Neutral Citation Number [2006 IEHC 166]

THE HIGH COURT

[2004 No. 312 J.R.]

JUDICIAL REVIEW

IN THE MATTER OF THE REFUGEE ACT 1996, THE IMMIGRATION ACT 1999 AND THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000

BETWEEN

OLUWAKEMI ADEDAJU DADA, YEWANDE DADA (A MINOR), DOYINSOLA DADA (A MINOR) SUING THROUGH THEIR NEXT FRIEND AND MOTHER OLUWAKEMI ADEDAJU DADA

APPLICANTS

AND

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

RESPONDENTS

Judgment of Mr. Justice John MacMenamin dated the 31st day of January, 2006.

1. On the 30th of November and 1st December, 2005 the applicants herein sought leave to apply for judicial review inter alia challenging orders for their deportation made by the first named respondent on 5th March, 2004 and claiming entitlement to apply for asylum status. Judgment granting leave was delivered on 9th December, 2005. Having regard to the circumstances the first named respondent was not disposed to furnish any undertaking to the court regarding the applicants remaining in the jurisdiction pending full hearing of the judicial review proceedings. Thereafter an application for an injunction restraining the deportation of the applicants was brought. Judgment was delivered on that discrete issue on 19th December, 2005. The court granted an interlocutory injunction restraining the deportation of the applicants on specified grounds pending the determination of the issues in the judicial review proceedings. The grounds upon which the injunction was granted related to the statutory considerations applicable as to the manner in which the first named respondent should exercise his discretion to deport having regard to events which occurred, involving the applicants' apparent unlawful detention subsequent to the applicants deportation on 6th April, 2005.

2. The issues which arise for consideration in these proceedings however are distinct, and relate to a challenge to the decision made by the first named respondent to deport the applicants which was made and transmitted between 27th day of February, 2004, and 5th March, 2004. The issues applicable to the first applicant are quite distinct from those which arise relating to the second and third named applicant. The judgment on the leave application set out the background to those applications. The findings of fact in this judgment reflect that background material, but now based on the following facts as determined herein.

3. The first named applicant is the adult mother of the second and third named applicants. The second applicant was born on 5th April, 1993 and is now aged 12 years. The third applicant was born on 7th July, 1995 and is now aged 10 years.

4. The first named applicant arrived in Ireland in January 1998. The second named applicant arrived later in the State in early May 1999. The third named applicant then arrived in this state in January 2000. Following arrival the first named applicant sought refugee status and was issued with an 'ASY1' form on 30th January, 1998. She subsequently completed a questionnaire on 16th January of that year.

5. The first named applicant says that it is clear that her application for refugee status was made in relation to herself only and not in relation to the second and third named applicants who, she says, were not at that point in this country.

6. The first named applicant deposes that when her daughter the second named applicant arrived in this State in early May 1999 she notified the authorities of her arrival by reporting to the Immigration Officer at Anglesea Street Cork. She states that she submitted a birth certificate in respect of her, and she was allocated a reference number by the Department of Justice, Equality and Law Reform. The applicant refers to a note contained in her file from the Immigration Office in Anglesea Street in Cork stamped 10th May, 1999 by a Detective Sergeant Holland. She contends that she did not make an application for a declaration of refugee status on behalf of her daughter. She disputes a note made by Detective Sergeant Holland on the date in question indicating that such an application had been made. She avers that her purpose in going to the Immigration Office with her daughter was solely to notify the authorities that her daughter had arrived in this State.

7. In the course of these proceedings heard on 19th January, 2006 the court heard evidence from former Detective Sergeant Holland (now retired) and also, from the first named applicant. Former Detective Sergeant Holland made reference to a record book which was maintained in Anglesea Street Garda Station in 1999. This record book was kept in relation to asylum seekers. Mr. Holland then had custody of this as he was the Immigration Officer in Cork during the relevant period. After an entry for the 28th April, 1999 that book contains the following note:

> "2/5/99 Her daughter Yewande Dada dob 5/4/93 came to Ireland."

8. Thereafter there was recorded an entry for 4th May, 1999 which merely states the first named applicant "signed on" on that date. Former Detective Sergeant Holland testified however that on the intervening date, that is 3rd May, 1999 the first named applicant called to the Garda Station. He stated that she requested asylum for the second named applicant who was a Nigerian national. She produced her birth certificate which was thereafter forwarded to Dublin. The first named applicant gave details of the second named applicant's father and said they were now divorced. The witness took photographs of the child and commented on the fact that she had a rash. He asked was she ill and he was told that she had a skin disorder. The first named applicant was advised to have a health check carried out on the second named applicant from the Southern Health Board. She was further advised that for this purpose she should visit the Southern Health Board premises. In the course of an affidavit sworn on 11th January, 2006 it was alleged that Detective Sergeant Holland had interrogated the applicant in an overbearing fashion. He denied having done so, or having engaged in any intimidating conduct. It is unnecessary to resolve this issue in the context of these proceedings.

9. It is now necessary again to make reference to additional documentation relating to the 3rd May, 1999. Subsequently Detective Sergeant Holland reported to his superior officer in the Gardai in Cork. Ultimately this report went to the immigration authorities in Dublin. It was titled:

> "Re Asylum Kemi Dada DOB 22/12/1966 and daughter Yewande Dada DOB 5/4/93 Nigerian national." Thereafter it states:
>
> > "On 3/5/99 Kemi Dada, asylum applicant 69/168/98 arrived at Anglesea Street Immigration Office and requested Asylum for her daughter Yewande Dada DOB 5/4/93 Nigerian National. She produced her original birth certificate, attached, and stated that Babasanmi, Nigerian National was the father. They are now divorced.

> I photographed her and requested her to notify the Southern Health Board of the child's presence and to have her medically examined as she was ill with some rash or skin disorder.
>
> They are residing at Middle Flat, 45 Bandon Road, Cork. "For your information and for transmission to the Aliens and Immigration Office, "C" branch (ILO) please." This document was signed by Detective Sergeant Holland and forwarded for transmission to the Aliens and Immigration Office.

The cover note thereto dated 18th May, 1999 signed by Detective Sergeant Holland's Superintendent is headed:

> "APPLICATIONS FOR POLITICAL ASYLUM Kemi and Yewande Dada – Nigerian nationals".

10. When the third named applicant arrived in this State in January 2000, the first named applicant was living in Ireland. She went to the reception centre of the second named respondent in Mount Street in Dublin and notified them of her younger daughters' arrival in this State. Again the first named applicant swore that no application for refugee status was made by either her or her younger daughter at that point.

11. The first named applicant testified at the hearing on these issues. She said that she was unfamiliar with the procedures extant at that time but that she had made no application for asylum for her daughters at or about the time of their arrival. She merely notified the authorities of their presence in the State.

12. At the time when the first named applicant made her application for refugee status, the main provision of the Refugee Act 2000 had not come into force. A set of procedures known as The Hope Hanlon procedures were operated by the first named respondent in relation to the processing of applications. The first named applicant states that her application for refugee status was processed thereunder.

13. When the first named applicant sought asylum she stated that her reasons for doing so related to a recent coup in Nigeria indirectly. She stated that her husband was a Customs Clearing Agent. By inference the first named applicant was involved in this business also. She stated in the course of interview that the business in question had both a legal and illegal aspect, and that it was also engaged in the importation of arms and ammunition on an illegal basis.

14. Subsequent to the then recent coup the first named applicant stated that she was arrested, placed in custody for a significant period during which time she was subjected to sexual assaults from a number of soldiers. She was ultimately released and thereafter was escorted by a Major Salami on a flight to Amsterdam, and thereafter to Dublin. For her application for asylum Mrs. Dada was interviewed.

15. A report on foot of these interviews was prepared by a Mr. Michael Leahy a designated official of the member under the Hope Hanlon procedures. In the course of that report Mr. Leahy makes reference to the fact that the applicant had three daughters. The first of these was at the time of the report (the 16th September, 1999) still resident in Nigeria where she remains. This daughter is not involved in the proceedings. Reference is also made in that report to the second and third named applicants, who at the time were aged 6 and 4 years.

16. In the course of the report it is stated:

> "On 3rd May, 1999 Ms. Dada called to the Immigration Office at Anglesea Street Cork and claimed asylum for her daughter Yewanade Dada date of birth 5th April, 1993 a Nigerian National TAB 1 and produced a Photostat of the child's birth certificate. She has not stated how the child entered the country. In her application form at section 22 she claimed that the child was in Nigeria. She stated that she had three children in Nigeria (at Q. 8)."

17. Reference is also made to an incident which allegedly occurred in Shannon on 28th December, 1998 when a Detective Garda Peter O'Leary, checking passengers coming off a flight from the United Kingdom, stated that a passenger presented a provisional driving licence in the name of the first named applicant. The first named applicant denies that she had travelled to the United Kingdom and claimed that she had lost her driving licence and bank cards in October or November of 1998. I do not consider this material relevant to this case.

18. At the conclusion of Mr. Leahy's report he decided that Ms. Dada had failed to establish a well founded fear of persecution on any grounds and that "herself and her daughter" could now expect to avail of the protection of their country of origin. Mr. Leahy was satisfied that the first named applicant did not meet the criteria as set out in the 1951 United Nations Convention relating to the status of refugees amended by the 1967 New York protocol and as defined in s. 2 of the Refugee Act 1996.

19. On 21st September, 1999 the Asylum Division of the first named respondent advised the first named applicant by letter that her refugee status had been refused.

20. On 3rd November, 1999 the applicant received a letter from the Asylum Appeal Unit of the first named respondent confirming the decision to refuse her application and outlining the appeal procedure. The appeal was scheduled for 14th September, 1999 and the applicant's solicitor (she was by then legally represented by her present solicitors) submitted a form and letter of 22nd September, 1999 by way of appeal against the decision to refuse refugee status.

21. The matter was considered by the Refugee Appeals Authority as Appeal No. 69/168/98 C. The recommendation was entitled:

> "Between
>
> > Kemi Dada and Yemande (sic) Dada (Nigeria) appellant and the Minister for Justice, Equality and Law Reform respondent."

22. In the course of that recommendation Mr. Sean Delap a former District Justice stated that the appellants were Nigerian and that they were a mother born on 22nd December, 1966 *and* her daughter born on 5th May, 1993, that the mother arrived in Dublin Airport via Amsterdam on 12th January, 1998 and that Ms. Dada called to the Immigration Office, Anglesea Street, Cork, and claimed asylum for the infant appellant who did not appear at the hearing.

23. During the course of the report the recommendation recites:

> "Her daughter came later and she allegedly left the country while seeking asylum and did not notify the authorities here. It is not clear whether the daughter came directly from Nigeria or came through the United Kingdom."

24. In the recommendation dated 8th March, 2000 Mr. Delap stated that he did not find the appellant to be a credible witness. As regards her fear of persecution, if she were to return to her native country he stated that the situation in Nigeria had changed. With regard to the alleged sexual assaults Mr. Delap stated that there was provision for an investigation and persecution of all human rights violations committed by past regimes and that local investigations were the competent authority to deal with that type of complaint.

25. Consequently, he stated: "I am satisfied that the senior appellant has not established that she is a refugee, and that she has not established a well founded fear of persecution for any of the reasons set out in the Geneva Convention of 1951 as amended by the New York Protocol of 1967 and s. 2 of the Refugee Act, 1996."

26. A letter informing the first named applicant of the making of this determination on appeal was sent to the first named applicant on the 11th April, 2000 by a Ms. Linda Greally of the Asylum Division. There was no reference contained in that letter to the second named applicant.

27. No action by way of deportation was taken in the year 2000. The applicants' legal advisors submitted an application for leave to remain on humanitarian grounds to the Minister and enclosed documentation in support thereof. The first named applicant subsequently received a further letter from the first named respondent of 19th November, 2001 confirming the decision to make a proposal to make a deportation order. The first named applicant makes the point that this letter for the first time referred to the second and third named applicants, and that it erroneously stated that all three were persons who had failed in asylum applications. The applicant states that, thus contains the first reference the third applicant.

28. The applicants legal advisors continued to correspond with the first named respondent regarding the application for leave to remain and furnished updated information in support of this. Amongst this documentation were letters relating to the first named applicants employment prospects, the course of education she had undertaken, her medical condition, and the progress of each of the children in their education in this state as well as a number of testimonials and references. The first named applicant stated that her children were progressing extremely well in their education and that the stability and progress of her children would be traumatically and seriously adversely affected if they returned to Nigeria.

29. At no stage during the course of this correspondence which took place under the aegis of the applicants' legal advisors is there evidence that any point was taken in relation to the failure of the first named respondent separately to consider the position of the second and third named applicants who were the infant children of the first named applicant. Indeed, in a letter dated 20th April, 2000 the applicants solicitors specifically refer to the fact that Ms. Dada is a single mother with two children aged 5 and 7.

30. In the ultimate paragraph of that letter it is stated by the applicants solicitor "I would ask the Minister to consider very carefully these references in relation to Ms. Dada and her family. It is quite clear they have integrated into our society. Her children are well settled at school and I would ask the Minister to exercise his discretion and allow our client's (sic) to remain in Ireland".

31. As set out earlier, on 19th November, 2001 a letter was sent by the first named respondent addressed to all three applicants at Flat 5, 19 North Circular Road indicating the intention to the first named respondent to make a deportation order in relation to each of the applicants, being all of the three persons named at the heading of the letter in accordance with the power given to the first named respondent under s. 3 of the Immigration Act, 1999. The letter explicitly refers to the applicant and her two daughters throughout. A copy thereof was sent to the applicants solicitors at their address at 14 Upper Ormond Quay. No point was taken then relating to the failure to consider separately the position or status of the second and third named applicants at this point either.

32. It appears no action was taken on foot of this letter and there was further correspondence on the claim to remain in December 2001 April 2003 and January 2004 with enclosures and supporting documentation.

33. On 31st March, 2003 a letter was transmitted from the applicants' solicitors to the respondents solicitor headed: "Re Our Client Kemi Dada - Yewande Dada, and Diana Dada", and seeking the result of the leave to remain application. A letter in similar terms was transmitted from the applicants solicitors on 28th January, 2004.

34. It was headed:

> "OUR CLIENTS KEMI DADA AND HER DAUGHTERS YEWANDE DADA AND DIANA DADA". This letter refers to "*our above named clients*".

35. On 5th March, 2004, a letter signed by Ms. Tracy Healy of the Repatriation Unit, Immigration Division was sent to each of the applicants (and their solicitor) indicating that it was the intention of the first named respondent to make deportation orders under s. 3 of the Immigration Act. The letter included a deportation order in respect of each of the applicants made pursuant to s. 3(2)(f) of the Immigration Act, 1999.

36. On 2nd April, 2004 the same solicitors, acting for the second and third named applicants wrote letters to the second named respondent. Enclosed with those letters were applications for refugee status for the second and third named respondents.

37. Thereafter the applicants' legal advisors submitted an application for leave to remain and enclosed documentation in support thereof.

38. On 6th April, 2004 the applicants herein initiated proceedings to seek leave for judicial review.

39. The applicants state that by letter of 23rd March, 2004, their legal advisors sought from the first named respondent a copy of the analysis and examination undertaken by them in relation to the making of deportation orders in respect of each of them. By letter of 16th March, 2004, the applicants' legal advisors had made an application for the release of documents concerning themselves pursuant to the Freedom of Information Act.

40. The applicants were subsequently directed to attend at the offices of the Garda National Immigration Bureau on 6th April, 2004. They were deported to Nigeria on 7th April, 2004. Prior to this no undertaking had been given by the respondents not to deport the applicants and no injunction was obtained or sought from this Court preventing their deportation prior to 7th April, 2004. Subsequent to the deportation of the applicants, the hearing of the leave application in these proceedings was listed on a number of occasions.

41. On 17th June, 2004, the matter could not be heard due to the unavailability of a judge to hear the case. On 12th October, 2004 the judge in charge of the asylum list on that date transferred the case to Peart J. The respondents point out that that judge had by then given judgment in the full hearing of the case entitled *Nwole & Ors. v. The Minister for Justice* (The High Court, Unreported, 26th May, 2004). That case bore certain similarities with the facts of the instant case. The applicants were unsuccessful. The respondents contend that although the applicants' advisors had previously not agreed to adjourn this case pending the determination by the Supreme Court of the appeal in the Nwole case, the applicants unaccountably then agreed to such adjournment after the matter was transferred to Peart J. The applicants subsequently had the matter listed for hearing on 28th June, 2005 but this date was subsequently vacated on consent.

42. On 18th June, 2004, the first named applicant, who was by then resident in Lagos, Nigeria, swore an affidavit for the purposes of these proceedings. She stated that when she arrived at the Garda National Immigration Bureau she made it clear to the immigration official who dealt with her that judicial review proceedings challenging the deportation order had been instituted and handed the official a copy of a facsimile message from her solicitor confirming this. She states that she understood that this had already been sent to the Garda National Immigration Bureau by her solicitor. The applicant states that the immigration official crumpled up the document which indicated that judicial review proceedings challenging the deportation had been instituted and threw it in the bin.

43. The applicant further states that, while she was held at the Garda National Immigration Bureau and subsequently, she and her children were treated badly and with contempt and in an abusive fashion. The applicant states that her family conditions were extremely poor as a result of her return to Nigeria and that quite a number of people who were repatriated to Nigeria on the same plane as herself and her children were actually detained in Lagos and that they were not released until money (€900) was paid for this purpose.

44. These contentions were disputed by the respondents. In an affidavit sworn by Mr. Pat Power, an official of the Department of Justice, Equality and Law Reform, he stated that it would not be unusual for persons repatriated to be detained and questioned upon arrival in relation to matters of interest to the authorities such as immigration or criminal matters. This would normally only be for a matter of hours or at most a short number of days. Mr. Power states that he has not been made aware, either from submissions prepared in individual cases or on any broader basis, that there was a risk that persons would be detained for no apparent reason or for lengthy periods of time by the Nigerian authorities following repatriation until money was paid to secure their release. Mr. Power states that having searched a U.K. Home Office Report dated April, 2004, there was no suggestion contained in such report that persons, including young children repatriated to Nigeria, were arbitrarily detained for long periods of time upon their return and only released following the payment of money to government officials.

45. A further replying affidavit was also filed by Detective Sergeant Michael Cryan of the Garda National Immigration Bureau, stating that there was no injunction in existence restraining the deportation of the applicants from the State, and that the Garda National Immigration Bureau were not entitled to give any undertaking restraining their removal therefrom. Detective Sergeant Cryan states that he was on board the plan chartered to fly the applicants to Nigeria on 7th April, he spoke to the first named applicant as she boarded the flight and she made no complaints about her treatment by any members of the Garda National Immigration Bureau.

46. The applicant stated that after they were released from detention in Nigeria, they stayed in hiding with a friend in a one-bedroomed apartment in Lagos. She stated that her ex-husband, who wished to have her children circumcised, became aware that they had returned and that they were obliged to leave again and stay in a more remote place in Lagos state, where they remained in hiding. Through family connections, the first named applicant says that her ex-husband became aware of their presence in the state and that her friend was contacted at her workplace with enquiries as to their whereabouts, although they have some relevance to the proceedings in suit.

47. The issues relating to events subsequent to 7th April, 2004 were considered in the injunction proceedings referred to earlier.

48. The applicant states that in the circumstances (and based upon her stated fears) it was necessary for her and her children to return to this State.

49. She re-entered this jurisdiction via London and Belfast on 24th September, 2005 and subsequently made contact with her solicitor at the end of the first week of October. From 12th October, 2005 onwards, further correspondence took place between the applicants' solicitors and those acting for the respondent. These included a letter of 12th October, 2005, indicating that the applicant had returned to Ireland within the past two weeks; a letter from the office of the Chief State Solicitor of 17th October, 2005, pointing out that the applicants were illegally present in the State and that, should they be located, they could be liable to immediate removal therefrom.

Considerations of the Evidence and Findings Thereon

50. I turn back then to the evidential issue in more detail. The first evidential issue to be considered are the series events which transpired at Anglesea St. Garda Station in May of 1999. In this regard I accept the evidence which has been tendered to this court by former Detective Sergeant Holland. I do so for the following reasons. In the first place it is entirely consistent with the written memorandum which he wrote in 1999. His understanding then was that an application for asylum was made on behalf of the second named applicant. Upon what basis could he have been mistaken? The applicants advance none. Second, at no time prior to 2004, did the first named applicant make any contention that she had not sought asylum at that time. This despite the fact that she had access to documentation which recorded this fact in the course of the consideration by the authorities of the application described earlier in the first place by Mr. Leahy and secondly by Mr. Delap. I can think of no reason why former Detective Sergeant Holland might be in any way mistaken as to what transpired. His memorandum was dated 3rd May, 1999. No challenge to its contents or to any record of its contents was made thereafter until April 2004.

51. Equally I accept the submissions by the defendant in relation to the procedure adopted in relation to the third named applicant in the year 2000. This procedure has been outlined earlier in the judgment. It seems to me that the conduct of the first named applicant in bringing both the second and third applicants to the attention of the authorities and having them photographed is consistent only with her intention that they should be considered as asylum seeker as, otherwise, they would have no status to be within the State. In this connection I reject the evidence of the first named applicant when she stated that she did not understand the nature of the procedures in 1999 or 2000. Her allegations that she did not make an application for asylum on behalf of her children does not accord with the documentary evidence made at the time. I do not accept the first named applicant's case that she did not understand the procedures. In the course of her evidence she struck me as being a highly intelligent and resourceful woman who understood the English language well and who also understood precisely the course of action that she had adopted, then and now.

52. Having been deported from the State on 7th April, 2004 and having claimed that such deportation was unlawful the applicants did not instruct their solicitors to seek injunctive relief permitting their return to the State pending the determination of these judicial

review proceedings. This must be seen in the light of their contention not only had they been unlawfully deported but also that the second and third named applicants were in danger of being subjected to female genital mutilation. In fact the first applicant remained in Nigeria for some 18 months without at anytime seeking permission to be re-admitted to the State, or moving by way of injunction. I find that on two separate occasions the applicants allowed the judicial review application to be adjourned until the hearing by the Supreme Court of the Nwole case. I regret that this inaction on the part of the first applicant, for which no explanation is offered, calls into question the credibility of the claims now being made in relation to female genital mutilation. It would appear that there were no practical reasons for not so applying as, firstly, the applicant continued to instruct her solicitors in Ireland throughout this period. The applicants have now illegally re-entered the State. No explanation is offered by the applicants for their failure to seek an injunction from the court permitting their re-entry into the State, nor does they seem to be an awareness on the part of the applicants as to the legal status of their actions.

53. The basis and reasons for the alleged fear of persecution of the children is before the court and has been set out on affidavit. There is also information and documentation before the court by way of country of origin information regarding the risks threats and prevalence of the female genital mutilation including within those states and region of Nigeria which maybe relevant to the second and third named applicants. But no explanation is offered to this court in the instant case as to any reason why this highly important issue has only now been advanced. It is not suggested that there is any question of personal experience on the part of the first named applicant which has given rise now to this issue. Nor is it suggested that there was any particular experience which occurred in her immediate family or that of her husband. It is not suggested that there is any particular incident which occurred in her past life which might give rise to this belief. It is not suggested that because of religious reasons the applicant now raises this point. No independent evidence is adduced as to why, now, this issue has arisen when it had not been advanced earlier. An issue of this critical importance is not one which is easily forgotten or omitted even if it is, or was, present to the mind of the first named applicant.

54. I turn now to the conduct of the applicant in relation to the authorities.

55. Throughout the processing of the asylum applications between 1999 and 2004 I find that there was a common position between the applicants and their solicitors that the application should be dealt with compositely. I do not accept the contention made on behalf of the applicants that the failure at any time from 1999 to 2004 to distinguish between the position of the first second and third named applicants during the course of the procedure was a failure on the part of the applicants legal advisors a at that time, or anytime. I consider that the conduct of the applicant outlined earlier demonstrates that there was a common understanding between the applicants their legal advisors which continued up to 31st March, 2004 when the Garda National Immigration Bureau directed the applicants to attend for the purpose of deportation on 6th April, 2004. Thereafter, there occurred what I can only conclude was a purported asylum application by the second and third applicants wherein unaccountably the fears of the first named applicant was raised.

56. In the course of his report of 16th September, 1999 Michael Leahy had specifically referred to his view that the applicant and her daughter (referring to the second named applicant) "could now expect to avail of the protection of their country of origin". The issue of any separate status on behalf of the applicant was not raised by the applicants' lawyers at that time, nor at any time up to April 2004.

57. No exception was taken to the provisions of the "s. 13" of Mr. Leahy which was provided to the applicants on 21st September, 1999.

58. No challenge was then made to the designation of her daughter as being included in the asylum claim. Nor was any explanation furnished as to there being a distinction to be made between mother and daughter when the appeal was brought to the appeals authority then appointed under the Hope Hanlon procedure. The appeal was refused on the basis of a decision of Mr. Delap referred to earlier. No explanation was furnished as to the failure of the applicants to challenge the decision of the second named applicant. It was only a matter of years after the refusal of the appeal by Mr. Delap that the applicants took issue with this account set out in Mr. Delap's report of the first named applicant's attendance at Anglesea Street Garda Station with her daughter the second applicant.

59. There is too a consistency in action between what occurred with the second named applicant and the fact that, following the arrival of the third applicant at a date unknown, the first applicant brought the third applicant to the offices of the Commissioner in January 2000. At that point she too was photographed and given a file reference number.

60. I have already pointed out earlier in this judgment that at no stage during the lengthy correspondence which took place between the applicants solicitors and the Minister concerning the application for leave to remain on humanitarian grounds no point was made in relation to any alleged failure to consider the separate positions of the second and third named applicants. Indeed as has been earlier referred to they are mentioned by the applicants solicitors in the headings of a number of the letters as being their clients.

61. The correspondence specifically refers on occasions to the applicant and her two daughters.

62. The letter transmitted from the applicants solicitors to the respondents solicitor specifically refers to all three applicants as being the clients of that office.

63. In the instant case therefore no evidence was ever put before the authorities up to March 2004 of any additional or separate grounds of alleged persecution regarding the second or third named applicants. No challenge was ever taken up to the year 2004 to their designation by the Minister as asylum seekers, and by their subsequent designation as failed asylum seekers. Thus I do not think there can be an evidential basis for any contention that a normal practice which existed in the case of a minor accompanied by his or her guardian should have been departed from. If there was any issue of this type the first named applicant (who was at all stages legally represented) had an onus to raise these issues. She was not a passive participant in the process.

64. No judicial review proceedings was brought in relation to the deportation orders of 2000 and 2001. Thus, as a matter of law such orders continued to subsist and remained of full effect. The first challenge was made thereto on the 8th April, 2004. No justification has been offered for the elapse of time which occurred between the making of the orders and this challenge. No challenge was made within made to the decision of the Minister of 14th November, 2001. In my view the failure or absence of any challenge fatally undermines the claim made by the applicants in these proceedings to be asylum seekers.

65. Moreover in this case there are the following salient facts. These are

1. The failure to raise the issue of female genital mutilation until a very late date;

2. That such issue was prompted by the issuance of a deportation order;

3. That the children had not been mentioned by the mother in the course of her application procedure as raising any specific distinct or individual issues which should be considered;

4. That no objection had been raised by the first named applicant to the procedure adopted in relation to herself and the second and third named applicants at a time when they were legally advised;

5. There is a substantial issue regarding the issue of credibility;

6. The conduct of the applicants between the period 1999 and 2004 was not that of an active participant in the procedure. The entire onus was placed upon the State to raise issues which were more properly within the purview and ambit of the mother to raise. This applied a *fortiori* in the context of the applicants having had the benefit of legal advice from 1999 onwards.

66. I accept that in the instant case the alleged basis and reasons for the fear of persecution of the children is before the court. It has been set out in affidavit. I accept too that there is information and documentation before the court by way of country of origin information regarding the risks and threats and prevalence of female genital mutilation.

67. It is true that the former appeals authority operated by the first named respondent included the second and subsequently the third named applicant under the ambit and scope of the appeal decision in relation to the first named applicant.

68. I find that at all relevant stages up to April 2004 the applicants conducted themselves in a manner wherein they themselves considered that they had been lawfully refused a declaration of refugee status by the Minister. At no stage prior to that time up to April 2004, despite the fact that there were numerous opportunities therefore, to the first named applicant, or the lawyers acting on behalf of each of the applicants, seek to challenge any finding made in relation to each and/all of the applicants. In the light of the very substantial elapse of time between the year 2000 and the year 2004 I can only conclude that the case now been advanced by the applicants at this stage amounts to a retrospective assertion of what is wished had, or had not occurred earlier as opposed to being based on any objective or independent facts or records made at the time or subsequently.

69. I turn then to the conduct of the first named applicant with regard to her daughters. On any objective interpretation of the evidence the actions of the first named applicant demonstrate clearly that she understood and intended that her two daughters were residing in the State as asylum seekers, or failed asylum seekers who had no grounds for seeking asylum independent of her own. Her conduct (and that of her lawyers) in making detailed representations in support of her claim for humanitarian leave to remain after the refusal of a declaration of refugee status for her and her children provides support only for this proposition. No separate claim for asylum was made on the part of her daughters because, quite simply, the first named applicant never had any independent fears for their safety during the period 2000 to 2004. The issue of female genital mutilation was never raised in the asylum process or in the six times that her solicitor corresponded with the Minister in relation to leave to remain application. The court can only conclude that the absence of such material is consistent only with a correlative absence of fear that the second and third named applicants might be exposed to such an inhuman practice if they returned to Nigeria. No other explanation is available for the failure to mention the issue between 1999 and 2004. The absence of such explanation is striking. So too is the absence of any explanation as to why this issue became present to the mind of the applicant in 2004 when it had never been expressed earlier at all. The conduct of the applicants in this and other areas has been criticised as being 'cynical'. I understand this to refer to the manner in which it appears that the critical question of female genital mutilation was raised only in March 2004 and not before that time. While I do not go that far the fact remains that it is not explained.

70. I also conclude that there are a number of statutory courses of action relevant to these proceedings of which the applicants failed to avail.

71. Under s. 5(1)(2) of the Illegal Immigrants (Trafficking) Act 2000 it is provided that a person shall not question the validity of the various decisions, determinations, and notifications specified at (a) to (n) of subs. (1) of that section unless an application for leave to seek review of such decisions is made within 14 days of the persons being notified of the decision. In the absence of there being granted an extension of time under s. 5(2)(a) of the Act of 2000 I find that the applicants herein were not therefore entitled at the time the proceedings were brought, to question the validity of the Minister's decision made under s. 17 of the Refugee Act 1996 refusing to grant them refugee status. On two separate occasions, the latter being November 2000, the Minister proposed to make deportation orders in respect of them on the basis that they were failed asylum seekers and that they were entitled under s. 3 of the Immigration Act to make representations in this regard.

72. They did not question the validity of these notifications within 14 days of being so notified. I do not think the applicants should therefore be permitted to utilise procedures established in order to claim refugee status on grounds never mentioned before and in circumstances where no explanation was offered for failing previously to raise what is now to be considered to be a vital issue.

73. I have already outlined the issues where it has been submitted the facts in the instant case are distinguishable from *Nwole*. I have also set out the facts wherein this case resembles *Nwole*. I consider that the latter set of facts are so striking as to make it incumbent upon this court to follow the judgment in *Nwole* on the facts as they arise here.

74. I consider that in the instant case as in *Nwole* the applicants were at all times within the care of their mother who, consistent with the judgment of the Supreme Court in the case of *North Western Health Board v. HW and CW* [2001] 3 I.R. 622, confirmed the respect which the Constitution gives to the rights and responsibility of parents in relation to their minor children. I have already indicated that no evidence was put before the authorities in this case of any separate or additional grounds of persecution in relation to the children. I consider that the first applicant can only be interpreted as having accepted that her children were failed asylum seekers in putting before the Minister submissions to leave for remain on humanitarian grounds. Where she never sought to challenge this description of her children by way of judicial review or otherwise there could be no basis for the contention that the norm that the case of an unaccompanied minor should be determined with that of the guardian should have been departed from in this case. The failure to make any alternative submission relating to the status of the applicants whether separate or otherwise has been referred to earlier.

75. The decision in N*wole and Ors. v. the Minister for Justice Equality and Law Reform and Anor.* [2004] I.E.H.C. 433 made by Peart J. delivered on 26th March, 2004 is therefore not only relevant, but in my view should be followed because of the striking similarity of factual material as found. In my view the entire basis for the distinctions which the applicants has sought to draw between the instant case and *Nwole* fails simply because the evidence as found in this case does not establish that any distinction should be drawn. While the basis and reasons for fear of persecution has been set out it has been not established in evidence in a credible fashion. It is unnecessary to comment on the information and documentation before the court by way of country and origin

information. The true issue is whether the threat can be said to legitimately exist in relation to the applicants herein. This matter has been dealt with earlier. The inclusion of the second and third named applicants with the claim of the first named applicant must be seen in the light of the conduct of the applicant and her legal advisors between 1999 up to 2004 if any issue of substance existed, or if separate considerations existed they were never raised.

76. It may be accepted too that when a decision to include a child in an adjudication in respect of their mother within the asylum process there is an obligation to give consideration to that child and to construe the Refugee Act 1996 having regard to the provisions of the United Nations Convention on the Right of the Child and in particular Article 12 and 22 thereof. But again the applicants have failed to identify any separate issue which actually arose during the relevant time span. This changed in March 2004.

77. Moreover the court must have regard to the reality of such a contention in the light of the fact that the second named applicant was aged 6 years on her arrival in the State and the third named applicant was aged 4 years.

78. In *Nwole* Peart J. concluded that, the applications of children who arrived in the State with their mother and who made no separate applications nor put forward any separate or independent grounds were properly and correctly treated as subsumed or incorporated in their mother's application. Peart J. found that the duty fell upon the mother as guardian and primary protector of the best interests of the children to ensure any individual application for refugee status was made in respect of the children and did not accept the mother's account of events that she was not aware that her application when made incorporated her children.

79. It will be convenient to this point to refer in greater detail to another aspect of the judgment of Peart J. In *Nwole* at p. 24 he stated

> "… I find it so incredible as would lead to a conclusion that it is untrue, that the applicant at the time she completed the application for refugee status had a fear in respect of her young daughters that if returned to Nigeria they would be subjected to female genital mutilation and that she did not even mention this at the time or subsequently. She now says that her daughters also have this fear. One can only ask the question rhetorically as to where they acquired such a fear as no basis whatsoever for this fear is contained in any affidavits sworn in these proceedings either by mother or on her behalf. Mr. Tunney (the applicants solicitors) says in his said affidavit at paragraph 15 thereof that he is instructed that mother did not fully outline her fears and concerns in this regard during her asylum application process and that the children did not get an opportunity to outline their concerns. The fact is that mother did not outline this as a concern at all – there can be no question of her simply not having outlined her concerns "fully". I have already referred to the fact that on the application and the questionnaire and at the interview it is made clear that all matters relevant to an application must be put forward at that time so that they can be considered and it is not open to the applicant to allege that she had no opportunity to express concerns and fears present at that time. I am satisfied that the fear of female genital mutilation is something which has been invented now in order to bolster up an attempt to have the process of application recommenced on behalf of the present applicants in these proceedings, namely the children."

80. Peart J. added:

> "I view with the same scepticism the averments of mother and instructions to the same effect given to her solicitor that when she completed her application form she never intended that it should constitute an application also on behalf of her children. Such a claim rings very hollow in my ears I am afraid to say. As I have said already these children were aged 12 years down to 4 years. Without any application made on their behalf on arrival they would enjoy no status here and would have no entitlement to remain. The right to remain applies only to those persons who seek asylum and then only during that process of application. Even if mother might not have been aware of that fact which is possible but unlikely in my view, it is clear from the manner in which she completed the documents and answered the questions at interview that her concerns were for her and her children and she went so far as I have already stated earlier in my judgment to state an answer to the question at the end of the interview as to whether she wanted to add anything to say "that is up to you to keep us as we can't back."
>
> "It is clear beyond any doubt that she intended to apply for a declaration on her own behalf and on behalf of her children and that at the end of the interview she wished to emphasise that just in case the authorities were in any doubt about it. It is clear that such an intention is one that is entirely consistent with the parent acting in the best interests of her children because as I have said without it the children enjoy no rights to remain here with her. In my view any other interpretation of what mother did on arrival and during the application process, such as is contended, defies logic and flies in the face of any reasonable or common sense interpretation of the facts, or credibility, and must be discounted completely."

81. Peart J. went on to consider the following questions (at p. 26):

> "1. Whether mother was legally entitled to make that application on behalf of her children in the way she did;
>
> 2. Whether if she was so entitled, the Minister is entitled to carry out his consideration of the application as an application by a mother to which the childrens application was linked; or
>
> 3. Whether he is obliged to give separate consideration to each childs 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."

82. The judgment continues: "Before dealing with these points I want to refer to a passage from the Supreme Court's judgment *In The Matter of Article 26 of the Constitution and In The Matter of ss. 5 and 10 of the Illegal Immigrants (Trafficking) Bill 1999* [2000] 2 I.R. 360. At p. 395 where the court stated:

> "*First it must be observed that a person seeking asylum or refugee status is the applicant for that status. There is an administrative procedure in place to carry out and assist him or her in the processing of that applicant. He or she is not a passive participant in that process* … In availing of such procedures and in exercising any discretion in relying on such procedures the State is bound to act with due respect to the Constitutional right of access to the courts and the right to fair procedures of the persons concerned."
>
> "This statement is important. The mother in this case proceeded, subsequent to the deportation orders being made though not beforehand in my view as if it was entirely up to the Minister to take the initiative in the matter of the

children, to assess whether they had capacity to express views separate from mother, to enquire into whether, in spite of mother's silence in this regard there may be grounds applicable to one or more of the children which might entitle them, if not mother to a declaration and then to interview each of the children and consider their applications individually and separate from mother. This could not be correct. For this to be correct it would be necessary to subordinate the rule of the childrens mother to that of a passive and disinterested bystander whose responsibility is in relation to her children effectively ceased once she set foot in this country and that thereafter the welfare interests of the children become instantly the responsibility of the State. Such a situation will be to undermine her constitutionally recognised role as the person in whom is vested the primary duty and obligation in all matters related to all aspects of her childrens welfare".

83. The issue which must be decided is as to whether the facts in the instant case are such that *Nwole* should be followed. The applicants submit that the basis and reasons for the fear of persecution of the children is before the court in the instant case and has been set out in affidavit. They contend the failure to do this was an influencing factor in the decision of Peart J. in *Nwole*. They further submit that there is also evidence on documentation before the court by way of country of origin information regarding the risks threats and prevalence of female genital mutilation in the regions of Nigeria relevant to the applicants.

84. On any objective comparison it seems to me that the relevant facts in the instant case and those in *Nwole* show a remarkable and fundamental similarity. In *Nwole* as here the first applicant mother was the legal guardian of the minor applicants at all times during their residence in the State. Consistent with that role the first applicant and the mother in *Nwole* was entrusted with bringing to the attention of the authorities any separate or independent grounds she may have had for seeking asylum on their behalf. In *Nwole* no such grounds were brought to the attention of the authorities until deportation orders were issued and about to be executed. Similarly in the present case no independent grounds were brought to the attention of the authorities throughout the asylum process up to March 2004.

85. With regard to the interpretation of the Refugee and Immigration Acts I also consider that Peart J.'s judgment is apposite. In regard to the mother's assertion that constitutional rights had been infringed Peart J. stated:

> "I have no doubt the legislation [the Refugee and Immigration Acts] permits of an interpretation consistent with this. It is immediately apparent from the legislation that special arrangements have been put in place in order to ensure that the interests of an unaccompanied child are looked after, and it is only right and proper that this should be done, since there can be no doubt that a minor is a 'person' who can therefore seek refugee status upon arrival in the State. It seems clear from the UN Handbook, which has been judicially approved as a useful document for the purpose of interpreting and understanding the legislation in these cases, that where a minor is accompanied by an adult on arrival in the State, that adult may take care of the interests of the minor, and in the case of that adult being a parent of the minor, the parent's application will also be treated as an application also for the minor, and that the minor's application will be determined on whatever basis the parents application is determined. The reverence, respect and recognition which the judgments of the Court have found that the Constitution pays to the primacy of the rights and duties of parents in respect of their childrens welfare, means that in 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 accompanied 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 a consequence, continues to have the responsibility, 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 parent's 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."

86. Later in the judgment Peart J. said at pp. 31 – 32 thereof:

> "It follows in my view that where no such separate grounds of application have been identified by the parent in respect of any child in his/her company, that the Minister has no obligation to consider each child separately from his consideration of the parents application, since there is in effect nothing separate to consider. No right of the child is infringed in this way, and it would defy commonsense, and would ignore the two-way process involved in these applications, if for some theoretical reason devoid of any practical purpose, the Minister was obliged to require a separate form to be completed in respect of each child, involving thereafter a separate questionnaire, a separate interview, and a separate consideration, in circumstances where consideration has already been given to the identical grounds of application made out by mother ..."

87. Peart J. continued.

> "It is true that the statutory framework introduced in this jurisdiction has not been drafted in a way which introduced an authorised scheme based upon the principle of family unity. It is equally true that the 1996 Act must be construed and interpreted in a manner which gives effect to the Convention. In my view, my findings in relation to the capacity of the Minister to treat the mother's application as an application also in respect of her children does no violence to the 1951 Convention, even if the principle of family unity itself cannot be relied on the respondents for this view. Equally, there is nothing in the findings which I have made which, in my view, offends against what is contained in the relevant passage of the UN Handbook on Procedure and Criteria for determining refugee status". I consider that these observations by Peart J. are as pertinent in the instant case as in the case they were made. I would add that Article 12 of the Convention entitles *children capable of forming their own views* to "the right to express those views freely in all matters affecting the child, the views of the child been given due weight in accordance with the age and maturity of the child".

88. In the instant case no evidence was ever put before the authorities of any additional or separate grounds of persecution in relation to the second or third named applicants. No challenge was ever taken, up to the year 2004 as to their designation by the Minister as asylum seekers and by their subsequent designation as failed asylum seekers. 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 said guardian should be departed from in this case.

89. 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 and the United Nations Handbook on Procedure and Criteria for Determining Refugee Status.

90. One final observation is apposite in relation to the Hope Hanlon Procedures. Under those procedures, and indeed now under the 1996 Act, it is the Minister who ultimately makes the decision on the question of refugee status. The minister is and was only bound

by the decisions at first instance or on appeal if the decision was positive i.e. one which recommended that an applicant be granted asylum. Otherwise it is the Minister who ultimately decides whether or not to grant a declaration of refugee status. As previously noted the third named applicant arrived in the State prior to the determination by Mr. Delap of the appeal yet no separate or independent grounds for asylum were ever submitted on her behalf either to the Appeals Authority or to the Minister either before he made his decision in April 2000 or thereafter prior to April 2004. Therefore the issues of time and sequence of the applicants arrival in the State are not fundamental to the issue under consideration as it is clear that it was open to the first applicant at all stages to bring to the attention of the authorities the issue of female genital mutilation.

91. It is now necessary to consider the application brought on separate grounds by the first named applicant. Under the provisions of s. 3(6) of the Immigration Act 1999 the first named respondent "have regard" for a number of matters and/or factors. This a condition precedent to the making of a valid deportation order. One of the factors outlined under s. 3(6) is at subparagraph (f) "the employment" including self employment (prospects of the person);

92. The course of the consideration giving rise to the deportation order Ms. Joy Ryan, a Clerical Officer of the Repatriation Unit expressed the view concerning the first named applicant that "her prospects of obtaining employment would be slight in view of the current climate". It is submitted that by virtue of the training in which the first named applicant engaged and other experience which she gained no reasonable decision maker presented with this information could conclude given the economic climate prevailing that Ms. Dada's employment prospects were slight. It is submitted that this information is incorrect and that her employment prospects are far better than suggested by Ms. Ryan. I consider while Ms. Ryan's statement may appear surprising it is the observation of one clerical officer who prepared one submission for consideration by the Minister. It was not a view which was endorsed as the case was considered by more senior officers of the Department prior to being sent by the Minister. In any event this was one of a number of submission and documents placed before the Minister prior to his consideration of the case. It was the Minister who ultimately decided not to grant the order for deportation and not to grant humanitarian leave to remain and the documentation exhibited demonstrates that submissions were made to him in relation to all matters he was obliged to consider under s. 3(6) of the Immigration Act 1999. This judgment thus far has dealt with

(a) that the facts as established do not allow for the reliefs sought

(b) that there has been acquiescence and/or waiver

(c) that there was delay in raising the issue of female genital mutilation

(d) that there stands over the case a substantial issue of credit.

93. Associated with the latter there arises another point which is the conduct of the case. It is impossible to avoid the conclusion in the instant case that the first named applicant who is legally presumed to have acted in the best interests of the second and third applicants at all times has demonstrated a complete disregard for the deportation order served on her and her children by illegally returning to the State in defiance of the terms of these orders which direct that she and her children should remain out of the State. While outside the State the applicants were afforded the full benefit of the statutory rights conferred upon them by the Refugee Act 1996 (as amended) and the Immigration Act 1999 (as amended). During the periods they were firstly claiming asylum and secondly seeking humanitarian leave to remain the applicants had the assistance and advice of lawyers expert in the area of refugee and immigration law. Following their lawful deportation from the State the applicants continued to instruct the same lawyers for the purpose of seeking to have the impugned deportation order set aside.

94. As indicated earlier the first second and third named applicant resided in the State for approximately six years, five years and four years and had their claims for residence or asylum fully considered under both the statutory and non statutory schemes then in existence. Rather than argue by way of correspondence or judicial review that the second and third applicants were wrongly included in the Minister's refusal for asylum, detailed representations were made to the Minister in support of the claim of all three applicants jointly and severally to remain in the State. At no stage in the course of five separate applications for humanitarian leave to remain was any reference made either to the Minister having wrongly categorised the second and third named applicants as failed asylum seekers in his letter proposing to deport them or that the first applicant had a fear that her two daughters would be exposed to the risk of female genital mutilation if returned to Nigeria. The unexplained failure of the first named applicant as a caring mother to bring her alleged fears to the attention of the authorities as outlined earlier fundamentally undermines the credibility of her present alleged fears. Equally the oral evidence of the first named applicant in the light of the documentation and testimony as to what occurred in 1999 at Anglesea Street in Cork fundamentally undermines her credibility.

95. The applicants had other options available to them to pursue their claims. Firstly they could have made an application to the Minister under s. 17(7) of the Act of 1996 for permission to make a further application for asylum on behalf of the second and third named applicant. Secondly they could have sought revocation of the deportation orders under s. 3(11) of the 1999 Act. No application was brought after the deportation seeking injunctive relief permitting the return of the applicants to the State pending determination of these judicial review proceedings. After the 7th April, 2004 the first named applicant remained in Nigeria for some 18 months without seeking permission from this court to be re-admitted into the State. Quite extraordinarily, given the alleged danger faced by her children, the first applicant not only did not seek injunctive relief but on two separate occasions allowed this judicial review application to be adjourned until the hearing by the Supreme Court of the *Nwole* case. This inaction on the part of the first named applicant, for which no explanation is even offered, raises the question of credibility in a very stark way especially as it would have been open to the first named applicant to instruct her lawyers with whom she continued in contact. The applicants have now illegally re-entered the State apparently via Northern Ireland. Not only is no explanation offered by the applicants for their failure to seek any of the courses of action outlined earlier but no full explanation is given as to how they travelled from Nigeria to Ireland. Nor has there been any recognition on the part of the applicants as to the extent or status of their actions which must be seen as unlawful.

96. In consideration as to whether or not judicial review should be granted the court must have regard *inter alia* to the conduct of the applicant which conduct includes lack of good faith in invoking the jurisdiction of the court, delay in challenging an administrative decision, acquiescence and waiver and the availability of alternative remedies.

97. Having regard to these facts I regret to conclude that the applicants in the instant case appear to have demonstrated disregard for the laws of the State and have chosen not to have invoke the jurisdiction of the court when appropriately they should have done so. As well as the conduct outlined earlier at all times they have had alternative remedies available to them in order to bring the alleged fear of female genital mutilation to the attention of the authorities. Prior to the making of the orders in question the first named applicant could have raised the issue with the Minister over a period of four years in the context of their application for humanitarian leave to remain. Both prior to and since their deportation to Nigeria the applicants could have sought re-admission to the

asylum process under s. 17(7) of the Refugee Act. Having been deported to Nigeria the applicants could, during the 18 months they were in that State and in communication with their present solicitors have applied to the Minister to revoke the deportation orders. All these issues must be seen regrettably in addition to the other matters of credit, delay acquiescence and waiver which have been outlined earlier. Unfortunately therefore I feel there is no alternative to state that this case comes within the category of cases envisaged in the *State (Abenglen Properties Limited) v. Dublin Corporation* [1984] I.R. 381 where the court, retaining a discretion to refuse the application for judicial review, may decline to grant that relief on the grounds of the conduct of the applicant. This is such an exceptional case.

98. For each of the reasons outlined earlier therefore the court will decline the application for judicial review.

99. For ease of reference I direct that the judgment in the leave application should at all stages be considered with this judgment.