Neutral Citation Number: [2008] IEHC 269

**THE HIGH COURT**
**JUDICIAL REVIEW**

**2006 No. 155 J.R.**

**BETWEEN**

**V. S., B. S., Vv. S. (A MINOR SUING BY HIS MOTHER AND NEXT FRIEND B. S.) AND Va. S. (A MINOR SUING BY HER MOTHER AND NEXT FRIEND B. S.)**

**APPLICANTS**

**AND**
**THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM**

**RESPONDENT**

**Judgment delivered by Mr. Justice John Edwards on the 29th day of July 2008**

**Factual background**

1. The applicants are a family of four Croatian nationals. The first and second named applicants are husband and wife respectively and they are the parents of the third and fourth named applicants. The third named applicant is a sixteen year old boy, who was born on the 30th May, 1992. The fourth named applicant is a twelve year old girl, who was born on the 21st February, 1996. By an order of Mr. Justice Charleton dated 19th February, 2008, the applicants were each respectively granted leave to apply by way of judicial review for orders of *certiorari* quashing deportation orders signed by the respondent on the 17th January, 2006, in respect of each of the applicants.

2. The applicants arrived in Ireland on the 23rd June, 2003. At that time the third and fourth named applicants would have been eleven years of age and seven years of age respectively. On the 24th June, 2003, the first and second named applicants applied for refugee status. On the same date the second named applicant signed a document in which stated that she wished to have her children, the third and fourth named applicants, included under her application for asylum and did not wish to have them interviewed or considered separately from her asylum application. On the 13th March, 2004, the Refugee Applications Commissioner issued reports under s. 13 of the Refugee Act 1996, in respect of the first and second named applicants' asylum applications recommending that they should not be declared by the respondent to be refugees. The report relating to the second named applicant referred in its heading to the third and fourth named applicants as "dependents covered by this application".

3. The first and second named applicants appealed the Refugee Applications Commissioners' recommendations to the Refugee Appeals Tribunal on the 13th May, 2004. On the 3rd June, 2004, the Refugee Appeals Tribunal made a determination refusing the appeal of the first named applicant. He was notified of this by letter dated 16th June, 2004. The respondent wrote to the first named applicant on the 13th July, 2004, informing him that he proposed to make a deportation order in respect of him, and advising him of the options open to him.

4. It appears from the paperwork that the Refugee Appeals Tribunal also purported to issue a determination refusing the appeal of the second named applicant (covering the third and fourth named applicants also) on the 3rd June, 2004. However, due to some procedural irregularity, the nature of which is not entirely clear to the court, the second named applicant's appeal was reconsidered by the Refugee Appeals Tribunal and a further determination was arrived at by the said Tribunal on the 2nd February, 2005, refusing the appeal of the second named applicant. Once again, the determination in the second named applicant's case was expressed to cover and bind the third and fourth named applicants. The second named applicant was notified of the Refugee Appeals Tribunal's determination on the 7th February, 2005. On the 16th February, 2005, the respondent wrote to the second named applicant informing her that he proposed to make a deportation order in respect of the second, third and fourth named applicants and advising her of the options open to them.

5. On the 30th July, 2004, the Refugee Legal Service submitted representations on behalf of the first named applicant, in response to the respondent's letter of the 16th June, 2004, seeking leave for the first named applicant to remain in the State on humanitarian grounds. On 6th March, 2005, the Refugee Legal Service submitted representations to the respondent on behalf of the second, third and fourth named applicants, in response to the respondent's letter of the 16th February, 2005, seeking leave for the second, third and fourth named applicants to remain in the State on humanitarian grounds.

6. On the 4th August, 2005, a Ms. Tanya M. Hanbury, Clerical Officer of the Repatriation Unit of the respondent's Department prepared a submission following an examination of the file relating to the first named applicant. She concluded that returning the first named applicant to Croatia would not be contrary to s. 5 of the Refugee Act 1996, and she recommended that the respondent should sign a deportation order in respect of the first named applicant. The evidence before me confirms that Ms. Hanbury made her recommendation having considered the papers on file, including the Refugee Applications Commissioner's recommendation and the Refugee Appeals Tribunal's decision. On the 9th August, 2005, a Ms. Claire L. Grayson, Executive Officer in the respondent's Department, confirmed that she had read and considered all the papers on the file and she also recommended that a deportation order should be made. On the 9th August, 2005, the entire file relating to the first named applicant was further considered by a Mr. Tony Butler, Assistant Principal Officer, in the Repatriation Unit of the respondent's Department and he in turn endorsed the recommendation of Ms. Grayson, that a deportation order should be made in respect of the first named applicant. The entire file was then placed before the respondent, who followed the recommendations of his officials and signed a deportation order in respect of the first named applicant on the 17th January, 2006.

7. On the 5th August, 2005, the aforementioned Ms. Tanya M. Hanbury, Clerical Officer in the Repatriation Unit of the respondent's Department prepared a submission following an examination of the file in relation to second, third and fourth named applicants. She concluded that returning the second, third and fourth named applicants to Croatia would not be contrary to s. 5 of the Refugee Act 1996, and she recommended that the respondent should sign deportation orders in respect of them. The evidence before me establishes that Ms. Hanbury made her recommendation having considered the papers on file, including the Refugee Applications Commissioner and the Refugee Appeals Tribunal's decision. On the 9th August, 2005, the aforementioned Ms. Claire L. Grayson, Executive Officer in the Repatriation Unit of the respondent's Department, having read and considered all the papers on file including the submission of Ms. Hanbury, endorsed the recommendation of Ms. Hanbury that deportation orders should be made in respect of the second, third and fourth named applicants. On the 12th August, 2005, the file was further considered by the aforementioned Mr. Tony Butler, Assistant Principal Officer, attached to the Repatriation Unit of the respondent's Department, and, having read and considered the file, he endorsed in turn the recommendation of Ms. Grayson, that deportation orders should be made in respect of the second, third and fourth named applicants. The entire file was then placed before the respondent, who followed the recommendations of his officials and signed deportation orders in respect of the second, third and fourth named applicants on the 17th January, 2006.

8. The applicants were notified of the making of the deportation orders in respect of them by letters dated the 26th January, 2006.

**The proceedings herein**
9. The applicants seek to challenge the deportation orders made by the respondent on a variety of grounds. Firstly, it is submitted in respect of each of the applicants that the respondent has been guilty of such delay as to entitle the applicants to an order quashing the deportation orders in respect of them. It is further alleged that the respondent failed in his statutory duty under s. 3(6) of the Immigration Act 1999, to properly consider the applications of the applicants for leave to remain on humanitarian grounds. A further specific ground is alleged with respect to the application of the first named applicant. It is alleged that the facts as they apply to the first named applicant were seriously misrepresented in the information that was given to the respondent for his consideration. It is further alleged that the applications of the third and fourth named applicants were not properly considered, but were twinned with those of their mother. It is further alleged that certain medical facts pertaining to the second named applicant were not properly considered by the respondent. Further, there is a general complaint of lack of fairness in the process whereby the applicants' section 3 applications were considered.

**Relevant legislation**
10. Section 3 of the Immigration Act 1999, to the extent that it is relevant to the issues before me, provides:-

> "(1) Subject to the provisions of section 5 (prohibition of refoulement) of the Refugee Act, 1996 , and the subsequent provisions of this section, the Minister may by order (in this Act referred to as 'a deportation order') require any non-national specified in the order to leave the State within such period as may be specified in the order and to remain thereafter out of the State.
>
> (2) An order under subsection (1) may be made in respect of -
>
> . . .
>
> (f) a person whose application for asylum has been refused by the Minister,
>
> (3) (a) …….. where the Minister proposes to make a deportation order, he or she shall notify the person concerned in writing of his or her proposal and of the reasons for it and, where necessary and possible, the person shall be given a copy of the notification in a language that he or she understands.
>
> (b) A person who has been notified of a proposal under paragraph (a) may, within 15 working days of the sending of the notification, make representations in writing to the Minister and the Minister shall –
>
> (i) before deciding the matter, take into consideration any representations duly made to him or her under this paragraph in relation to the proposal, and
>
> (ii) notify the person in writing of his or her decision and of the reasons for it and, where necessary and possible, the person shall be given a copy of the notification in a language that the person understands.
>
> . . .
>
> (6) In determining whether to make a deportation order in relation to a person, the Minister shall have regard to –
>
> (a) the age of the person;
>
> (b) the duration of residence in the State of the person;
>
> (c) the family and domestic circumstances of the person;
>
> (d) the nature of the person's connection with the State, if any;
>
> (e) the employment (including self-employment) record of the person;
>
> (f) the employment (including self-employment) prospects of the person;
>
> (g) the character and conduct of the person both within and (where relevant and ascertainable) outside the State (including any criminal convictions);
>
> (h) humanitarian considerations;
>
> (i) any representations duly made by or on behalf of the person;
>
> (j) the common good; and
>
> (k) considerations of national security and public policy,
>
> so far as they appear or are known to the Minister."
>
> 11. Section 5 of the Refugee Act 1996, is in the following terms:-
>
> "(1) A person shall not be expelled from the State or returned in any manner whatsoever to the frontiers of territories where, in the opinion of the Minister, the life or freedom of that person would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion.
>
> (2) Without prejudice to the generality of subsection (1), a person's freedom shall be regarded as being threatened if,

*inter alia*, in the opinion of the Minister, the person is likely to be subject to a serious assault (including a serious assault of a sexual nature)."

12. Commenting on this statutory scheme, Clarke J. in *Kouaype v. the Minister for Justice, Equality and Law Reform* [2005] IEHC 380 said:-

> "Thus in general terms there are two statutory prerequisites to the making of a deportation order.
>
> (1) The Minister is required to be satisfied that none of the conditions set out in s. 5 of the 1996 Act are present; and
>
> (2) The Minister is also required to consider the humanitarian and other factors set out in s. 3(6) of the 1999 Act, insofar as they are known to him. In this latter context it obviously follows that the Minister is required, inter alia, to have regard to any representations on those matters which are made by or on behalf of the person concerned.

13. Finally it does need to be noted that the reasons on which the Minister is prohibited from making a deportation order under s. 5 of the 1996 Act, are virtually identical to the basis upon which a person qualifies for refugee status in Irish law."

14. The circumstances in which a decision by the Minister to make a deportation order might be challenged were considered by Clarke J. in the Kouaype case hereinbefore mentioned. In that regard he had this to say:-

> ". . . it seems to me that the grounds upon which a decision by the Minister to make a deportation order in the case of a failed asylum seeker, can be challenged are necessarily limited. Without being exhaustive it seems to me that it would require very special circumstances for such a review to be possible unless it can be shown that:-
>
> (a) the Minister did not consider whether the provisions of s. 5 applied. Where the Minister says that he did so consider and in the absence of any evidence to the contrary this will be established;
>
> (b) the Minister could not reasonably have come to the view which he did. It is unlikely that such circumstances could arise in practice in most cases of failed asylum seekers given that there will already be a determination after a quasi judicial process which will in substance amount to a finding that the prohibition contained in s. 5 does not arise. However it should be noted that it is incumbent on the Minister to consider any matters which have come to his attention (whether by way of submissions or representations on behalf of the applicant or otherwise) which would tend to show a change in circumstance from the position which obtained at the time the original decision to refuse refugee status was made;
>
> (c) the Minister did not afford the applicant a statutory entitlement to make representations on the so called 'humanitarian grounds'; or
>
> (d) the Minister did not consider any such representations made within the terms of the statute, or the factors set out in s. 3(6) of the 1999 Act, or (possibly) the Minister could not reasonably have come to the conclusion which he did in relation to those factors."

15. In the case before me it is clear that all of the various challenges come within the last category.

**Delay**

16. All of the applicants complain that the respondent was guilty of delay to such a degree as to entitle them to an order quashing the deportation orders in respect of them. The time lapse between the application for leave to remain by the first named applicant and the making of the deportation order was approximately seventeen and a half months. The time lapse in respect of the second and third and fourth named applicants was approximately ten months. The applicant's case in this regard is that they each had an entitlement to a decision within a reasonable time. The entitlement to a prompt decision in such matters is an aspect of constitutional justice. They contend that decisions were not made within a reasonable time in respect of any of them. Moreover, they say that the court should look at the totality of the length of time that the applicants have now spent in the State. They point out that they have put down roots and to a large extent have become settled and established within the State. In respect of the third and fourth named applicants the point is strongly made that they have, to a perhaps even greater extent than is so in the case of their parents, become assimilated into Irish society and that that should very much be taken into account. It is pointed out that the children have become accustomed to speaking English rather than Serbo-Croat, they are integrated within the Irish educational system and they have a social network here in Ireland. In essence, it is suggested that it would be hugely disruptive, upsetting and inappropriate in all the circumstances that they should be required to return to Croatia. The applicants are not making the case that the Minister is any way estopped from deporting them by virtue of the delay. Rather, they make the somewhat more subtle point that a direct consequence of the Minister's delay is that they all have, but particularly the children have, become ever more integrated and assimilated into Irish life and Irish society and that they were entitled to expect that significant regard would be had to this when their applications for leave to remain on a humanitarian basis were being considered. Their case is that there was little or no attention paid to these aspects of the matter by the respondent in considering their applications.

17. The respondent has submitted that the presence or otherwise of delay becomes irrelevant once deportation orders have been made. There is clear authority for the proposition that the respondent is entitled to make deportation orders irrespective of how long the applicants have been in the country. The respondents rely upon *A.A. v. The Minister for Justice, Equality and Law Reform* [2005] 4 I.R. 564. wherein Clarke J. said at 574/5:-

> "There may well be an obligation upon the first respondent to consider representations made under s. 3 of the Act of 1999, in a timely fashion. However, I am not persuaded that there are arguable grounds for suggesting that the remedy for any failure on the part of the first respondent to come to such a timely view would be such as would place the applicant concerned in a position where the first respondent could no longer exercise an entitlement to make a deportation order. Obviously the first respondent is required, on the occasion of any application to revoke a deportation order (which for the reasons indicated by the High Court (Finlay Geoghegan J). in *Malsheva v. Minister for Justice*, (Unreported, High Court, Finlay Geoghegan J., 25th July, 2003) may arise at a time even after deportation) to consider the facts as they then are. Clearly in those circumstances the first respondent was obliged when considering the application for a revocation of the deportation order to consider the relationship that had grown up in the intervening period between the parties and the impending marriage that resulted from it. If an earlier decision had been taken then perhaps less weighty considerations would have arisen. However, I cannot see that there are arguable grounds sufficient

> for the purposes of leave for the contention that the delay, of itself, interfered with the entitlement of the first respondent to exercise his discretion in the way that he did."

18. The respondent further relied upon *Lupascu v. The Minister for Justice, Equality and Law Reform* [2004] IEHC 400 wherein Peart J. said:-

> "The first ground put forward in his statement of grounds is that the Minister has been guilty of excessive delay between 14th December, 2001, and the 13th October, 2003. The first matter to remark is that there is no prescribed time within which the Minister must make the Deportation Order following the notification of his proposal to do so. I do not consider that the applicant has made out substantial grounds, to the necessary extent, that by this delay the Minister could be deemed to have acquiesced to the presence of the applicant here, and this is particularly so in the light of the Minister's letter dated 26th March, 2003, which makes the position of the applicant clear at that point in time."

19. The respondent submits that the only significance of the delay was that, if the respondent was indeed guilty of unreasonable delay, the applicants might have sought to compel him to make a decision. In that regard see my decision in the case *of K.M. and D.G. v. The Minister for Justice, Equality and Law Reform* (Unreported, High Court, Edwards J., 17th July, 2007). However, they did not do so and once the respondent decided to make deportation orders, the delay ceased to be relevant. I consider that the respondent is correct in his submissions as to the legal remedies open to an applicant in circumstances where the Minister is guilty of unreasonable delay in rendering a decision. However, these submissions, though undoubtedly correct, do not in fact address the central point made by the applicants which is to do with the degree to which they have become integrated or assimilated into Irish life and Irish society having regard to the total period of time that they have been in the State, of which total period any period attributable to the delay by the Minister was but a part. I am satisfied that the applicants were entitled to have the duration of their residence in the State taken into account in two respects. Firstly, they were entitled to have it taken into account as a circumstance per se under s. 3(6)(b) of the Immigration Act 1999. Secondly, they were entitled to expect that the extent to which they had become assimilated within and integrated into society and life in Ireland would be taken into account under the heading of humanitarian considerations pursuant to s. 3(6)(h) of the 1999 Act.

20. In this particular case it is clear that Ms. Hanbury considered the position of each of the applicants respectively under s. 3(6)(b) of the Immigration Act 1999. In relation to the first named applicant she noted:-

> "Mr. S. arrived in the State on the 26/6/03. He has been in the State for approximately two years and one month at the time of writing this submission."

21. In relation to the second, third and fourth named applicants she stated:-

> "Ms. S. and her two children Vv. and Va. arrived in the State on the 23/6/03. They have been in the State for approximately two years and one month at the time of writing this submission."

22. In relation to humanitarian considerations the following statements appear in the report of Ms. Hanbury relevant to the time that the applicants have spent within the State and the degree to which they have become assimilated in Irish society. In respect of the first named applicant she states:-

> "Mr. S. has been in the State for over two years with his wife and two children. His wife is receiving medical treatment and his two children are attending school in the State."

23. In relation to the second, third and fourth named applicants she says:-

> "Ms. S. has been in the State for over two years with her husband and two children. Her two children (ages 13 and 9) are attending school in the State."

24. It is undoubtedly true that the reports of Ms. Hanbury do not deal in detail with the extent to which the applicants, and in particular the children, have become settled and assimilated within the State. Having said that the reports must be read in their totality and it is the case that overall they do present a reasonably comprehensive picture of the applicants' respective circumstances. Further, the material which forms the basis of Ms. Hanbury's reports included the Refugee Applications Commissioner's section 13 report, the determinations of the Refugee Appeals Tribunal, and various representations and submissions forwarded on the applicant's behalf by the Refugee Legal Service. These submissions were also accompanied by supporting documentation in the nature of school reports, medical reports, character references and testimonials, letters of support from neighbours and other persons within the community in which the applicants live, and so on. It is clear from Ms. Hanbury's reports that she had regard to all of this material. In all the circumstances I am satisfied that she did consider and take account of the extent to which the applicants have been within the State and the extent to which they have become assimilated within and/or integrated into Irish life in making her recommendations. It is clear that when Ms. Grayson , Mr. Butler and the Minister respectively each came in turn to consider the case, they had the same material before them that Ms. Hanbury had. In the circumstances I consider that the claim that the Minister failed to have regard to the length of time that the applicants had been within the State is not made out. Further, I cannot say that the Minister's decision was irrational having regard to the length of time that the applicants had been in the State. On the contrary, it seems to me that it was perfectly open to the Minister to arrive at the decisions that he did, notwithstanding the periods in question and his decisions are unimpeachable in that context.

**Alleged factual misrepresentation with respect to the first named applicant**

25. A complaint is made on behalf of the first named applicant that the report prepared by Ms. Tanya M. Hanbury, dated the 4th August, 2005, concerning his case contained potentially misleading information, which was not explained or put in context. It states the following with respect to considerations arising under s. 3(6)(g) of the Immigration Act 1999,

> "Character and conduct of the person both within and (where relevant and ascertainable) outside the State (including any criminal convictions).

26. Mr. S. has not come to the adverse attention of the gardaí during his time in the State. His conduct and character before entering the State cannot be verified. However, Mr. S. stated that he was detained by the authorities in Croatia.

27. In addition, there are references on file from friends and acquaintances of Mr. S. and from his accommodation manager. They attest positively to Mr. S.'s character."

28. It was submitted to the court on behalf of the first named applicant that the summary provided to the respondent in the report of Ms. Hanbury grossly misrepresented the actual conduct of the first named applicant insofar as it suggested that he was lawfully detained by the Croatian authorities for good reason or because he had been engaged in some nefarious activity. The court's attention has been drawn to the fact that Charleton J., giving judgment *ex tempore* at the leave to apply stage in these proceedings, described this reference as "worrying". Further, in the course of the said *ex tempore* judgment delivered on the 1st February, 2008, the learned judge stated:-

> "Any information in relation to Mr. S. came from him. It came from him because he was the only [person] who said that he had any problem with the State authorities in Croatia by reason of his Serbian ethnicity. This is translated in the report into Mr. S. stating that he was detained by the authorities in Croatia. Being detained, being suspected means absolutely nothing. It seems to me that this is arguably an error."

29. I would certainly agree that the statement in question, if taken out of context, is capable of being construed as suggesting that the first named applicant had been in trouble with the law in Croatia. As was pointed out by counsel, there is no attempt in the report to explain that Mr. S. was ethnically on the wrong side of a significant cultural, ethnic and social divide within Croatia. However, when one reads the entirety of the report of Ms. Hanbury, it is quite clear that it is significantly favourable to him overall with respect to his character and that he is not regarded as being a person of bad or even doubtful character. Moreover, when his case is considered with respect to s. 3(6)(k) of the Immigration Act 1999, in relation to considerations of national security and public policy, the report expressly states that "considerations of national security and public policy do not have a bearing on this case". Further, the Minister was presented not just with the report of Ms. Hanbury, but with the entire file relating to the first named applicant's case. The circumstances relating to his arrest are set out in detail in the section 13 report prepared by the Refugee Applications Commissioner and they are also rehearsed again in the determination of the Refugee Appeals Tribunal. Moreover, there is extensive country of origin information to further contextualise the first named applicant's arrest and detention. In all the circumstances I am satisfied that the full picture with respect to the first named applicant's good character was placed before the Minister and that there was no material misrepresentation as to the facts of the first named applicant's case.

**Alleged failure to consider the circumstances of the third and fourth named applicants**

30. It is submitted on behalf of the third and fourth named applicants that the respondent did not consider any of the factors that were unique to the third or fourth named applicants and that the manner in which he arrived at his decision only considered the factors that applied to the second named applicant. It was submitted that prior to their arrival in Ireland the applicants had unsuccessfully sought asylum in Norway in June 2001 and were deported to Croatia in May 2002. On their return to Croatia, the third and fourth named applicants experienced such significant bullying and harassment in school that they became truant. It is submitted that in the report of Ms. Tanya Hanbury into the circumstances of the second, third and fourth named applicants, the only mention of the factors just mentioned in contained in a single sentence in the section concerning considerations arising under s. 3(6)(h) of the Immigration Act 1999, namely humanitarian considerations. The sentence in question states:-

> "The psychiatric service has met with the children and they verbalise both physical violence and constant verbal threats directed towards them by former schoolmates."

31. It is submitted on behalf of the third and fourth named applicants that while they were in Croatia they were unable to attend school or to live normal and unaffected lives similar to the lives they have been living since moving to Ireland in 2003. Their experience in Ireland has been a positive one and they have put down roots in Ireland since coming to live here. It is stressed that they are in their formative years. Complaint is made that there is not a single reference to the particular or individual circumstances of the third or fourth named applicants respectively, nor is there any reference a to why they, as distinct from their mother, should not be granted leave to remain on humanitarian grounds. It is suggested that the Minister was not provided with the requisite information to make an informed and proper decision with respect to the third and fourth named applicants. It is further submitted that a deportation of the third and/or the fourth named applicants without any, or any proper, consideration of the factors that specifically affect them, would constitute a breach of natural and constitutional justice by the respondent.

32. Counsel for the respondent makes the point that the third and fourth named applicants, while children, are nonetheless in the same position as the first and second named applicants as failed asylum seekers. The fear alleged on the part of the children was the same as that alleged on the part of the first and second named applicants. Croatia is a designated safe country of origin. Even if it be the case that educational facilities available in Croatia are not as good as those available in Ireland, that would not, of itself, constitute a sufficient reason to permit failed asylum seekers in the position of the third and fourth named applicants to remain in the State. The court's attention in this regard is drawn to the case of *Agbonlahor v. The Minister for Justice, Equality and Law Reform* (Unreported, High Court, Feeney J., 18th April, 2007). It is further pointed out that the Supreme Court has recognised that the parents of Irish citizen children can be deported even though the children will accompany them to countries where educational and health facilities are inferior to those available in this country. The cases *of L. and O. v. The Minister for Justice, Equality and Law Reform* [2003] 1 I.R. 1 and *Oguekwe v Minister for Justice, Equality and Law Reform* (Unreported, Supreme Court, 2nd May, 2008), are cited in support of this proposition. The respondent contends that no case has been made out that the respondent failed to consider the family and domestic circumstances or humanitarian considerations that might affect the third and fourth named applicants. The respondent contends that it was abundantly clear that the case of a family was being considered.

33. I find myself in agreement with the respondent with respect to this aspect of the claim. When the reports of Ms. Hanbury are read in their entirety it is quite clear that the position of a family was being considered. It is further quite clear that the respondent was appraised of the fact that the children are in their formative years, that they have settled well in this country, that they are engaged with the Irish educational system and that they have developed a social network here. The fact that they had specific difficulties in school in Croatia and were subjected to great stress as a result thereof is specifically identified in Ms. Hanbury's report relating to the second, third and fourth named applicants. The respondent was therefore in possession of the relevant facts. In all the circumstances of the case I am not satisfied that there is any substance in the complaint made.

**Alleged failure to properly or adequately consider the medical history of the second named applicant**

34. It has been submitted on behalf of the second named applicant that her medical history was not properly or adequately considered by the respondent in arriving at his decision. It is pointed out on her behalf that her medical history includes a number of serious documented illnesses and complaints. These include chronic depression, post traumatic stress disorder, suicidal ideation, nightmares, headaches, heart palpitations, Hepatitis B and generally fragile mental health. It is pointed out that her generally fragile mental health is a direct result of her experiences in Croatia during the war and the fact that she is ethnically Roma. Counsel makes two points in respect of the second named applicant. The first is that a return to Croatia would necessarily exacerbate her psychiatric and psychological symptoms. Specifically it has been submitted that her inability to protect her children from what is described as "the situations that will inevitably befall them on their return" will cause an increase in her symptoms and her suicidal ideation. The second point made is that the treatment available to her in this jurisdiction will not be available in Croatia. It is

suggested that if the deportation order against her is executed she will experience a reduction in the level of medical care and assistance available to her compared to that which she currently enjoys in Ireland. By way of reply to the first point the respondent says her subjective fears were considered in the context of her asylum application and were found to be not objectively well founded. In reply to the second point the respondent contends that he is not obliged to permit a failed asylum seeker to remain in the State on the ground that her medical condition may be better in this country or on the ground that better treatment may be available in this country than in her country of origin. Two authorities are cited in support of his position, namely, *Cosma v. Minister for Justice, Equality and Law Reform* (Unreported, High Court, Hanna J., 15th February, 2006), and *Agbonlahor v. The Minister for Justice, Equality and Law Reform*, already cited.

35. Once again I find myself in agreement with the respondent with respect to this aspect of the matter. The mere fact that the second named applicant may have subjective worries, indeed significant subjective worries, about how she and her children may be treated when they return to Croatia is not determinative of anything. Moreover, she has been through the asylum process and her fears have been found to be not well founded, applying a forward looking test. Croatia is a designated safe country of origin. Further, Feeney J. in the *Agbonlahor* case expressly approved of the following statement from the judgment of Lord Hope in the case of *N. v. Home Secretary* [2005] 2 A.C. 296, wherein he stated:-

> " …..a comparison between the health benefits and other forms of assistance which are available in the expelling State and those in the receiving country does not of itself give rise to an entitlement to remain in the territory of the expelling State."

36. Lord Hope further stated later in the same judgment:-

> "Aliens cannot in principle claim any entitlement to remain on the territory of a contracting State in order to continue to benefit from medical, social or other forms of assistance provided by the expelling State."

37. Moreover, Feeney J. expressed the view that the approach identified by the House of Lords in the *N.* case is a correct and proper approach and is entirely consistent with the approach of the Supreme Court in this country in the case of *A.O and O.J.O. v. The Minister for Justice* [2003] 1 I.R. 1.

**Fair Procedures**
38. Having carefully reviewed all of the paperwork put before me in relation to this matter I am satisfied that the applicants were afforded the benefit of fair procedures in the consideration of their respective claims for leave to remain. This was not a *Carltona* situation. The respondent personally exercised his statutory discretion. The evidence before me as contained in the affidavit of Ms Carr is to the effect that the entire file was placed before the respondent. The applicants' Solicitor speculates in an affidavit sworn by him in response that there is no way that a busy Minister would have had time to read the entire file and that he must be presumed to have read only the reports of Ms Hanbury. With all due respect to the applicants' Solicitor I do not consider that any such presumption is justified. But even if he is correct, I am satisfied that the respondent would have been entitled to consider each of these cases solely on the basis of a reasonable and fair report from one of his officials based upon a review by that official of the entire file with reference to the statutory considerations specified in section 5 of the Refugee Act 1996 and section 3 of the Immigration Act, 1999. Of course, in such circumstances the entire file should be made available to the respondent in case he should feel the need to further review it personally, or to clarify some point in the report presented to him. In this instance I am satisfied that the reports prepared by Ms Hanbury were, as a matter of fact, both reasonable and fair. Moreover, the entire file was made available to the respondent in this case and I do not consider that he bears any onus to specify what part or parts of it he may have consulted.

**Conclusion**
39. For the reasons hereinbefore stated I must dismiss the claims of each of the applicants. I am satisfied that the deportation orders signed by the respondent on the 17th January, 2006 are lawful and that the Minister's decision to sign the said orders was in each instance rational and within jurisdiction. I will hear arguments with respect to costs.