Neutral Citation No. [2005] IEHC 78

THE HIGH COURT
JUDICIAL REVIEW

[Record No. 888/2003JR]

BETWEEN

YURI BUGOVSKI OKSANA BUGOVSKA ROMAN BUGOVSKI (A MINOR SUING BY HIS FATHER AND NEXT FRIEND YURI BUGOVSKI) AND EVA BUGOVSKA (A MINOR SUING BY HER MOTHER AND NEXT FRIEND OKSANA BUGOVSKA)

APPLICANTS

AND

THE MINISTER FOR JUSTICE EQUALITY AND LAW REFORM AND REFUGEE APPEALS TRIBUNAL

RESPONDENTS

Judgment of Mr. Justice Gilligan as delivered on the 18th day of March, 2005

The first and second named applicants are husband and wife and are the parents of the third and fourth named applicants who are minors. The applicants are all Ukrainian nationals. The applicants entered the State in April, 2001. The first named applicant is appealing against the recommendation of the Refugee Applications Commissioner to refuse him refugee status in accordance with the definition as contained in s. 2 of the Refugee Act, 1996, which recommendation was contained in a letter dated the 19th day of June, 2002 and was based on the grounds that the Refugee Applications Commissioner had considered the application pursuant to ss. 11 and 13 of the Refugee Act and had concluded that the first named applicant had not demonstrated a well founded fear of persecution within the meaning of s. 2 of the Refugee Act, 1996 (as amended). By letter dated the 4th day of July, 2002 the applicant's solicitor appealed the recommendation and lodged grounds of appeal. The appeal was heard on 16th September, 2002 and the first named applicant was represented by a solicitor from the Refugee Legal Service and by counsel and the Refugee Applications Commissioner was represented by the presenting officer.

The applicant's claim in respect of persecution in the Ukraine was on the basis of his political opinion as he is a member of a political party, UNA-UNSO.

The Refugee Appeals Tribunal member gave his decision in the first named applicant's case on 26th day of September, 2002 and he came to the conclusion that the first named applicant had not demonstrated that he held a well-founded fear of persecution for a reason set out in s. 2 of the Refugee Act, 1996 (as amended) and he found that the applicant's account was unsatisfactory in terms of credibility and substance and he affirmed the findings of the Refugee Applications Commissioner at first instance and dismissed the applicant's appeal. The relevant decision was notified to the first named applicant by letter dated 9th October, 2002 and the Minister then refused to grant a declaration of refugee status and notified the first named applicant that he proposed to make deportation order in regard to him by letter dated 22nd November, 2002. Representations were then made by the first named applicant's then solicitors as dated respectively 20th December, 2002 and 8th January, 2003 and these representations were considered by the Minister and deportation orders were made on 8th August, 2003 in respect of the first named applicant and the deportation order was notified by letter dated 30th October, 2003.

These proceedings were then instituted on 1st December, 2003 and it is accepted on all the applicants behalf that the first named applicant's claim can be regarded as the lead application and the other applications in relation to the issues that arise in this application will depend on the ruling of the court.

Pursuant to s. 5(2)(a) of the Illegal Immigrants (Trafficking) Act, 2000 an application for leave to apply for judicial review under the order in respect of any of the matters referred to in sub-s. (1) shall –

> "(a) be made within the period of fourteen days commencing on the date on which the person was notified of the decision, determination, recommendation, refusal or making of the order concerned unless the High Court considers that there is good and sufficient reason for extending the period within which the application shall be made."

It is clear that in the circumstances of this case an extension of time is required to challenge the decision of the Refugee Appeals Tribunal as these proceedings have been commenced some thirteen months outside the relevant period of fourteen days.

Section 5(2)(b) specifies that an application such as is being made in this instance shall be by motion on notice (grounded in the manner specified in the order in respect of an ex parte motion for leave) to the Minister and any other person specified for that purpose by order of the High Court and such leave shall not be granted unless the High Court is satisfied that there are substantial grounds for contending that the decision, determination, recommendation, refusal or order is invalid or ought to be quashed.

Accordingly, the applicant has to satisfy this court that there are substantial grounds for contending that the decision of the member of the Refugee Appeals Tribunal dated 26th day of September, 2002 ought to be quashed.

In the particular circumstances of this case it is appropriate that I set out the decision of the Refugee Applications Commissioner as dated 9th day of May, 2002 which provides certain very relevant information.

Report and recommendation of the Refugee Applications Commissioner pursuant to s. 13(1) of the Refugee Act, 1996 (as amended)

1. Results of Investigation

1.1. I have considered the information and documentation in relation to the application for a declaration made by Yuri Bugovski.

1.2 Beginning in October 1999, and continuing throughout January 2000, January 2001 and March 2001 the applicant was involved with a group called UNA-UNSO in demonstrations against government. The applicant submitted medical documents pertaining to January, 2001 and March 2001 which would show that he was involved in violent demonstrations at this time. I had gathered information from the first interview about the events surrounding March 2001. At that time the applicant was detained for three to four days by agents of the SBU. After paying $2,000 the applicant was released. A BBC report of 10 March 2001 which I have tabulated as Tab 2 says that the police in Ukraine rounded up two hundred members of an extreme right-wing party UNA-UNSO in connection with protests in Kiev the previous day and they could face criminal charges.

1.3 In the re-interview I allowed the applicant to cover in detail the circumstances surrounding the events of the end of January 2001. Injuries received by the applicant resulted from riot situations similar to those described earlier. The applicant, a member of UNA-UNSO along with twenty-four others, was the target of police dispersal and apprehension in late January 2001.

1.4 One of the consistent allegations brought against UNA-UNSO as well as its extreme nationalism is its anti-Semitism. See Tab 3. During the second interview when I asked the applicant about this he said he was not aware of such a position. A UNHCR document which I have tabulated as Tab 4 describes most of the members of UNA-UNSO as young people with military backgrounds and histories of arrest and disorderly conduct. It has also been described in the same document as an essentially fascist grouping formed initially as a loose alliance of right-wing parties. The UK Home Office report for October 2001 which I have tabulated as Tab 5 notes not only the word fascist but refers to the group advocating violence and ethnic intolerance. Further reports which I have tabulated as Tab 6 show UNA-UNSO to be a paramilitary group.

2. Findings
2.1 The applicant had been involved as a member of UNA-UNSO on at least four occasions since 1999 in anti-government demonstrations. The two most recent, January 2001 and March 2001, for which he submitted medical reports and which he described during interview show that he was along with many others involved in violent clashes with government police. The description of UNA-UNSO which I have gathered from country of origin reports, a BBC report and the Research Directorate, Immigration and Refugee Board of Canada would show them to be ultra-nationalistic and militaristic. Their ideology could be described as in Tab 4 as based on authoritarian rule, militarism, chauvinism and a veiled anti-Semitism.

2.2 It is considered that this ideology is not consistent with the principles or ideals of the United Nations and, hence, a person involved in such an organisation could not be regarded as deserving of protection as provided for in the 1951 Convention.

2.3 Accordingly I am satisfied that the applicant has not established a case such as to qualify him for refugee status as defined in Section 2 of the Refugee Act, 1996 (as amended).

John O'Rourke

For the Refugee Applications Commissioner

Date: 9 May 2002

3. Recommendation
3.1 I have read the file and pursuant to the provisions of Section 13 (1) of the Refugee Act, 1996 (as amended) I recommend that Yuri Bugovski should not be declared a refugee.

_____

Feargal MacSuibhne

For the Refugee Applications Commissioner

9 May, 2002."

In his decision as dated 26th day September, 2002 the member of the Refugee Appeals Tribunal in a lengthy and reasoned decision considered *inter alia* the evidence of the first named applicant's membership of the UNA-UNSO political party. He refers to the s. 13 report relying on country information that this particular political party is characterised by the United Nations Commissioner as fascist, advocating extreme nationalism and anti-Semitism and advocates violence and ethnic intolerance. These allegations were put to the applicant in the course of his interview and in the course of the hearing and he refuted the allegations. The member of the Refugee Appeals Tribunal took the view that the political orientation or philosophy of the first named applicant's political party is significant as the applicant claims he was subjected to persecution and violence solely because of his membership of and activities carried out on behalf of the political party. The applicant remained unemployed from the end of 1999 to April 2001 when he left his country of origin and spent this period engaged in whole time party activities and in particular engaged in demonstrations.

The member of the Refugee Appeals Tribunal succinctly sets out the criteria for determining refugee status and the importance of considering the applicant's statements in the context of the relevant background situation. The member in his decision refers to the requirement that the applicant furnishes the relevant facts in the first instance and charges the decision maker with determining the validity and credibility of the applicant's statements when a claim for persecution has been presented. Both country of origin information and the applicant's evidence point to the UNA–UNSO being a legally registered political party whose activities are permitted under Ukrainian law and the member is satisfied that this indeed is the case.

The member then refers extensively to the applicant's evidence of being arrested and beaten by the police in Ukraine on several occasions and refers to the presenting officer at the hearing before the Refugee Applications Commissioner as having relied on information from a web page connected to the Russian Orthodox church which pointed to the anti semitic tendencies of the applicant's party which is characterised as extremist and right wing. Nevertheless the member refers to the fact that the political party is legal and is engaging in its right of political expression and while its politics may be odious unless there is a suggestion of illegality or criminality about its activities, the applicant is entitled to engage in political expression and he is entitled to freedom from persecution. The applicant gave evidence of having being imprisoned for 15 days following a demonstration in the city of Khmnetisyk. This demonstration was by the applicant's political party and its supporters on behalf of self employed entrepreneurs/stallholders and appears to be somewhat at odds with the applicant's own unemployed status. The member refers to the fact of the interview notes stating that the applicant took part in blocking the town administration and this action was not explained at the hearing but the member took the view that it can be reasonably inferred that the applicant's subsequent incarceration for 15 days did not arise merely from an ordinary people protest.

The applicant in the course of two interviews denies that his party is anti semitic extremist nationalist, advocates violence or ethnic intolerance.

In the course of his decision the member deals extensively with the various demonstrations and alleged beatings which the applicant sustained at the hands of the police and having reviewed the evidence he came to the conclusion that it was noticeable that the applicant who had been actively operating out of his hometown for nearly a year was not deterred by arrests or police beatings throughout this period. The applicant's subjective fear was negated by his continuing involvement in radical agitation. The applicant was not incarcerated in his hometown for any longer period than two weeks and was then released. In the members view "it is not tenable or consistent for the applicant to maintain that he would now face a prolonged period of 15 years or so in jail because he was taking part in the demonstration in Kiev". The demonstration in Kiev was described as being a mass demonstration at which 20,000 people attended and at which the applicant alleges there were massive beatings of demonstrators by the police. The applicant was

not arrested even though he stated there were thousands of arrests. The historical record does bear out these facts but the member took the view that it was inconsistent and out of keeping with the applicant's overall evidence that he somehow evaded police attention at a mass rally in Kiev when it was full of police and he had in all previous demonstrations been arrested and taken into custody the member took the view that the applicant's account in this regard was in all probability embellished. The applicant says that what in fact occurred was that he was arrested at the railway station on his way home from Kiev to his home town of Khymnetisyk and taken into custody by the secret police whom the applicant likened to the KGB of soviet days. The applicant says he was interrogated about the demonstration in Kiev and beaten endlessly for two days and two nights and was then asked to sign a document incriminating himself and admitting to organising demonstrations and the Kiev demonstration in particular and the applicant says he capitulated and signed and was then released on bail paid by his wife on condition that he stay at home and the applicant then left the Ukraine on 9th April, 2001.

The member proceeded to assess the persecutory risk and dealt with this aspect in the following terms.

> "*Assessment of Persecutory Risk*
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> The applicant is a Party member but not an active Parliamentary politician. The leader of the UNO-UNSO (described in Kiev Post as an ultra-nationalist Party), Andy Shkil, 'remained behind bars more than a week after he won a Parliamentary seat and immunity from prosecution in last month's elections'. The leader of UNA-UNSO was arrested in March 2001 for taking part in violent anti-Presidential street protests. It is significant that the Applicant was released by the police, the Party's sitting MP was not. This is not indicative of persecution against the Applicant. The country of origin reports point to the Applicant's Party as being ultra nationalistic, intolerant of minorities and racist in nature. The Applicant denies these allegations. Research carried out by the Tribunal corroborates the anti Semitic politics of the organisation proffered by the Commissioner at the Hearing. The Applicant's Party was one of many taking part in the March 2001 demonstration against Kuchma. Dissatisfaction with Kuchma and his regime is rife in Ukraine. Demonstrations against Kuchma continue even today at the date of the writing of this Decision., The Kiev Post reports that the Ukrainian opposition holds its second nationwide demonstration in eight days, calling for President's resignation.
>
> The contemporary reports of the British Helsinki Human Rights Group in relation to the demonstration in Shevchenko Park in Kiev on March 9th, adverted to by the Applicant, states,
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> > 'BHHRG representatives counted about 2,000 in all, many of whom were either journalists or curious bystanders who had come to see what all the commotion was about. In the morning, the number of active participants at this demonstration described as the largest up to that time, was evidently no more than a few hundred.'
>
> These reports also state that some resistance was evident by demonstrators, who were arrested and put into police vans. Western media appeared at pains to portray the move by the authorities as an example of police brutality, but in fact no injuries were reported among the 42 demonstrators. The demonstrators were fined 8 times the minimum wage, but refused to pay. The British Helsinki Human Rights Group, whose representatives attended the demonstration, is dismissive of reports that participants were in the range of 10,000-18,000 as described by several Western news agencies. More importantly, the actions of the police were not as the Applicant described them. In the light of the patent implausibility of the Applicant's claim that he was able to support himself from his vegetable garden for a year and a half while he conducted his radical agitation, I find the Applicant's account to be lacking in credibility. The Applicant has stated he was severely beaten and adduces medical reports in support. Yet he was able to move around Ukraine without any discernable effects on his health while sustaining himself, without an income, from his vegetable garden."

The member then proceeded to deal with the standard of proof that the applicant must demonstrate a well founded fear of persecution for the reasons enumerated in s. 2 of the Refugee Act, 1996 namely race, religion, nationality, membership of a particular social group or political opinion and owing to such fear must be outside his country of nationality and is unable or unwilling owing to such fear to avail himself of the protection of that country. The onus of establishing such persecution rests in principle on the applicant. The member refers to the fact of credibility being established where the applicant has presented a claim which is coherent and plausible not contradicting generally known facts and therefore is on balance capable of being believed. The member accepted that not all parts of an applicant's case are capable of being proved and therefore it is frequently necessary to give the applicant the benefit of the doubt.

Having considered the evidence of the applicant and having considered the submissions of the applicant's legal representative and having considered the material submitted on behalf of the applicant and on behalf of the Refugee Applications Commissioner the member went on to conclude that he was of the view that the applicant had not demonstrated that he had a well founded fear of persecution for reasons set out in s. 2 of the Refugee Act, 1996 (as amended). He found that the applicant's account was unsatisfactory in terms of credibility and substance and accordingly he affirmed the findings of the Refugee Applications Commissioner at first instance and dismissed the applicant's appeal.

It is against this background that the applicant contends that he is entitled to an extension of time within which to bring this application and that he has substantial grounds for contending that the members decision ought to be quashed.

The applicant contends that the member did not give him a fair hearing because the applicant's credibility was a matter put in issue. The applicant had denied the various allegations as regards the character of the political party of which he was a member and the member stated in the course of his decision that "research carried out by the Tribunal corroborates the anti semitic politics of the organisation proffered by the Commissioner at the hearing". The applicant contends that this was a grievous finding in a number of respects. Firstly it amounted to a finding that the first named applicant had made a material misrepresentation at the hearing. Secondly it purported to resolve an express conflict between the parties. Thirdly as confirmed by other observations of the member the finding was one that cast a moral shadow over the applicant because of its nature.

The applicant contends that it is clear from the terms of the finding that research was carried out by the member after the hearing. Accordingly the thrust of the applicant's submission is that there was a want of fair procedures and he relies on the decisions of this court as handed down in *Killiney and Ballybrack Development Association Limited v. Minister for Local Government* [1973] 112 I.L.T.R. 69, *Geraghty v. Minister for Local Government (No. 2)* [1976] I.R. 153 and *Genmark Pharma Limited v. Minister for Health* [1998] 3 I.R. 111.

The applicant relies on s. 16 (8) of the Refugee Act, 1996 which provides:-

> "The Tribunal shall furnish the applicant concerned and his or her solicitor (if known) and the High Commissioner whenever so requested by him or her, with copies of any reports observations or representations in writing or any other document furnished to the Tribunal by the Commissioner copies of which have not been previously furnished to the applicant or as the case maybe the High Commissioner pursuant to s. 11(6) and an indication in writing of the nature and source of any other information relating to the appeal which has come to the notice of the Tribunal in the course of an appeal under this section."

The applicant essentially contends that the merits or otherwise of the political views attributed rightly or wrongly to an applicant for asylum are irrelevant to deciding the application and it may be perfectly consistent with the claim of persecution on political grounds that the political view held or attributed sits uneasily with the mores of the country of refuge.

In these circumstances the applicant seeks the relevant extension of time on the basis that at the time the applicant had his application for asylum refused he was represented by the Refugee Legal Service. He makes the case that he was not advised that there were any mistakes in the members decision and was not advised about the possibility of applying to the High Court for judicial review nor was he aware of that possibility prior to instituting these proceedings having consulted a new solicitor.

It is submitted on the applicant's behalf that s. 5(2) of the Illegal Immigrants (Trafficking) Act, 2000 is not a limitation period but confers a discretion on the court.

Reliance is placed by the applicant on the decision of the Supreme Court in *C.S. v. Minister for Justice, Equality and Law Reform* unreported Supreme Court 27th July, 2004 in which McGuinness J. giving the judgment of the court at p. 32 observed:-

> "Indeed it may well be that there has been an over-emphasis on the attribution of blameworthiness or fault, either or vicarious, in regard to the issue of extension of time. There is, it seems to me, a need to take all the relevant circumstances and factors into account. The Statute itself does not mention fault; it simply requires "*good and sufficient reason*". The dicta of this court in the reference judgment quoted earlier indicate many factors which may contribute to "*good and sufficient reason*". By no means all of these can attributed to fault, or indeed absence of fault, on the part of an applicant. Both Denham J. in *S. v. Minister for Justice Equality and Law Reform* and Finnegan J. (as he then was) in *G.K. v. Minister for Justice Equality and Law Reform* refer to other factors apart from blameworthiness which must be taken into account. In the present case it must also be borne in mind that two of the applicants are infants, to whom blameworthy delay cannot be imputed."

Counsel for the applicant refers to the decision of the Supreme Court in *Re Article 26 of the Constitution and ss. 5 and 10 of the Illegal Immigrants (Trafficking) Bill, 1999* [2000] 2 I.R 316 where the court noted at p. 360

> "The courts are regularly requested to extend the time for the taking of certain steps in proceedings, for an appeal from one court to another and indeed for the bringing of judicial review itself. The extension of time for the filing of pleadings, by agreement or by leave of the court, may, under a relevant rule, occur in a very large number of cases but this has never been regarded as undermining the constitutional validity of the rule in question."

Counsel for the applicant further relies on the dicta of Hardiman J. in *G.K. v. Minister for Justice, Equality and Law Reform* [2002] 2 I.R. 418, wherein at p. 423 Hardiman J. states:-

> "The merits of the underlying case also appear relevant in considering an application to stay proceedings, usually on grounds of delay, in the exercise of the inherent jurisdiction of the court. An example of this is *Guerin v. Guerin* [1992] 2 I.R. 287, where such an application was refused *inter alia* on the basis that even if the delay was inexcusable, the plaintiff had a very strong, indeed almost unanswerable, case on the merits of the substantive action so that 'an obvious and substantial injustice' would be done to him if deprived of the opportunity to litigate his claim."

It is submitted on the applicant's behalf that an obvious and substantial injustice would accrue to him if time were not to be extended since in the applicant's view his case is almost unanswerable.

Counsel for the applicant submits that the failure of the appellants then legal representatives to initiate judicial review proceedings was the type of "clear oversight by lawyers acting for an applicant" as envisaged by this court amounting to a good and sufficient reason for extending time in *Muresan v. Minister for Justice Equality and Law Reform* [2004] 2 I.L.R.M. 364 p. 373.

Counsel for the respondent submits that in the particular circumstances of this case the applicant exhausted the various remedies that they were available to him following the decision of the member on 26th day of September, 2002 which procedure is finalised in a deportation order being notified to the applicant on 30th October, 2003 at a time when he was legally represented.

Counsel submits that it is clear from cases such as *G.K. v. Minister for Justice Equality and Law Reform* Unreported Supreme Court 27th July, 2004 and *S. v. Minister* [2002] 2 I.R. 163 that an explanation for the delay must be given by the applicants and that circumstances must exist to excuse such delay.

Counsel submits that a change of counsel or a differing view are not of themselves sufficient reason to depart from the defined period of time and certainly not sufficient to grant an extension of 13 months within which to bring the application against a background where at all times the applicant had the benefit of legal advice.

Counsel for the respondents accepts that there is a statutory requirement that the Tribunal must disclose any information relied upon in determining the appeal and in this regard the member had disclosed in the decision the matters to which he had regard to. The principles of natural and constitutional justice have not been infringed in this case and counsel relies on the decision in K*arakaran v. Secretary of State for the Home Department* (2000) 3 A.E.R. 449 at p. 479 where Sedley L.J. stated that the sources of information of decision makers "will frequently go beyond the testimony of the applicant and include country reports, expert testimony and sometimes specialised knowledge of their own (which of course must be disclosed)". Counsel submits that there is no suggestion in the decision of the member that the information must be disclosed prior to the decision being made. Reference is made to M*uresan v. Minister for Justice Equality and Law Reform* [2004] 2 I.L.R.M. wherein at p .364 Finlay Geoghegan J. held that the Minister did not breach the principles of natural and constitutional justice by failing to give the applicant notice of certain documents considered by him in deciding that the principle of non refoulement was not infringed.

Counsel submits that there was ample evidence before the member to enable him to accept the submission of the Commissioner that UNA-UNSO was extremely right wing fascist and advocated extreme nationalism and anti semitism notwithstanding the evidence of

the applicant. The information sourced and disclosed by the Tribunal supported the statements in the s. 13 report. It would appear that such information was sought to assist the applicant who disputed the material provided to the Tribunal by the Commissioner.

Counsel submits that the applicant has not shown good and sufficient reason for failing to comply with the time limit as prescribed by s. 5 Illegal Immigrants (Trafficking) Act, 2000 and that the decision of the member of the Refugee Appeals Tribunal was made within jurisdiction.

I am quite satisfied taking into account the totality of the facts of this matter that the Tribunal member has come to his decision on the basis of a very well reasoned and thought out view and clearly there was a factual basis for him to reach his conclusion. The applicant can only take issue with the statement by the member that "research carried out by the Tribunal corroborates the anti semitic politics of the organisation proffered by the Commissioner at the hearing."

The central thrust of the applicant's case is that it is clear on the terms of the statement that the research referred to by the member was carried out after the hearing and that there was no way of knowing what sources the member had regard to.

I take the view that this submission is without foundation because it is quite clear taking into account the totality of the facts that there was documentation before the member arising from the report and recommendation of the Refugee Applications Commissioner as previously referred to herein wherein it was stated that "one of the consistent allegations brought against UNA-UNSO as well as its extreme nationalism is its anti semitism and reference was made specifically to tab 3 and it was noted that the applicant's denied being aware of such a position and the Commissioner then made reference to a document as tabulated at tab 4 which inter alia described most of the members of UNA-UNSO as young people with military backgrounds and histories of arrest and disorderly conduct and as an essentially fascist grouping forming a loose alliance of right wing parties."

Subsequently in his finding the Commissioner makes specific reference back to the document as set out in tab 4 describing the ideology of UNA-UNSO as being based on authoritarian rule, militarism, chauvinism and veiled anti semitism.

Accordingly, on a factual basis I would not be satisfied on the balance of probabilities that the research carried out by the Tribunal member which corroborated the anti semitic politics of UNA-UNSO was carried out after the hearing nor would I be satisfied on the Balance of Probabilities that the member considered any other documentation than that which was before him arising from the appeal from the decision of the Refugee Applications Commissioner as dated the 9th day of May, 2002. However even if the submission of counsel for the applicant was correct that it is clear from the wording of the decision that the members research was carried out after the hearing and the relevant nature and source of the information was not identified I am reasonably satisfied that any failure by the member in this regard would not have made a material difference to the decision arrived at having regard to the various other conclusions as made by him and quite clearly as to whether or not UNA-UNSO is anti semitic in its view was not a significant factor taking into account for example the extent of the members decision that was given over to the resulting facts from the demonstration by UNA-UNSO members in Kiev in August 2001 and the fact that the leader of the party remained behind bars more than a week after he won a parliamentary seat and immunity from prosecution in subsequent elections whereas the applicant was released by the police and the member's views that this was not indicative of persecution against the applicant and further that the country of origin reports pointed to the applicant's party as being ultra nationalistic intolerant of minorities and racist in nature all of which features the applicant denied.

I am quite satisfied that as to whether or not the political party UNA-UNSO was anti semitic in its views plays only a very minor role in the decision as arrived at by the member and in my view in these circumstances the applicant does not satisfy me that there are substantial grounds for contending that the member's decision ought to be quashed. I am also satisfied that it was entirely a matter for the member to assess the weight that should be given to the various matters which were before him and clearly there were grounds before him on which he can have reasonably arrived at his decision that the applicant was not entitled to refugee status.

In *McElhinney v. Commissioner of An Garda Síochána* Unreported 10th May, 1995 Geoghegan J. states:

> "Equally it seems to me that if the court is reasonably satisfied that the failure to furnish a statement of a document would not have made any material difference to the outcome of the proceedings, certiorari should be refused as a matter of discretion. In my view that is the case here".

In *Baby O. v. Minister for Justice* [2002] 2 I.R. 169 at p. 180 Keane C.J. states:-

> "Unless it can be shown that there was some breach of fair procedures in the manner in which the interview was conducted and the assessment arrived at by the officer concerned or that, in accordance with the well established principles laid down in *The State (Keegan) v. Stardust Victims Compensation Tribunal* [1986] I.R. 642 and *O'Keeffe v. An Bord Pleanála* [1993] 1 I.R. 39, there was no evidence on which he could reasonably have arrived at the decision, there will be no ground for an order of certiorari in respect of this decision. In this case, it was entirely a matter for Mr. Leahy to assess the weight that should be given to the various matters to which I have referred and it could not be said that there were no grounds on which he could not have reasonably arrived at the decision that her application for refugee status was manifestly unfounded."

Accordingly in the exercise of my discretion I refuse the applicant's application for leave to apply for judicial review.

For the sake of completeness I am satisfied that s. 5(2) of the Illegal Immigrants (Trafficking) Act, 2000 is not an absolute limitation period and does confer a discretion on the court.

However in the particular circumstances of this case it is quite clear that the applicant does not have a very strong or indeed almost unanswerable case on the merits of the substantive action and there is no question that an obvious or substantial injustice would be done to him if he was deprived of the opportunity to litigate his claim. In my view there was no clear oversight by the lawyers acting at the material time on the applicant's behalf and what has occurred in this instance is that a different lawyer has taken a different view on the decision given by the Member on 26th day of September, 2002 but has done so at the remove of some 13 months during which entire period of time the applicant had the benefit of alternative legal advice and exhausted with the benefit of that advice the various legal procedures that were open to him culminating in the Minister's decision to make a deportation order in respect of the applicant which order was notified to the applicant by letter dated 30th October, 2003.

I endorse the view of Finlay Geoghegan J. in *Muresan v. Minister for Justice Equality and Law Reform* [2004] 2 I.L.R.M. 364 wherein at p. 373 she states:-

> "It is inevitable that different counsel will take a different view of the same case. It appears to me that if the courts were to permit an extension of the period provided for under s. 5(2) of the Act of 2000 simply upon the grounds that a new counsel had come into a case and had taken a view that a differing and additional claim on new and distinct grounds should be made that this would defeat the legislative intent as expressed in s. 5(2) of the Act of 2000. It may be that on certain facts the clear oversight or errors by lawyers acting for an applicant may amount to a good and sufficient reason for extending the period under s. 5(2). There was no such clear error in this case."

I am quite satisfied that in the particular circumstances of this case there was no clear oversight or errors by the lawyers previously acting for the applicant and in my view no good or sufficient reason for extending the period under s. 5(2) has been made out and I decline to extend the time within which this application shall be made.

Accordingly I decline to grant the reliefs as sought.