

THE HIGH COURT

[2011 No. 1098JR]

BETWEEN/

Q.W.

APPLICANT

AND

MINISTER FOR JUSTICE, EQUALITY AND DEFENCE

RESPONDENT

JUDGMENT of Mr. Justice Hogan delivered on the 17th July 2012

1. The issue which is presented in this application for judicial review is the extent of the obligations which are cast upon the Minister for Justice, Equality and Defence ("the Minister") to effect service on the subject matter of a proposed deportation order. It has been agreed that this application would be treated as a telescoped hearing. The issue arises in the following way.
2. The applicant ("Mr. W") is a Chinese national who arrived in Ireland in April, 2004 on a student visa. His permission to stay in Ireland expired at the end of July, 2006. On his arrival Mr. W. had originally registered with the Garda National Immigration Bureau ("GNIB") and gave his address at 18 Mary Street, Galway.
3. In August, 2005 the applicant's permission to remain was renewed until the end of July 2006, giving his address at 33 Abbeygate Street, Galway. This was the last address provided to the GNIB by Mr. W. until shortly before the present proceedings commenced.
4. Mr. W. did not, however, leave the State after July, 2006 but remained here residing with this then partner (and now wife) Ms. H. The couple had a daughter who was born in the State on 30th September, 2008. The applicant and Ms. H. were married in March, 2009. Sometime previously, however, the applicant approached a prominent member of the Oireachtas and the Minister received a letter from that member on November, 2006 requesting an extension of the student visa. The address given for the applicant in that communication was also 33 Abbeygate Street, Galway. This application for an extension of the student visa was finally refused in April 2009. By this stage, however, the applicant had moved address and the letter was not received by him.
5. On 9th June, 2009, the Minister issued a letter addressed to the Abbeygate address containing a proposal to deport the applicant and affording him an opportunity to make representations in that regard. It would appear that Mr. W. did not receive that this communication and, of course, no representations concerning these proposals were duly made.
6. In May, 2010 the applicant came to the attention of GNIB following a routine inspection of a local shop where he was working. He was required to attend at a meeting with GNIB on 17th May, 2010. At that meeting Mr. W. was served with a notice pursuant to s. 14 of the Immigration Act 2004 ("the Act of 2004"), which required him to reside at No. 32, The Elms, Forster Street, Galway; to report to his local immigration officer and to cease employment.
7. Mr. W. was issued thereafter with further notices pursuant to s. 14 of the Act of 2004, but at no stage was he informed that the Minister proposed to issue a deportation order against him. In the meantime the deportation process continued apace and a letter confirming the making of the deportation order was sent to him by letter dated 28th March, 2011. The letter was, however, addressed to 33 Abbeygate Street Upper, Galway. When Mr. W. did not attend at GNIB offices in April 2011 in the terms required by this latest letter, he was then classified as an evader.
8. On 3rd May, 2011, the GNIB in Galway wrote to Mr. W. at his Forster Street address acknowledging that he had (belatedly) attended their offices in Liosban Business Park. The letter then stated that the applicant should present himself at GNIB offices in Burgh Quay in Dublin for the purposes of ensuring his deportation from the State. Mr. W.'s solicitors, Messrs. Rathigan & Co., wrote on 18th May, 2011, acknowledging that he had attended at Burgh Quay in the manner required, but adding that their client "was not aware that a deportation order had been made in his case". The letter requested further details in this regard.
9. The Minister promptly replied on 20th May, 2011, enclosing "a copy of the arrangements letter" which issued to Mr. W. on 28th March, 2001, saying that this "was issued to the last address updated to ourselves by your client". Messrs. Rathigan & Co. were further advised that the applicant had been marked as an evader and was liable to arrest. They in turn responded that that Mr. W. "never received your correspondence of 18th March, 2011, as he no longer lives at the address of the correspondence". The Minister was informed that Mr. W. now lived at 27 The Elms, Forster Street, Galway, with the solicitors adding that "this address is known to your Immigration Office in Galway." The Minister was further informed that Mr. W. wished to make representations in respect of the deportation order.
10. There then followed an exchange of correspondence as between the solicitors and the Minister over the summer period on the question of whether Mr. W. should now be allowed to make representations afresh regarding the making of the deportation order. Mr. W. sought a stay on the deportation order, while the Minister maintained that he was unlawfully at large in the State. Matters culminated with the arrest of Mr. W. in November, 2011 and his deportation from the State on 16th November, 2011.
11. I should record that an application for an interlocutory injunction to restrain Mr. W.'s deportation was made to this Court as the deportation order was in progress. By the time that application came to be heard by me, Mr. W. was in the process of being flown to Frankfurt Airport where he was then to be escorted to a Lufthansa flight onwards to Beijing. I refused that application, because even assuming I still had a jurisdiction in the matter at that stage - which was, at best, uncertain- the balance of convenience clearly favoured the refusal of relief given the belated nature of the application.
12. The critical question, however, is whether the respondent Minister lawfully served the deportation proposals to Mr. W. It is to that issue which we can now turn.

Section 6 of the Immigration Act 1999

13. Section 6(1) of the Immigration Act 1999 ("the Act of 1999") deals with the service of immigration notices. It is common case that the applicant was never served personally with a deportation proposal, so that method of service- which is provided for ins. 6(1)(a)- does not arise for consideration in the present case.

14. That being the case, therefore, the alternative provisions for service are contained in s. 6(1)(b) of the Act of 1999 (as substituted by s. 10(c)(iii) of the Illegal Immigrants (Trafficking) Act 2000):-

"Where a notice is required or authorised by this Act to be served on or given to a person, it shall be addressed to him or her and shall be served on or given to him or her in some one of the following ways....

(b) by sending it by post in a prepaid registered letter, or by any form of recorded delivery service prescribed by the Minister, addressed to him or her at the address most recently furnished by him or her to the Registration Officer pursuant to Article 11 of the Aliens Order 1946 (S.R. & O. No. 395 of 1946) or to the Refugee Applications Commissioner pursuant to s. 9(4A) of the Refugee Act 1996, as the case may be or, in a case in which an address for service has been furnished, at that address."

15. Mr. W. never applied for asylum, so the reference in the sub-section to the Refugee Applications Commissioner has no relevance to the present case. It is true that Messrs. Rhatigan & Co. furnished the Minister by letter dated 7th June, 2011, with his address at 27 The Elms, Forster Street, Galway and this notification manifestly amounted to the provision of an address for service within the meaning of s. 6(1)(b) from that point onwards.

The obligation to register with a Registration Officer

16. This, however, is far from dispositive, because this case really turns on whether Mr. W. was properly served with the proposal to deport him in June 2009. Here it may be recalled that Article 11(1)(a) of the Aliens Orders 1946 (S.R. & O. 395 of 1946) ("the Order of 1946") imposes an obligation on a non-national such as Mr. W. to provide details of his address with his Registration Officer. The term Registration Officer simply means the local Garda Superintendent for the District in which the non-national is residing: see Article 3 of the Order of 1946.

17. While counsel for the applicant, Mr. Lowry, at one stage came close to arguing that reference to the Order of 1946 must now be regarded as inoperative by reason of changes effected by subsequent legislation such as the Immigration Act 2004, it must not be overlooked that the Order of 1946 (with the exception of the deportation power in Article 13 of that Order) was confirmed and given statutory effect by s. 2(1) of the Act of 1999: see *Leontjava v. Director of Public Prosecutions* [2004] 1 I.R. 560. It follows, therefore, that the obligation to register with the local registration officer must now be regarded in the same light as if there were in existence a free standing statutory obligation to do so.

18. All of this means, therefore, that as the last address for service supplied by Mr. W. to the registration officer was that of the address in Abbeygate, the service was in the manner prescribed by s. 6(1)(b). In arriving at this conclusion, I am conscious of the fact that the applicant almost certainly did not receive the documents in question and it was for that reason -and perhaps that reason only- that Mr. W. did not engage with the deportation process. To this may be added the fact that by May, 2010 the GNIB had in fact required the applicant to live at the Forster Street address.

19. Yet there has to be some order in the hugely complex business of organising immigration and asylum procedures for non-nationals. If non-nationals were not under a legal obligation to notify the Minister of a change of address, it would be well nigh impossible for immigration controls to be effective. If it were otherwise, it would mean that non-nationals could simply change address with impunity and no notices could be duly served.

20. This issue was also addressed by Finnegan J. in *DP v. Governor of Training Unit* [2001] 1 I.R. 492 where he stated:-

"The sole cause of that denial however was the applicant's failure to notify his change of address as he is required to do by virtue of the Aliens Act, 1935 and orders made thereunder. Further I am satisfied from the affidavits filed in the matter that the requirement to notify a change of address was brought to the applicant's attention. Again the letter of the 28th April, 2000 limited a reasonable time within which he could make representations to the Minister and the inability to avail of the opportunity to do so was solely the fault of the applicant in failing to notify his change of address. Had the applicant notified his change of address, the receipt by him of the letters of the 10th February, 28th April, 2000 and 7th May, 2000 in the ordinary course of post would have afforded him adequate time to make appropriate arrangements. The problem in this case is of the applicant's own making and is not a consequence of any unfairness in the scheme operated by the respondents."

21. That, in essence, is the situation here. The real problem for the applicant is that he changed address without notifying the Minister. This in turn means that he cannot be heard to complain if he did not otherwise receive the appropriate statutory notices, since the Minister had otherwise duly complied with the requirements of s. 6(1)(b) by sending the proposal to deport to the applicant's last registered address with the GNIB. In that regard, it is irrelevant that the applicant in fact lived elsewhere during that period or that other State agencies knew of that address, since the only issue of importance is the address actually tendered to the Minister via the address supplied to the Registration Officer.

Conclusions

22. In these circumstances I am obliged to conclude that the applicant was duly served with the requisite statutory notices regarding the proposal to deport him in accordance with s. 6(1)(b) of the Act of 1999. It follows in turn that the present application for judicial review of the deportation order itself must necessarily fail.