Neutral Citation [2016] IEHC 652

THE HIGH COURT

JUDICIAL REVIEW

[2015 No. 492 JR]

BETWEEN

P.S.M.

APPLICANT

AND

MINISTER FOR JUSTICE, EQUALITY

RESPONDENT

(No. 2)

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 14th day of November, 2016

1. In *P.S.M. v. Minister for Justice and Equality (No. 1)* (Unreported, High Court 29th July, 2016) I dismissed the applicant's judicial review proceedings. The applicant now applies pursuant to s. 5 of the Illegal Immigrants (Trafficking) Act 2000 for leave to appeal. I have considered the relevant case law in relation to leave to appeal including *Arklow Holidays Ltd v. An Bord Pleanála* [2007] 4 I.R. 112 and *Glancré Teoranta v. An Bord Pleanála* [2006] IEHC 250.

The proposed questions grounding the application for leave to appeal

2. The first proposed question is *"where the Minister for Justice and Equality seeks to rely on the prevention of disorder and crime as a justification for the making of a deportation order, is it necessary for the Minister to find that the proposed deportee has a present propensity to commit crime".*

3. The applicant relies on case law relating to the deportation of EU nationals such as *P.R. v. Minister for Justice and Equality* [2015] IEHC 201 (Unreported, High Court, McDermott J., 24th March, 2015) and *Case C-30/77 Regina v. Boucherau* [1977] E.C.R. 1999. I held in the substantive judgment at para. 32 that the EU caselaw does not apply to non-EU nationals, and no authority or indeed logical basis has been shown by the applicant as to why it should or why there is any uncertainty in the law. This point does not meet the statutory criteria for leave to appeal.

4. The second proposed question is*, "where a proposed deportee is married and/or has Irish children is there an onus for the Minister for Justice and Equality to show compelling justification when making a deportation order which will have the likely effect of separating the spouses or parent from child (sic), or is the correct test rather that the proposed deportee must show compelling circumstances to outweigh the public interest in deportation".*

5. However in the substantive judgment I assumed in favour of the applicant that compelling justification was required in this particular case. Therefore the second proposed question is a hypothetical and, if answered in the manner sought by the applicant, would not change the result of the case. Accordingly it is not an appropriate question for certification.

6. The third proposed question is *"are the immigration rules (and in particular para. 398 thereof) passed by the UK parliament entitled to a presumption of compatibility with the European Convention on Human Rights when considered by an Irish court".*

7. This question is misconceived. I discussed the UK rules at paras. 42 to 43 of the substantive judgment, but that was by way of support and confirmation for a conclusion I had independently arrived at. The decision is not actually based on a finding that the UK rules are ECHR-compatible. Accordingly, a finding in the applicant's favour on this question would not change the result of the case.

8. The fourth proposed question is "*where the Minister for Justice and Equality is considering whether to deport a person on the basis of a criminal conviction, is the Minister entitled to base a decision to make a deportation order wholly or partly on the fact that the proposed deportee maintains his or her innocence in respect of the events in question".*

9. At para. 53 of the substantive judgment I noted that failure to accept responsibility for an offence is relevant to the questions of rehabilitation and future risk. There is also the somewhat unconventional and roundabout process in which the applicant is protesting his innocence; a process which did not involve appealing his criminal conviction at the time. No Irish authority has been cited suggesting that a failure to acknowledge the offending behaviour is irrelevant to rehabilitation, and accordingly there is no uncertainty in the law that requires to be resolved by the Court of Appeal.

10. The final proposed question is "*where the proposed deportation of a parent is likely to have serious negative consequences for his or her minor children, should the Minister for Justice and Equality adopt an approach that in general and insofar as possible she should avoid visiting such children with the adverse consequences of their parent's wrongdoing"*.

11. Reliance is placed on the decisions in *Chigaru v. Minister for Justice and Equality* [2015] IECA 167 (Unreported, Court of Appeal (Hogan J.), 27th July, 2015) and *Oboh v. Minister for Justice Equality and Law Reform* [2011] IEHC 102 (Unreported, High Court, Hogan J., 2nd March, 2011).

12. However those decisions do have a fundamentally different context, namely the exercise of equitable and discretionary jurisdiction by the courts. *Chigaru* was an injunction case, where it was held that the wrongdoing of a parent could be a reason to refuse an injunction if adult applicants stood alone, but not given the impact on child applicants in the particular circumstances of that case.

13. *Oboh* was a leave decision where the court decided not to visit the applicants with the consequences of dishonest affidavits filed on behalf of parents, where to do so would have adverse effects on children.

14. These decisions simply have no relevance to the wide jurisdiction of the Minister as statutory decision-maker to make a deportation order in relation to a parent. For the reasons set out in the substantive judgment in this case, there is no principle of law that the Minister in making a deportation order is precluded from making a decision which will have adverse effects on children who are innocent of wrongdoing.

15. Indeed Mr. Colm O'Dwyer S.C. (with Mr. Anthony Hanrahan B.L.) in an able submission for the applicant does not suggest that this alleged (and in my view non-existent) principle of "no adverse impact on children" means that one cannot deport a parent. He submits that it means that one has to have compelling reasons. On that interpretation, the fifth question is really a rephrasing of the second question and is not appropriate for certification for the same reasons discussed above under that heading.

16. Overall, I accept the submission of Mr. Cormac Ó Dúlacháin S.C. (with Mr. Dermot Manning B.L.) for the respondent that *"the applicant has done no more than re-run arguments which failed at hearing and has not illustrated that the decisions are in realms where there is legal uncertainty".*

Order.
17. For the foregoing reasons I will order that the application for leave to appeal be refused.