Neutral Citation: [2017] IEHC 175

**THE HIGH COURT**

**JUDICIAL REVIEW**

**[2017 No. 207 J.R.]**

**BETWEEN**

**M.A.**

**APPLICANT**

**AND**

**THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, IRELAND AND THE ATTORNEY GENERAL**

**RESPONDENTS**

**JUDGMENT of Ms. Justice O'Regan delivered on the 16th day of March, 2017**

**Issues**

1. The applicant served a notice of motion bearing date the 6th March, 2017 on the respondent seeking a declaration that the deportation of the applicant at this time would be unlawful together with an interlocutory injunction restraining the deportation of the applicant until such time as the applicant's application for subsidiary protection has been lawfully determined.

2. The matter was heard on notice to the respondent on 13th March, 2017.

**Submissions**

3. The applicant's application for subsidiary protection is made by way of letter of his solicitors of 5th March, 2017 wherein it is identified that the applicant arrived in Ireland in 2014 and he fears return to his country of origin (Pakistan) because his former girlfriend committed suicide and her family blames him for her death. The claim is based upon the fact that the applicant asserts that his former girlfriend's family have threatened his family and he has received death threats. He also claims that the police put his name in a newspaper stating that he was wanted for making his girlfriend commit suicide.

4. When the matter first came before the Court on an *ex parte* basis I indicated that the detail afforded was not such as to likely secure an injunction on the principles identified by the Supreme Court in *Okunade v. The Minister for Justice & Ors.* [2012] 3 I.R. 152. However when the matter came before the Court on 13th March, 2017 the applicant pursued the matter on the basis of the decision at the Court of Justice of the European Communities in (Case C-429/15) Danqua v. Minister for Justice & Ors. a judgment of 20th October, 2016 together with the subsequent decision of the Court of Appeal (*Danqua v. Minister for Justice & Ors.* [2017] IECA 20) which was delivered on 6th February, 2017.

5. Counsel for the respondent has agreed that if a valid subsidiary protection application is before the relevant tribunal the applicant is entitled to remain in this jurisdiction pending the determination of the claim (s.16 (1) of the International Protection Act 2015). The respondent does not object to the form of application but rather is relying on the letter from the international protection office of 13th March, 2017 suggesting that for the applicant to maintain a valid subsidiary protection application he is obliged to afford a compelling explanation for the delay in maintaining the application as the application is out of time. The letter identifies that the applicant was refused refugee status on the 29th September, 2015.

6. Although the parties did argue as to whether or not certain communications were received by the applicant from the respondent and as to the correct postal address of the applicant, nevertheless it appears to me that the basis of the concession by the respondent that the form of the application is not at issue but rather an extension of time is required to deem such form to be a valid application for subsidiary protection it appears to me that issues with the postal address of the applicant are not germane.

7. The respondent has sought to distinguish the within circumstances from that which prevailed in *Danqua*. It is submitted that he has never tried to make an application for subsidiary protection until recently (5th March, 2017) whereas the applicant in *Danqua* did. In this regard it is stated that *Danqua* did not sit back whereas there was no communication at all as between the within applicant and the Minister prior to the applicant's arrest. The respondent argues that although the fifteen day time limit has been condemned by the Court of Justice nevertheless there has been delay in maintaining the application for subsidiary protection (although the date upon which the delay might have first commenced has not been identified) and therefore the applicant is obligated to explain the delay prior to his application being considered valid.

8. The applicant had been notified by a registered letter of 30th June, 2015 that he was not being granted refugee status.

9. In the *Danqua* matter the applicant had made an application for refugee status on 13th April, 2010 following which a negative ORAC recommendation issued on the 16th June, 2010. Subsequently the Refugee Appeals Tribunal upheld the ORAC decision in a decision of 13th January, 2011. The applicant received a letter bearing date the 9th February, 2011 advising her of the fact that she had fifteen days to apply for subsidiary protection. In that matter apparently the Refugee Legal Services indicated that they would not assist her in preparing a subsidiary protection application. On 23rd September, 2013 a decision was made to refuse Ms. *Danqua* leave to remain on humanitarian grounds and thereafter on 8th October, 2013 she applied for subsidiary protection which was refused on 5th November, 2013 because of delay.

10. The decision of the Court of Justice which issued on 20th October, 2016 was to the effect that the principle of effectiveness must be interpreted as precluding a national procedure which requires an application for subsidiary protection within a period of fifteen working days of notification.

11. The question posed of the Court of Justice was formulated by the Court of Appeal and following the ruling of the Court of Justice aforesaid the matter came back before the Court of Appeal. At para. 39 of the decision of the Court of Appeal it was held that the effect of the Court of Justice decision was to hold unambiguously that the fifteen working day time limit governing applications for subsidiary protection violated the E.U. principle of effectiveness.

12. In my view by virtue of the foregoing there is no question but that the fifteen day time limit has been suspended in respect of all applications for subsidiary protection.

13. At para. 41 of the judgment of the Court of Appeal it is stated:-

> "It follows in turn that the Minister's decision of 5th November, 2013 which refused to permit the applicant to make an application for subsidiary protection on this ground must be quashed. I would accordingly allow the appeal on this ground and grant the appropriate order of certiorari."

**Conclusion**

14. Given the fact that the fifteen day time limit within which an application for subsidiary protection following notification of a refusal of refugee status must be made is contrary to E.U. law then the respondent has not in place any time limit at present which might identify a date upon which this Court might consider thereafter a delay has occurred. I am satisfied that it is not appropriate for the Court to identify such a date in the absence of some procedural measure being put in place by the respondent limiting the time in which an application for subsidiary protection might be made. In the circumstances the detail of the current applicant are sufficiently similar to the status of Ms. Danqua that the respondent can not now validly state that the unknown time limits have passed so that it is for the applicant to establish good grounds for the delay.

15. Given that no issue is taken with the form of the application for subsidiary protection and further given that the respondent accepts that if a valid application for subsidiary protection exists then the applicant has an entitlement to remain in the jurisdiction pending a conclusion of his application, the issue herein is as to whether or not delay has occurred and must be explained.

16. I am satisfied in all of the circumstances that the respondent is not entitled to suspend recognition of the application for subsidiary protection until such time as the applicant has put forward compelling reasons for the delay and accordingly it appears to me that it is appropriate to grant an interlocutory injunction restraining the deportation of the applicant until such time as his application for subsidiary protection, made by letter of a solicitor of 5th March, 2017 has been lawfully determined, in order to safeguard the applicants rights – s.16(1) of the International Protection Act 2015 provides an entitlement for permission to remain in the State pending an exoneration of an application for international protection.