is the long vacation, there was a short period of delay which was further aggravated by the solicitors unavailability for a number of days whilst he was on vacation. This explanation does not deal with the fact that by the date when the solicitors wrote the letter of the 5th June, 2003, they were in a position to state they had instructions to institute proceedings. A delay thereafter to August without clear reasons for extending time cannot be excused. This court is not satisfied that good and sufficient reasons for extending the time to apply for leave up to the date of the issue of these proceedings have been established and therefore declines the application to extend time.

3.1 Even though the period of time for the making of this application has not been extended it is appropriate to deal with the grounds for which leave was granted in the order of the 5th July, 2005. The grounds upon which relief is sought is that the Applicant has been denied and refused the right to have his application for a declaration of refugee status processed investigated and considered and that there has been a refusal to process, investigate and consider the application of the Applicant in breach and denial of his rights to constitutional and natural justice and fair procedures and further that the Applicant is a person whose application for refugee status has not been investigated or considered and consequently that no decision could have issued in respect of such application. Relief is also expressly sought on the ground that there is no statutory basis or authority for the incorporation of the application for refugee status of the Applicant in the applications for refugee status of his mother. Certain other grounds are set forth at sub-paragraphs 5 to 11 of paragraph 5 of the statement grounding the application for judicial review. The Respondent's reply to the application for judicial review by claiming that the Applicant's application was dealt with as part of the application of his mother and that his application was linked to his mother's application and further that there is no obligation to give separate consideration to the Applicant's application and that that is particularly the case where the Applicant's mother was given an ample opportunity to present a case for refugee status to the Commissioner on behalf of the Applicant and where there was no request for separate consideration and further where no circumstances or facts individual to the Applicant were identified as a basis for refugee status and where the mother's claim of refugee status was based upon a set of facts identical to the facts relied upon on behalf of the Applicant. The Applicant identifies the facts he relies on in the affidavit sworn to ground these proceedings.

3.2 The central basis of the claim herein is to challenge the refusal of the declaration of the Applicant as a refugee and to contend that the Applicant is entitled to an entirely separate consideration of his claim for refugee status. The fact that that is the central issue is demonstrated in that when the full hearing for judicial review came on for hearing, on the first occassion, it was adjourned pending the determination of a Supreme Court hearing in the *Nwole* case *(i.e. Angela Nwole and Others v. The Minister for Justice, Equality and Law Reform and Another* [2002] 656 J.R.). This court was informed, during the course of the hearing, that the Applicant in this case had at an earlier date applied for an adjournment of the hearing to await the outcome of the *Nwole* Supreme Court decision. In the *Nwole* case leave to appeal was granted pursuant to s. 5(3)(a) of the Illegal Immigrants Trafficking Act 2000 on two grounds namely "1 and 2" set out in the schedule to the order of Mr. Justice Peart of 28th July, 2004:

> "1. Whether the procedures for dealing with an application for asylum pursuant to the Refugee Act 1996 or the pre-existing non-statutory scheme permit the Minister to receive and determine an application for refugee status made by the parent of a minor child (which child accompanies that parent) on the parent's own behalf and on behalf of or including such minor child as the application for asylum of that child either at all or where the parent does not advance or bring to the attention of the Minister any facts or circumstances relevant to that minor separate and distinct from the facts or circumstances relevant to the parent's application
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> 2 Whether in considering an application for asylum made by or on behalf of an accompanied minor the is obliged to consider the application of an accompanied minor in his or her own right separately and distinctly from that of the accompanying parent and whether for that purpose the Minister is obliged to:
>
> (a) ascertain the views of the minor and more particularly the fears of the minor related to the application for a declaration of refugee status
>
> (b) ascertain the capacity of the minor to express his or her views directly
>
> (c) interview the minor unless such interview would cause unnecessary hardship and trauma on the minor."

3.3 The basis of the earlier application in this case to adjourn the substantive hearing before the High Court to await the outcome of the Supreme Court decision in the *Nwole* case was that the same or substantially the same legal points arose in this case. Notwithstanding that approach the Applicant adopted a different position when the case appeared once more before the High Court and proceeded with the case and endeavoured to distinguish the facts of this case and the principles to apply from the facts and principles of the *Nwole* case.

4.1 In pursuing the hearing before this court, rather than awaiting the determination of the decision in the Supreme Court in the *Nwole* case, counsel on behalf of the Applicant identified two factors as to why it was now appropriate to proceed rather to await the result in the Supreme Court. Those two factors were that there was a factual difference between the facts in this case and the *Nwole* case in that the Applicant in this case had made an application for refugee status in his own name and that there is no deportation order in being in respect of the Applicant herein and that the Applicant did not acquiesce in the process which purported to incorporate or include him within his mother's refugee application and secondly, that the approach adopted at the leave stage by Finlay Geoghegan J. in the *Nwole* case was to be preferred to the legal position identified by Peart J. in the full hearing in the *Nwole* case. The decision by Peart J. was adopted by MacMenamin J. in the *Oluwakemi Adedaju Dada v. The Minister for Justice, Equality and Law Reform* in a judgment delivered on the 31st January, 2006.

4.2 In the judgment granting leave Finlay Geoghegan J. in *Nwole and Others v. The Minister for Justice, Equality and Law Reform and Another* delivered on the 31st October, 2003, had held at p. 8:

> "This issue turns on the question as to whether the second to sixth named applicants made an application for asylum which was duly processed and considered and refused by or on behalf of the Minister. The primary claim made on behalf of the second to sixth named applicants is that no application for asylum was made by them or in respect of them and hence has not been refused by the Minister. The only application for asylum made was by the first named applicant, their mother. Alternatively, they contend that if an application is deemed to have been made by them or on their behalf, it was not considered in accordance with the statutory provisions to the point of refusal by the Minister… the assertion made

(on behalf of the Minister) is that the Minister as he was entitled to do, applied the policy of treating the first named applicant's application for asylum as being an application on behalf of herself and each of the accompanying minors. It is also stated that as the second to sixth named applicants were dependant children of the first named applicant, that her application was regarded as including the children for the purpose of the asylum process. It is contended that this was the proper course for the Minister taking into account the diminished capacity of the second to sixth named applicants herein. It is further contended that this is in accordance with the principle of family unity at paragraphs 2 and 3 of the Handbook on Procedures and Criteria for determining Refugee Status."

The judgment by Finlay Geoghegan J. went on to identify that the only factual matter relied upon by the Respondents in that case was the assignment of identical file reference numbers other than for a different letter and the taking of photographs for each of the first to sixth named Applicants. The facts identified in that case also confirm that all correspondence in that case was with the first name Applicant and that there was no reference to any application to the second to sixth named Applicants. Finlay Geoghegan J. went on to state at p. 12 of the judgment that:

> "Having regard to the necessity of each applicant for asylum establishing that she is a 'refugee' within the meaning of s. 2 of the Act of 1996 for the reasons already set out, there appear to be substantial grounds for contending that every application by or on behalf of a minor for asylum must be processed in accordance with the statutory scheme and ultimately a decision made by the Minister as to whether such minor should be granted or refused a declaration of refugee status."

The judgment went on to state at p. 13:

> "Even if the application of the first named Applicant was treated as an application on behalf of herself and her minor children (and I am not so concluding) there are substantial grounds for contending that the above provisions (and earlier procedures) impose on the authorities an obligation to consider whether each individual minor applicant is or is not entitled to a declaration of refugee status."

Leave was granted to seek judicial review on the basis that the deportation orders made were invalid in relation to the second to sixth named Applicants as such Applicants were persons whose applications for asylum had not been refused by the Minister within the meaning of s. 3(2)(f) of the Immigration Act 1999.

4.3 A full hearing of the Nwole case resulted in a judgment of Peart J. being delivered on the 26th May, 2004. Peart J. refused the application for *certiorari* and held that the deportation orders were valid and were made in respect of persons whose applications for asylum had been refused and further held that the Minister was entitled to treat the mother's application as an application also on behalf of her children and, there being no separate matters to take into consideration, he was entitled to regard the application on behalf of the children as also so refused. On p. 26 of his judgment Peart J. identified certain questions for consideration, namely:

> "1. Whether mother was legally entitled to make the application on behalf of her children in the way she did;
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> 2. Whether, if she was so entitled, the Minister is entitled to carry out his consideration of the application as an application by mother to which the children's' application was linked; or
>
> 3. Whether he is obliged to give separate consideration to each child's application, and if necessary give each child an opportunity of expressing her views to him, separately and distinctly from their mother, or whether she can be assumed by the Minister to be acting on their behalf and in their best interests in all matters."

Peart J. went on to hold having considered the judgment of the Supreme Court in *North Western Health Board v. H.W.* [2001] 3 I.R. 622 and the constitutionally recognised role of parents as the persons vested with the primary duty and obligation in all mattes related to the children's welfare and the recognition therein that:

> "It is immediately apparent from the legislation that special arrangements have been put in place in order to ensure that the interests of unaccompanied children are looked after, and it is only right and proper that this should be done, since there can be no room for doubt but that a minor is a person who can therefore seek a declaration of refugee status upon arrival in the State… the reverence, respect and recognition which the judgments of the courts have found that the Constitution pays to the primacy of the rights and duties of parents in respect of their children's welfare, means that the absence of a special provision in the legislation or the procedures thereunder as to what should happen in relation to an application of an unaccompanied child, does not result in a lacuna in the legislative process. A constitutionally harmonious interpretation of the legislative framework in relation to the interests of a minor accompanied by a parent is that the parent is the person who continues to carry the responsibility of looking after the minor's interests, and as consequence, continues to have the responsibly, in the capacity of active participant in the asylum process, of setting out in an appropriate way any grounds for the application, including those referable to the minor where they differ from or are in addition to the parents only own grounds. Such an interpretation is consistent with the Constitution's recognition of the primacy of the parent's duties and obligations in this regard. It follows in my view that not only did the mother intend to include the children in her application, but was also entitled to make an application in the way she did which included her children, and that she had a duty to do so as a parent acting in their best interests, especially given the fact that if she did not do so her children would enjoy no legal entitlement to remain while her own application was being processed."

Peart J. went on to hold at p. 31 of the judgment when considering the Convention on the Rights of the Child as follows:

> "I am satisfied that there is nothing in the Convention which requires the State to provide, in all cases of minors accompanied by a parent or parents, that a separate application must be made out in respect of each accompanied child and that a separate determination must be made in respect of each, in situations such as the present case where no grounds separate from those in respect of the parent have been put forward by that parent in respect of her children or any one or more of them."

. Ultimately Peart J. concluded at p. 32:

> "I have concluded I am satisfied that mother was entitled to make application on behalf of her dependant children in the way she did, and that the Minister is and was entitled to treat the mother's application as an application also on behalf of her children, and that he is entitled to have considered and determined the children's application as part of his consideration of the mother's application, there being no separate matters to take into consideration, and therefore, upon

the refusal of the mother's application, he was entitled to regard the application on behalf of the children also refused."

4.4 The matter of an application of an accompanied minor being considered as part of his or her guardian was considered by MacMenamin J. in *Oluwakemi Adedaju Dada and Others v. The Minister for Justice, Equality and Law Reform and Another* delivered on the 31st January, 2006, wherein he concluded (at p. 32):

> "Thus there can be no basis for a contention that the normal practice which arose in the case of a minor accompanied by his or her guardian should be determined together with that guardian should be departed from in this case."

MacMenamin J. also stated:

> "In addition I accept and concur with the interpretation of the Refugee and Immigration Acts set out by Peart J. in the course of his judgment in *Nwole*. I also accept and respectfully adopt his remarks in relation to the 1951 Convention in the United Nations Handbook on Procedures and Criteria for determining Refugee Status."

4.5 This court is satisfied that the approach adopted by Peart J. in the full hearing in the *Nwole* case is the correct approach. In that case Peart J. upheld the procedures adopted whereby the Minister was deemed entitled to receive and determine an application for refugee status made by a parent of a minor child when such child accompanies that parent both on the parents own behalf and on behalf of the child as the application for asylum of the parent and that child in circumstances where the parent does not advance or bring to the attention of the Minister any facts or circumstances relevant to that minor separate and distinct from the facts or circumstances relevant to the parents application. Peart J. also held that in considering an application for asylum made on behalf of an accompanied minor that there was no obligation to consider the application of such accompanied minor in his own or her own right separately or distinctly from that of the accompanying parent. The legal position identified by Peart J. in the *Nwole* case, was also adopted by MacMenamin J. in the *Dada* case. This court is satisfied that the Minister is entitled to treat the Applicant's application for asylum as part of his mother's application. I am satisfied that there was no obligation on the second named Respondent to interview the minor child as he was accompanied by his mother and guardian at the time of his application. The duty on the second named Respondent to arrange for a separate assessment and or interview and whether or not the same is required is to be determined in accordance with the principles of natural and constitutional justice and in this case where no separate facts or circumstances relevant to the minor Applicant separate and distinct from the facts and circumstances relevant to his mother and it follows that therefore there was no obligation for separate consideration or interview. On the facts of this case this court is satisfied that there was no necessity for separate consideration of the applicant's application as the entire basis which has been identified for his application has been considered in the context of his mother's application. The respondents were entitled to precede on the basis that there was no separate or independent grounds. In arriving at this conclusion the court has taken into account the age of the Applicant at all relevant times.

4.6 This Court does not consider that the absence of a statutory framework is of benefit to the Applicant as the 1996 Act must be construed and interpreted in a manner which gives effect to the Convention and there is nothing in the Convention which requires the procedures identified in this application.

4.7 This court does not consider the fact that an application was made on behalf of the Applicant as a relevant distinguishing fact from the principles identified by Peart J. in the *Nwole* case. In both the *Nwole* and the *Dada* cases there was an issue before the court as to whether the children had ever in fact applied for asylum and both those cases determined that notwithstanding the absence of an application that an application for asylum had been made and considered on behalf of the children. There is no such dispute on the facts in this case as it is conceded that the Applicant did in fact apply for asylum. The central issue therefore is whether or not where an application for asylum is made on behalf of an accompanied child, is can the Respondents deal with that application as part of a parents application. This court is satisfied that in accordance with the approach identified by Peart J. in the *Nwole* case that there is no obligation on the second named Respondent to separately interview or consider the Applicant's application where no facts or circumstances relevant to the minor separate or distinct from the facts or circumstances relevant to the parent's application have been identified. In the *Nwole* and *Dada* cases it was held that the Respondent was entitled to arrive at a conclusion in respect of accompanied minors as part of the consideration of the parent's application and that is what has occurred in this case. This court is satisfied that the Respondent can deal with the Applicant's application as actually made, along with and as part of his mother's application.

4.8 This court is satisfied that it should adopt and follow an approach consistent with that identified by Peart J. in the *Nwole* case and that in those circumstances and for the reasons outlined above the court would have declined the application for judicial review even if the time for making such application has been extended.

4.9 The court will hear the parties in relation to whether or not a stay should be granted pending the determination of the Supreme Court appeal in the *Nwole* case.