Neutral Citation Number: [2011] IEHC 441

THE HIGH COURT

JUDICIAL REVIEW

2011 739 JR

BETWEEN

O. C. O. AND D. T. O. (AN INFANT SUING BY HIS MOTHER

AND NEXT FRIEND, O. C. O.)

APPLICANTS

AND

MINISTER FOR JUSTICE AND EQUALITY,

IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Mr. Justice Cooke delivered the 22nd day of November 2011.

PART 1

1. In this application for judicial review the applicants seek leave to apply for orders of *certiorari* to quash, first, a decision of the first named respondent refusing an application for subsidiary protection dated the 7th April, 2011; and secondly, deportation orders issued in respect of them dated the 15th July, 2011. The notice of motion of application for leave included notice of an intention to apply for an interlocutory injunction to restrain deportation of the applicants pending the determination of the proceedings. When the proceedings were commenced on the 16th August, 2011, the respondent Minister gave an undertaking not to implement the deportation orders prior to the return date of the notice of motion on the 3rd October, 2011, but has since refused to continue that undertaking. It is in these circumstances that the applicants now apply for interlocutory orders restraining their deportation pending, at least, the determination of their applications for leave to apply for judicial review.

2. The first argument raised on behalf of the applicants is one which goes to the approach which should be adopted by the Court in these particular circumstances, that is, in cases where it is sought to restrain deportation when the application for judicial review has been commenced within the fourteen day time limit imposed by s. 5 of the Illegal Immigrants (Trafficking) Act 2000, and the application for leave has yet to be determined.

3. It is submitted that, as a matter of law, an applicant for judicial review who is seeking leave to apply for an order of *certiorari* to quash a deportation order is entitled, as of right, to an interlocutory injunction restraining implementation of the order until the application for leave can be determined.

4. This argument relies particularly on observations made, obiter in the judgment of Geoghegan J. in the Supreme Court in *Adebayo v. Commissioner of An Garda Síochána* [2006] 2 I.R. 298, and on the approach of Hogan J. in his judgments in *L.A. v. Minister for Justice, Equality and Law Reform* and *P.J & Ors v Minister for Justice Equality & Law Reform* [Unreported, Hogan J, 19th October 2011.] This proposition is argued to be at variance with the view expressed in *Adebayo* by Fennelly J. and, to some extent at least, with the view expressed by this Court in its judgment in *A.P.A. and Others v. Minister for Justice, Equality and Law Reform and Others* (Unreported, High Court, Cooke J. 20th July, 2010).

5. The essential question which arises on that argument is this; in these cases where it is sought to restrain deportation pending the hearing of the leave application, is the applicant, as Hogan J. concluded "entitled to a stay absent special circumstances" or is there some criterion, principle or test which the High Court should apply, and, if so, is that test the *Campus Oil* test or some other one? It is appropriate, however, to deal first with the more particular circumstances of the present application for injunctive relief.

6. This case is one of a large number in which the Minister has declined to continue an undertaking not to deport beyond the return date of the motion for leave under s. 5, of the Illegal Immigrants (Trafficking) Act, in which no separate *ex parte* application for leave has been made in respect of the proposed challenge to the refusal of subsidiary protection. Instead, because the deportation order has been made before the expiry of the six month time limit for seeking an order of *certiorari* in accordance with O. 84 of the Rules of the Superior Courts, a single judicial review proceeding has been commenced in which relief in respect of both decisions is sought on notice to the respondents. Because there have been a large number of these cases, the Court has been unable to hear separate *ex parte* applications for leave on the return date of that motion. It has been necessary to treat the application for leave to challenge the subsidiary protection determination as having been moved and then adjourned with the motion so that, in the interests of economy of time and procedure both applications for leave can be heard together at an adjourned date.

7. The present case differs from those considered in the *A.P.A.* and *P.J.* judgments in that it has been argued primarily (at the suggestion of the Court,) by reference to the pending challenge to the subsidiary protection determination. In effect, a valid refusal of an application for subsidiary protection is a necessary pre-condition to the making of a valid deportation order. Furthermore, the application for leave to seek an order of *certiorari* quashing the refusal of subsidiary protection does not come within the scope of s. 5 of the Act of 2000 and is thus made *ex parte* and then assessed by reference to the lower threshold for leave under O. 84, rather than that of demonstrating "substantial grounds" under s. 5 of the Act of 2000.

8. This then is a judicial review proceeding, in which relief by way of *certiorari* is sought quashing the Minister's refusal of subsidiary protection. Accordingly, if, upon the hearing of the application, leave is granted, the Court will be entitled under O. 84, r. 20(7(a) to direct that the order will operate as a stay of proceedings. By contrast with the situation considered in the *A.P.A.* and *P.J.* cases,

however, there is no procedure which can be stayed in the circumstances of the present case. The Minister has refused the application, so that consideration of the applicants' position under the European Communities (Eligibility for Protection) Regulations 2006, (the "2006 Regulations") is at an end. Where leave is granted to apply to quash a deportation order, there is at least in being an administrative process for removal of the applicant from the State which is under the continuing control of the Minister and which can, therefore, be interrupted and restrained. There is no equivalent underlying and continuing process in the case of a subsidiary protection application once it is refused. There cannot, accordingly, be any automatic stay of any proceeding. The only continuing process which can be the subject of restraint is the distinct procedure under s. 3 of the Immigration Act 1999 namely, the deportation procedure.

9. It follows in the view of the Court that where a challenge is sought to be made to the validity of a subsidiary protection determination and the applicant seeks to preserve the status quo, it can only be done by means of an application to injunct the Minister from taking any steps to advance the proposal to deport or, if the deportation order has already been made, by applying to injunct implementation of the order. Because such an application is directed at a different procedure and is not the "proceedings" in which subsidiary protection has been considered, there can be no question of the Court directing a stay under para. 7(a) of Rule 20, much less of there being any automatic stay by virtue of the grant of leave. As a result, the entitlement to an injunction to restrain deportation when made on foot of a proposed challenge to the validity of a refusal of subsidiary protection must depend upon the Court being satisfied that the established criteria of the *Campus Oil* case are fulfilled and this must be so whether the injunction is sought before or after leave has been granted.

10. It is necessary therefore, to consider first whether in the present case a fair issue has been raised as to the entitlement of the applicants to the remedy which is to be sought at the end of the period during which the restraint is to operate. This means in the circumstances of the present case, whether the applicants have raised a fair issue as to an entitlement to obtain leave to apply for an order quashing the subsidiary protection determination as unlawful. Because s. 5 of the 2000 Act does not apply, that entitlement turns upon there being a stateable case to the effect that the facts averred to in the grounding affidavit together with the legal submissions advanced will be sufficient, if accepted as established at the leave hearing, for the grant of the leave claimed, namely liberty to apply for that judicial review. (See the judgment of Finlay C.J. in *G. v. DPP* [1994] 1 I.R. 374).

11. The Court would draw attention to the requirement that the fair issue raised must be one which will entitle the applicant, if it is established as correct, to the relief sought, namely the quashing of the challenged decision. In the view of the Court it is not sufficient for this purpose in a judicial review proceeding for an applicant, even an applicant with the necessary *locus standi*, to point to some interesting but academic issue of law as the fair issue to be tried, unless the determination of that issue in the applicant's favour will necessarily render the challenged decision unlawful and liable to be quashed.

12. An applicant with the appropriate *locus standi* is always entitled to litigate general issues of law affecting his or her interest by a plenary action seeking declaratory relief. By contrast the Court is not obliged to entertain such exercises in judicial review proceedings and, *a fortiori*, to acquiesce in the proceeding being utilised as the vehicle for interlocutory relief in respect of measures the validity of which will not necessarily be affected by the outcome of the proceedings.

13. This point is mentioned because in the present case thirteen grounds are advanced in support of the challenges to the two decisions of which three (Nos. 4, 5 and 11 in the Statement of Grounds), are directed at the alleged failure of the State in transposing the provisions of Council Directive 2004/83/EC of 29 April 2004 (the "Qualifications Directive",) to provide an effective remedy in the form of an appeal against the Minister's determination of the application.

14. Even if these grounds should be substantiated they will not lead to the annulment of the subsidiary protection determination. At most they may lay the ground to a challenge to the validity of the subsequent deportation order but by claiming an entitlement to such an appeal there is an implicit acknowledgment of the existence of a measure against which an appeal can be claimed to lie in law. The absence of an appeal mechanism does not of itself render the decision which is sought to be appealed, unlawful. Furthermore, the assertion that only an appeal by way of *de novo* re-examination or rehearing can provide an effective remedy necessarily implies that an examination of the legal validity of the determination will not provide the required remedy as indeed is explicitly the basis of ground number 11.

15. Of the other grounds advanced in the Statement of Grounds, Nos. 1, 2, and 3 are directed at the proposition that the Minister has not arrived at the decision in the determination "in cooperation" with the first named applicant as allegedly required by Article 4.1 of the Qualifications Directive. In particular, it is argued that this Article requires the respondent to furnish a draft of the determination to the applicant for comment or rebuttal prior to its adoption. These grounds raise no stateable basis for relief by way of *certiorari* for two reasons. First, the point is made as a purely theoretical one in the circumstances. No specific error of fact, mistake of understanding or other flaw in the content of the determination is identified as an element which would have been determined differently had the alleged cooperation with the first named applicant, in the form of furnishing a draft of the determination for comment prior to its adoption, been employed.

16. Secondly, for the reasons given in more detail in the Court's judgment in *B.J.S.A. (Sierra Leone) v. Minister for Justice, Equality and Law Reform* (Unreported, Cooke J. High Court, 12th October, 2011), this Court indicated why in its judgment this reliance upon Article 4.1 of the Qualifications Directive was in any event unfounded. In the judgment of the Court, insofar as this element of cooperation may have some residual effect at this final stage of an application for international protection (that is, after the personal interview of the asylum seeker and the two stage examination of the asylum application,) it does no more than reflect the general principle *audi alterum partem* namely, the obligation of the decision maker, before reaching a decision, to put to an applicant for comment or rebuttal any new information which is to be relied upon and which contradicts some asserted fact material to the applicant's claim.

17. It must be borne in mind that an application for subsidiary protection is not a process of adversarial adjudication. It is a matter in which the decision maker is required to assess whether the conditions of entitlement are made out by the applicant. The Minister is not obliged to enter into a debate.

18. In the judgment of the Court the remaining grounds in the Statement of Grounds are either clearly unfounded or so lacking in identification of specific flaws or illegalities in the determination, as to be incapable of constituting the basis of a stateable case for the grant of leave to apply for an order of *certiorari*.

19. In grounds 6 and 10, it is alleged that the respondent failed to have regard to representations made. Insofar as this relates to the subsidiary protection determination, it is clearly contradicted by the content of that decision. In argument, emphasis was placed upon the claim made in the application that the first named applicant was at risk of serious harm because of her membership of a particular social group comprising her family or, alternatively, young single mothers with no family support or means of protection. This particular

claim is repeated in several places in the determination and is answered by recourse to extensive country of origin information on the status of women, mothers and children. It is also pointed out that the applicant claims to have received sixteen years of formal education and to have worked as a teacher in Nigeria. It is thus concluded that she should be able to support herself and could obtain protection as an adult woman by relocating away from the particular source of the alleged serious harm.

20. Ground 7, alleges that the refusal of subsidiary protection was not "proportionate or reasonable" but no particular basis has been advanced in argument as to why the determination should be unlawful in that regard. It is by no means clear how a determination that the qualifying conditions for subsidiary protection have not been met could be condemned as disproportionate. A decision is disproportionate in the legal sense when the measure adopted exceeds what is necessary to achieve the relevant objective. In an application for subsidiary protection the statutory criteria are either present or absent.

21. In ground 8, it is asserted that country of origin information consulted was "read selectively against the applicant's interest" and the conclusions reached were irrational. Again, the Court does not consider that any basis has been laid for this assertion. All of the country of origin information recited in the determination is clearly relevant to the claims being made, and while it has been "selective" it has been selected for the purpose of answering those claims. The conclusions reached could not, in the judgment of the Court, be said to be irrational in the sense of lacking any reasonable relation to the claims advanced. The conclusions were clearly open to the respondent Minister having regard to the claims made.

22. Ground 9, claims generally that the Minister "had insufficient regard to the best interests of the child". In the application for subsidiary protection of the 27th October, 2009, no specific case was in fact put forward on behalf of the child in this regard. The second named applicant is a child slightly over three years of age. The best interest of the child clearly lies with remaining in the care of the first named applicant. In ground 12 it is alleged that the country of origin information relied upon was insufficient in that it was not up to date and was not made available until after the decision. The application was made in October 2009 and the determination was given in April 2011. The information consulted in relation to the matters raised in the application is for the most part drawn from reports dating from late 2009 and mid-2010. Furthermore the material in question is largely of a general character relating to general social conditions and the position of women and children, the status and effectiveness of the police and structures for avenues of complaint. This is not a case which raised issues related to events susceptible of rapid change such as the rise or fall of specific political regimes, groups or leaders. Given that there is always a necessary time lag between the compilation and the circulation of such reports, the Court does not consider that the consultation of that information was in any way vitiated by anachronism. Furthermore, if it to be complained that there was some failure to consult the applicants in relation to the information and that this has led the Minister to reach a false conclusion, it is necessary in the judgment of the Court for an applicant to exhibit the contradicting information which would have been produced had the opportunity been given. That has not been done.

23. For all of these reasons the Court is satisfied that no fair issue has been raised in this case as to the entitlement of the applicant to seek leave to quash the determination refusing subsidiary protection. No interlocutory injunction could therefore be granted on that basis.

24. As already mentioned, the present application was argued primarily by reference to the challenge to the subsidiary protection determination. The Court has not therefore been addressed on the issue as to whether an interlocutory injunction to restrain deportation can be maintained on the basis of the challenge proposed to be made to the deportation order itself. The Court will therefore hear counsel further on this issue. With a view to giving focus to that issue, the Court will make the following observations.

25. First, as pointed out above, of the thirteen grounds advanced in the statement of grounds, it would appear that at least those at paras. 1, 2, 3 and 12 are directed exclusively at the validity of the subsidiary protection determination. So far as the remaining grounds may apply to both decisions, the observations already made above in relation to the lack of identified illegalities, may also be relevant in the context of the deportation order.

26. In its judgment in the *A.P.A.* case, referred to above, the Court expressed the view that the obligations of both the Minister and the Court to ensure that powers are exercised consistently with the requirements of the European Convention on Human Rights Act 2003, required that s. 5 of the Act of 2000, be interpreted and applied in a manner which precludes implementation of a deportation order before the expiry of the fourteen day period fixed by s. 5 and thereafter, until an applicant has been able to bring an application for judicial review before the Court, at least in cases where it is asserted that deportation would expose an applicant to a credible risk of irreversible harm.

27. Once the matter is before the Court, however, the right of access to the Court under s. 5 (or under the Constitution,) has been secured and any continuing restraint to be imposed upon the respondent in implementing what must otherwise be considered to be *prima facie* a valid deportation order, must necessarily depend upon the intervention of the Court to grant interlocutory relief or impose a stay.

28. In the *P.J.* judgment, Hogan J. expressed the view that "absent special circumstances" an applicant in such cases would be entitled to a stay once leave was granted and, as a result, should equally be entitled to a stay in the event that the issue arises in the period between the return date of the motion for the leave application and any adjourned hearing of that application.

29. Insofar as there may be said to be a difference of approach in those two judgments, the Court feels obliged until such time as the matter is resolved by definitive judgment of the Supreme Court, to maintain the approach it suggested in the *A.P.A.* case.

30. It is undoubtedly the case that in the majority of instances where a risk of serious irreversible harm is asserted should a deportation take place, the Court will preserve the actual status quo by intervening to postpone expulsion of an applicant from the State. There will also no doubt be cases where the continued presence in the State of the applicant is necessary in order to ensure the effectiveness of the right of access to the court but this is not necessarily so in every case.

31. The Court doubts, however, that the entitlement to an injunction can be said to be "automatic" by reason only of the bringing of an application for judicial review in which relief by way of an order of *certiorari* is claimed. Even where the leave issue is decided and leave is granted, the exercise of the Court's jurisdiction to "so direct" is required if the grant is to operate as a stay. There may well be many cases where no stay is possible, appropriate or necessary.

32. It must be borne in mind that even in challenges to deportation orders, there may be no issue of risk of irreversible harm to an applicant if expelled. A deportation order may be made, not only against a failed asylum seeker, but against any of the persons listed in paras. (a) – (i) of s. 3(2) of the Immigration Act 1999 and thus come within the scope of s. 5 of the Act of 2000.

33. Take for example, the case of a third country national (not an EU citizen,) who enters the State illegally, commits a serious crime

and serves a term of imprisonment and who at, or prior to, release from prison is the subject of a deportation order to return the person to, say, a non-EU Contracting State of the ECHR. No question of refoulement arises. The individual does not have and never has had permission to be present in the State. It could not be said, in the view of the Court, that the commencement of a judicial review proceeding seeking to quash such a deportation order could create any automatic entitlement to remain in the State pending the determination of an adjourned leave application, nor that it creates any presumption in the applicant's favour to that effect. A technical issue could be raised as to whether for example, the signatory of the order had been duly authorised to make it. Even the success of that ground would not establish an entitlement to remain in the State but only the need for a new order. In such an instance the Court might well refuse to grant an injunction before leave is decided or direct a stay even when leave is granted.

34. It may well be that such would be one of the "special circumstances" contemplated by the judgment in the *P.J.* case. But even if that is so, it remains the case that it is only by the intervention of the Court in directing a stay of the deportation process or by way of interim or interlocutory injunction, that a threatened implementation of the deportation order can be interrupted. If the issue is disputed by the respondent and the application for an injunction is challenged, the Court must have recourse to some criterion or test in deciding the issue. In the judgment of the Court the only test to be applied is the well settled test of the *Campus Oil* case.

PART 2

Delivered the 2nd day of December 2011

35. As explained in Part 1 of the Court's judgment, this application for an interlocutory injunction has been heard in two parts because of the different thresholds for leave which apply depending upon whether the review sought is based upon the challenge to the refusal of subsidiary protection or on the validity of the deportation order.

36. At the resumed hearing following the delivery of that judgment in which the Court held that no fair issue had been raised for the leave application in respect of the subsidiary protection refusal, the Court has heard the second part of the application for an injunction based upon the proposed challenge to the deportation order dated the 15th July, 2011.

37. Thus, the first question which arises is whether a fair issue is shown as to the existence for the leave application of a substantial ground for contending that the deportation order ought to be quashed.

38. As already indicated in that earlier judgment, only some of the proposed grounds in the statement of grounds are directed at the deportation order. Grounds 4, 5, and 11, while based upon the subsidiary protection challenge, are directed at the proposition that the absence of a provision for an appeal or an effective remedy against the refusal of subsidiary protection renders the existing procedures in of the legislative regime for the examination of international protection applications unlawful. Although the grounds are not articulated in those precise terms, the Court interprets these propositions to the effect that the absence of an appeal remedy in respect of a refusal of subsidiary protection renders the deportation order illegal because the existence of a valid refusal is effectively a precondition to the making of a valid deportation order. In the absence of a definitive confirmation of a refusal of subsidiary protection by an acceptable appeal decision, (so the argument goes,) it cannot be maintained that a deportation order has been validly made.

39. The remaining grounds capable of application to the deportation order appear to be:

> 6. – An alleged failure to have regard to representations made – in response, presumably, to the invitation in the letter proposing to make the deportation order;
>
> 7. – The decision to deport was not proportionate or reasonable;
>
> 8. – Country of origin information was consulted selectively and the conclusion reached was irrational;
>
> 9. – Regard was not had to the best interests of the minor applicant;
>
> 13. – There was a failure to take account of (unspecified) relevant considerations.
>
> Grounds 1, 2, 3, and 12, relate only to subsidiary protection.

40. It is necessary for the applicants under the first limb of the *Campus Oil* test, to raise a fair issue as to the case for the grant of leave in respect of one or more of these grounds. The Court has some doubt as to the tenability of the arguments advanced in support of those grounds, but given that that is primarily an issue to be addressed at the leave application hearing, it considers it appropriate for present purposes to consider first whether it is necessary for the Court to intervene at this stage to preserve the status quo on the assumption that a fair issue can be made out in respect of at least one of those grounds.

41. Thus, the essential issue for consideration on this application is whether the Court ought to intervene by way of injunction to ensure that the applicants remain within the State pending the hearing of the application for leave lest, as a result of a possible deportation in the interim, an irreversible and detrimental change will be brought about in the applicants' circumstances which will not be capable of compensation or repair should a deportation subsequently be judged unlawful.

42. What, therefore, is the evidence before the Court on this application in support of the proposition that if deportation is not restrained there is a credible risk that such irreparable or irreversible change in the applicants' circumstances may be brought about? The case advanced in that regard is based on the information presented throughout the asylum process and in the applications for both subsidiary protection and leave to remain. The application is moved on the basis of the affidavit verifying the statement of grounds for judicial review and its exhibits, no separate affidavit evidence having been offered for the purpose of the injunction. The verifying affidavit however has nothing to say on this issue.

43. In the account of her reasons for leaving Nigeria in the asylum application, the mother claimed that her father and brother had been killed in July 2006 by a band of thugs because of the father's political involvement or political associations. She claimed that in January 2007, her mother was killed by the same thugs. She says she went to Lagos where she remained with her daughter's father from January 2007, until May 2008. She claimed that in May 2008, a pipeline exploded which destroyed her house. She fainted, was taken to hospital by a man who befriended her and when she could not locate her partner or daughter amongst the survivors, the man helped her to travel to Ireland via Turkey.

44. In a lengthy and detailed examination of the credibility of that account, the Tribunal member concluded that the applicant "has not related a truthful account of her circumstances". The Tribunal member also says: "On examination of the applicant's claims a number of inconsistencies and credibility issues arise in the first named applicant's account which are not properly explained by her and are such that I do not accept that she ever had any difficulties in her country of origin as she alleges or has any fear of returning there, for herself or her child, the second named applicant herein, for any reason".

45. Quite apart from the very specific findings of implausibility and lack of truthfulness in the analysis of the applicant's claim as to why she fled Nigeria, what emerges from the information and evidence examined by all of the decision makers and is effectively not disputed by the applicant, is that on her own account, she successfully relocated to Lagos from what she claimed was the original cause of her fear of persecution and lived there until her house was destroyed by the explosion. It was this destruction of the house that was, according to her account, the immediate reason for her flight and not any fear attributable to her father's political involvement or the activities of the thugs.

46. Thus, insofar as her claims were based upon the past violence by thugs against her family for political reasons, her evidence is that her father and brother were killed in 2006 and her mother was killed in 2007. She moved to Lagos and remained there until May 2008. This is not evidence that she now faces continuing risk of violence from those thugs.

47. Accordingly, as the only information as to a risk to the applicants of exposure to personal harm by reason of the repetition of previous harm, has been dismissed as not to be believed, there is no credible evidence before the Court to sustain the proposition that if returned to Nigeria prior to the hearing of the application, the applicants would face a real danger of suffering some form of personal harm from that source. In effect, the documents containing the information put forward as the evidence of the risk or threat themselves contain the contradiction of that evidence.

48. It is of course the case that when exercising its jurisdiction in judicial review the Court is concerned only with the lawfulness of the process by which an administrative decision-maker or quasi-judicial tribunal has reached the contested decision. Where issues of credibility are involved, the Court does not substitute its own assessment of the credibility of an applicant for that of a respondent. But that is not the issue now before this court on this application for an injunction. Here the Court is required to consider whether it has before it sufficient evidence to enable it to conclude that there is some reality to the contention that the applicants face a risk or likelihood of some irreversible change of circumstances should the deportation take place. The present question is not whether the Minister was entitled to reject the claims or representations as made but whether this Court has before it evidence it can act upon to conclude that the second limb of the Campus Oil test is met. So far as concerns the information relating to the applicants reasons for leaving Nigeria are concerned the Court does not find the evidence adequate or reliable.

49. In support of the application, however, a different aspect of the case has been relied upon. It is argued that the application for subsidiary protection was based also upon a risk of serious harm "as a member of a particular social group comprising of young single mothers, with no family support and no means of protection. She avers that she will be at risk of denial of basic and fundamental rights as a woman and of persecutory discrimination by reason of her status as a member of a particular social group comprising if (sic) her family and/or her status as a single mother no familial support network".

50. As evidence of the reality of this risk extensive quotations are pointed to from a variety of reports dealing with the status of women generally and the status of single mothers in Nigeria in particular.

51. The difficulty for the applicants and for the Court is that this argument is advanced in very general terms based upon what are in effect, information, opinions and surveys contained in reports by foreign government agencies and international voluntary organisations involved in monitoring human rights conditions. The Court appreciates that in the evaluation of claims for international protection it is invariably necessary for decision makers to have recourse to material of this kind when endeavouring to assess the reality of persecutory risks alleged to exist in particular countries. Such information can undoubtedly be of great value when it contains evidence of actual political, ethnic, religious or social conflict or violence in specific areas.

52. In the view of the Court, however, the position is different where such material is sought to be relied upon to demonstrate that a particular individual must necessarily face conditions which amount to inhuman or degrading treatment by reason of the general social conditions prevailing in a given country for a particular group such as women generally or single mothers. What is at issue in such cases as in the present application for an interlocutory injunction is not whether the applicant would face harsh conditions as compared with the situation in this country, but whether the particular individual would necessarily be compelled to undergo some form of irreparable adverse treatment amounting to personal harm if returned to a particular country.

53. It does not necessarily follow, in the view of the Court, from the fact that one or more such sources of information paints a bleak picture of the status of women generally; or of the inadequate treatment by the authorities of rape victims; or the absence of remedies against violent husbands or the lack of support for single mothers, that the Court must conclude that an individual applicant will therefore be at risk of being raped or of suffering violence or harm by some unidentified attacker. The Court is thus confronted with the difficult task of evaluating the likelihood of personal risk to the particular applicant in the light of that general background information. The fact that such reports may for example indicate that in a particular country mistreatment of women is common or that the facilities for support of single mothers are negligible, does not create a presumption that all women are mistreated or that a specific individual will be without support.

54. The onus of establishing the existence of such risk to the necessary degree in order to obtain injunctive relief lies with the applicant and can only be discharged by reference to credible evidence. Although no applicant can prove that she will be raped or otherwise harmed, some credible factual context must be substantiated which makes the possibility of such harm a real risk in the context of the information available about the country in question. The Court had a recent example of that reality being substantiated in a case where up to date country of origin information was introduced to establish that in a particular country returning failed asylum seekers were being arbitrarily detained on arrival and subsequently punished for having left the country using false documents. That evidence provided the court with a basis for accepting that the applicant in question did face an actual risk if returned of being subjected to that treatment. The connection was thus made between the general information about conditions in the country and the personal situation of the individual concerned when returned.

55. In the judgment of the Court, that threshold has not been reached by the material relied upon in this application. The applicant, if she returns to Nigeria will find herself in the same position as other Nigerian women who face the same difficulties whether as women or as single mothers. That does not mean that her return to Nigeria necessarily exposes her to a risk of irreparable mistreatment at least in the absence of some evidence that her situation is such as to attract some distinct or heightened risk of such mistreatment as compared with others.

56. There is one final point which might to be made. It is not the function or competence of the High Court in the exercise of its judicial review jurisdiction to decide in any given case whether a particular person should be deported. Its only competence is to decide whether in the circumstances of each case the deportation order has been made in accordance with law. The fact that the Court declines to grant an interlocutory injunction does not oblige the respondent to implement the deportation order pending the hearing of the case. That is a matter for the respondent to decide knowing the case that has been made and the possible consequences for the State if deportation takes place on foot of an order subsequently found to be unlawful. Furthermore, the refusal of interlocutory relief when there is no evidential basis for the grant of an injunction does not preclude a later application should circumstances change and evidence become available which supports the existence of a credible risk of an irreversible or irreparable change being brought about in an applicant's circumstances by the implementation of the deportation order.

57. In the present case, however, the application for interlocutory relief is refused for the reasons given above.