Neutral Citation Number: [2010] IEHC 512

THE HIGH COURT

JUDICIAL REVIEW

2010 204 JR

Between

E. O. AND P. A. O. (A MINOR)

Applicants

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

Respondent

JUDGMENT of Mr. Justice Ryan delivered the 22nd October 2010

1. This is an application for leave to apply for judicial review of the decision of the Minister for Justice, Equality and Law Reform ('the Minister') to make deportation orders in respect of the two named applicants. Mr John Noonan B.L. appeared for the applicants and Ms Siobhán Stack B.L. appeared for the respondent. The hearing took place on 8 October 2010.

2. The first applicant ('the mother') is a national of Nigeria who arrived in the State on or about 19 December 2005. She applied for asylum but was unsuccessful. She claimed that she is a Christian and that she became pregnant and her family drove her from the family home and she went to live with her boyfriend. This boyfriend was a member of a secret cult and the members of this cult wanted her to sacrifice her baby. She claimed she fled and the cult started searching for her boyfriend. Her daughter, the second applicant, was born in the State on 17 January 2006. The Minister rejected an application for subsidiary protection on behalf of the first applicant on 13 August 2009, and on behalf of the second applicant on 26 January 2010. The first applicant made submissions on 12 October 2009 as to why the two applicants should not be deported.

3. On 3 February 2010 the Minister notified the first applicant that he had made deportation orders in respect of both her and her daughter. In a letter informing the applicants of the intended deportation the respondent stated that in reaching the decision to deport them "the Minister had satisfied himself that the provisions of section 5 (prohibition of refoulement) of the Refugee Act, 1996 (as amended) are complied with in your case."

4. The applicants challenge the deportation orders in these cases on three grounds. The first follows from the Supreme Court decision in *Meadows v MJELR* [2010] IESC 3, and, in particular, the criticism by the Chief Justice of the respondent's statement that "Refoulement was not found to be an issue in this case." Murray C.J. held that this statement was subject to multiple interpretations such that it was not possible to discern the rationale of the Minister's decision that no risk of refoulement arose. This meant that there was a fundamental defect in the conclusion of the Minister. Whatever about the validity of this argument, the second and third grounds seem to me to be without merit and I will just mention them briefly.

5. The applicants claim that although the two cases were considered separately, the concluding parts of each report concerning the proposed deportation referred to the other case, specifically, that a recommendation was being made to the respondent in respect of the other applicant and that, therefore, "no separation of the family unit is envisaged." The applicants submitted that it was possible that the respondent could have made a deportation order in respect of one applicant but declined to do so in the case of the other. Such a result would involve a separation of the family; therefore, there was no consideration of the separation of the family as required. Since the two cases concerned a mother and her four-year-old daughter, I think it would have been remiss if they had not referred to each other. In the circumstances of these cases, I think it is quite unreal to suggest that one conclusion could have been reached in one case and a different one in the other. The references to the related cases were not breaches of fair procedure or an injustice so as to invalidate the decisions.

6. Another complaint is that the subsidiary protection decision in respect of the second applicant, who is the four-year-old child, was expressed to be based on a rejection of the credibility of the first applicant and as a result the child was denied an individual assessment. I find this to be without substance.

7. Returning therefore, to the main point which is that of *Meadows*, the question is whether the rationale for the decision is clear from the material that was cited. Counsel for the respondent cited the opening part of the consideration in the report on her application where, in discussing s. 5 of the Refugee Act 1996, it says "[t]he following country of origin information addresses E.O. concerns." There then follows a series of pages of extracts from COI relating to three matters: (i) police protection; (ii) the position of cults; and (iii) internal relocation. These issues are obviously relevant to the question of refoulement. They are in fact more than, and substantially more than, the case that was made by the applicant in submissions of 12 October 2009. Those submissions did raise the question of the safety of the applicants so as to invoke s.5 consideration and the matter was dealt with on that basis in the report but it is clear that the report went a great deal further than the submission demanded. Following the extracts of COI, in the conclusion of the report it said "Having considered all the facts of this case, I am of the opinion that repatriating E.O. to Nigeria is not contrary to section 5 of the Refugee Act 1996, as amended, in this instance."

8. Does the *Meadows* decision invalidate the conclusion that was reached? It is to be noted first that the actual wording of this conclusion is different from that in *Meadows* and I think there is less room for an argument about ambiguity or non-clarity in this case than there was in the *Meadows* formula. When one takes the statement opening the consideration of this issue and the COI material together with the conclusion, it seems to me that the reasoning is clear. For the reasons that are set out in the extensive quotations of COI the Minister decides that repatriation would not breach s.5 of the Refugee Act 1996.

9. The argument against this put forward by Counsel on behalf of the applicants is that it could be that the conclusion was based on (a) police protection (b) the capacity to escape cult activity, or (c) internal relocation. I do not agree that this is a legitimate

criticism of the decision. I think that one would have to show that at least one of the issues was not based on the material contained in order to justify an attack of this kind. Even then, the question of severability would arise.

10. Cooke J. in *Edosa v MJELR* [2010] IEHC 94 gave an *ex tempore* decision in which, with apparent hesitation, he gave leave that questioned, in the circumstances of that case, the use of the conclusion in terms similar to that which was adopted here and which bore a "potential similarity" to that criticised in the *Meadows* decision. The respondent cited *Ugbo and Buckley v MJELR* (Unreported, March 5, 2010), a judgment of Hanna J. applying the Supreme Court decisions in *Baby O v MJELR* [2002] 2 IR 169 and *Meadows*.

11. It seems to me that, like most cases, *Edosa* was dependent on its own country of origin information and I do not think that the leave judgment was intended to be a general questioning of the formula of words used in that case and this, whenever and wherever they arose and irrespective of the information that was considered. Since the COI in this case contains extensive citations of specific relevance to material questions relating to safety and does not contain material that undermines the conclusion it seems to me that this decision is soundly based and there are no substantial grounds for challenging it.

12. For these reasons, I refuse the application.