Neutral Citation [2013] IEHC 206

THE HIGH COURT

[2013 No. 4086 P]

BETWEEN

F. O.

PLAINTIFF

AND

THE MINISTER FOR JUSTICE AND EQUALITY, IRELAND AND THE ATTORNEY GENERAL

DEFENDANTS

JUDGMENT of Mr. Justice Colm Mac Eochaidh delivered on the 9th day of May 2013

1. The defendants assert that these plenary proceedings which they say comprise a collateral attack on a deportation order must be dismissed because the validity of such an order may only be questioned by application for judicial review under Order 8 of the Rules of the Superior Courts and section 5 of the Illegal Immigrants (Trafficking) Act 2000.

Background Facts

2. The plaintiff was born in 1967 in Nigeria. On 17th January 2007, she was accused of killing her husband and taken into custody. On 20th January 2007 she was released on bail. She says she was ill-treated when she was in custody and that she fears retribution from her deceased husband's family. Following her release, the plaintiff came to Ireland and sought asylum. The Refugee Appeals Tribunal (the "RAT"), rejected her asylum application on 25th July 2007, on the basis that her claim was not credible.

3. In September 2007 the Irish Naturalisation and Immigration Service (the "INIS") wrote to the plaintiff to inform her that her entitlement to stay in the State has expired and that she had three options: option one, leave the State before the Minister decides on a deportation order; option two, consent to a deportation order; option three, apply for subsidiary protection and/or make representations to remain temporarily in the State. This "three options letter" said that she had to choose one of the options and concluded by saying:

> "If no response is received to this letter within 15 working days, it will be assumed that you do not wish to return home voluntarily and that you do not wish to apply for either subsidiary protection and/or make representations to remain temporarily in the State. The Minister will then consider making a deportation order in your case."

4. Within 15 days of that letter, the plaintiff's solicitors wrote to the INIS advising that judicial review proceedings of the decision of the RAT had been instituted and asking for confirmation "that our client can ignore" the three options letter.

5. That letter was acknowledged on 27th September 2007, with an indication that the correspondence was being "forwarded to the relevant section".

6. The judicial review proceedings challenging the decision of the RAT were unsuccessful and terminated in about the middle of March 2009.

7. The plaintiff says that on about the 18th March 2009, after the unsuccessful judicial review, she met her solicitor who informed her that it was now open to her to apply for subsidiary protection and/or humanitarian leave to remain.. Although the solicitor's letter requesting the defendants' permission to ignore the three options letter did not receive a substantive reply, the solicitor correctly advised his client that following the determination of the judicial review proceedings, it was open to the plaintiff to apply for subsidiary protection and/or humanitarian leave to remain, notwithstanding the lapse of time, substantially more than 15 days having passed within which such applications were originally required to have been made. This is so because as a matter of European law and as a matter of Irish law, a decision on subsidiary protection must post-date a decision on refugee status (that appears to be the generally accepted interpretation of the law, though I am aware that the Supreme Court has recently referred a question to the European Court of Justice as to whether it is always necessary to be refused refugee status before applying for subsidiary protection).

8. Neither the plaintiff, her solicitor nor the defendants took any step with respect to her status until an examination of her file under s. 3 of the Immigration Act 1999 was carried out by an Executive Officer of the Repatriation Unit, in September 2012. A detailed report was compiled as to the status and circumstances of the plaintiff, such report being made in aid of the making of a deportation order by the Minister.

9. The report noted that she suffered from TB and that she had received in patient treatment in the Mater Hospital in March 2007. In this connection, the report sets out the availability of medical care in Nigeria and notes that Tuberculosis is treated for free at almost all public hospitals.

10. Deportation orders must be underpinned by a consideration of the prohibition on refoulement contained in s. 5 of the Refugee Act 1996. The report recites that the plaintiff had been accused of killing her husband, that she was locked in a cell from 17th to 20th January 2007, that she was tortured during this time and that she was not allowed to have visitors. The report also notes that she was permitted to have access to a lawyer who successfully sought bail for her and that on her release, she fled Nigeria. The plaintiffs claim that her lawyer informed her that her deceased husband's family indicated that she would be killed is also recorded in the report. The author concludes that Nigeria has a less than perfect, but nonetheless functioning police force which seeks to enforce the rule of law and that there are procedures in place for persons to lodge complaints against the police force itself.

11. The conclusions of the Office of the Refugee Applications Commissioner and the Refugee Appeals Tribunal which dismissed the plaintiffs claims because of lack of credibility are quoted and/or noted, and on this basis the author concludes that returning the plaintiff to Nigeria does not constitute refoulement. Further detailed consideration is given to the availability of medical care in Nigeria,

having regard to the provisions of Article 3 of the European Convention on Human Rights and such consideration results in a finding that "it is not accepted that there are any exceptional circumstances in this case where deporting F. O. to Nigeria would be a breach of Article 3. The fact that medical treatment available to the applicant may be less favourable than those enjoyed in Ireland does not, in itself, exist as exceptional circumstances".

12. The report also sets out a consideration of whether Article 8 of the European Convention on Human Rights might be breached by deportation. The plaintiffs personal circumstances are briefly described in this section of the report, recording the date she entered the State and applied for asylum; the fact that her husband, four daughters and two sons remained in Nigeria; the fact that her husband was murdered; and that she has TB and was admitted to the Mater Hospital in March 2007 in this connection. The report says that "no information has been submitted regarding F. O.'s activities or level of integration in the State". There is then a further detailed examination of country of origin information regarding the provision of healthcare.

13. The author sets out a precis of the well-known decision in *R. (Razgar) v. Home Secretary* [2004] 3 AC 368, which examines the effect of a deportation on a person's Article 8 ECHR rights. The author accepts that the deportation "has the potential to be an interference with her right to respect for private life within the meaning of Article 8(1) of the ECHR. This relates to her educational and other social ties that she has formed in the State as well as matters relating to her personal development since his [sic] arrival in the State". I note that this is a peculiar statement given that no submissions of any sort were made on behalf of the plaintiff to the Minister. It is clear that the author of this report had no knowledge of the social ties that the plaintiff had formed since she arrived in the State, much less about her personal development. Notwithstanding the absence of any knowledge of such facts, the author concludes that it is not accepted that any such potential interference will have consequences of such gravity as potentially to engage the operation of Article 8 ECHR. Again, this finding may not have been open to the author of the report because no submissions of any sort were made on behalf of the plaintiff. The report fails to state, in terms, that the plaintiff made no submissions as to whether she should be deported. No complaint about this or any content of the report is advanced by the plaintiff in these or any other proceedings.

14. Based on the contents and recommendation of this report, a deportation order was made on behalf of the Minister for Justice and Equality on 17th January 2013. By letter dated 3151 January 2013, and copied to the plaintiff's solicitors and the Garda National Immigration Bureau, an official from the Repatriation Unit of the INIS informed the plaintiff of the Minister's decision to make a deportation order. The letter stated that:

> "Having regard to the factors set out in s. 3(6) of the Immigration Act, 1999 good in maintaining the integrity of the asylum and immigration systems outweigh such features of your case as might tend to support your being granted leave to remain in the State." [Emphasis added]

15. The letter to the plaintiff of 31st January 2013, required her to leave the State by 17th February 2013, and stated that if she did not do so, she would be liable to be deported. In addition, the plaintiff was told that if she did not leave the State by the date indicated that she was required to come to the Garda National Immigration Bureau on 19th February 2013, at 10.00am "to make arrangements for your removal from the State". Failure to leave the State by the date indicated was said to be a failure to comply with the provisions of the deportation order and such failure will, it was said, trigger arrest and detention under s. 5(1) ofthe Immigration Act.

16. On 14th February 2013, the plaintiff's solicitors wrote to the Repatriation Division of the INIS and made the obvious point that the deportation order had been made in circumstances where no representations had been submitted but did not make the equally obvious point that the Minister's letter notifying the plaintiff of the deportation order erroneously suggested that such representations had in fact been made. Nor was any complaint made about the content of the report mentioned above.

17. The letter provided new information about the plaintiff's circumstances which had not been adverted to in the report underpinning the deportation order. (The plaintiff had recently had surgery to remove a tumour from her spine. In addition, it appears that the plaintiff has "strong connections to Ireland including an Irish citizen sister and brother-in-law, both living and working in the State and that she has three Irish citizen nephews/nieces". These are factors which were clearly not considered by the Minister in making the deportation order.)

18. It is of central significance in this application that the plaintiffs solicitors did not, on receipt of the notification of the making of the deportation order, seek to challenge the validity of that order by instituting judicial review proceedings pursuant to s. 5 of the Illegal Immigrants (Trafficking) Act 2000, but instead requested the Minister to revoke the deportation order "and allow our client to apply for subsidiary protection and leave to remain". Counsel for the plaintiff confirmed that the request thus expressed was an application for revocation of a deportation order pursuant to s. 3(11) of the 1999 Act.

19. The Repatriation Unit of the INIS replied on 18th February 2013, noted receipt of the revocation application and stated that the application was "non-suspensive of the deportation order made in respect of your client".

20. On 22nd April 2013, the plaintiff was arrested and detained pursuant to s. 5(1) of the Immigration Act 1999. Such arrest and detention may only be for the purpose of deportation which must be achieved within 56 days.

21. The next day, on 23rd April 2013, the plaintiff, sought an interim injunction restraining deportation and instituted the present proceedings seeking the following reliefs:

> (i) A declaration that the plaintiff is entitled ... to make an application for subsidiary protection at this juncture to an independent decision making authority . . . and to have same adjudicated upon independently and separately from her asylum claim, prior to any deportation taking place.
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> (ii) A declaration that the terms and conditions set out in the three options letter are such as to deny the plaintiff the right to be heard in her application for subsidiary protection.
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> (iii) A declaration that the deportation of the plaintiff prior to a decision being made upon her request to be permitted to apply for subsidiary protection dated 14th February 2013 would be unlawful.
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> (iv) A declaration that the plaintiffs constitutional right of access to the court has been infringed in failing to inform the plaintiff or her solicitors with sufficient notice of the date of actual deportation.
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> (v) An injunction restraining the defendants from deporting the plaintiff pending the determination of the proceedings.

A statement of claim was also delivered. The statement of claim focuses on failures associated with the system for consideration of applications for subsidiary protection in Ireland. No complaint is expressly made as to the validity of the deportation order. An interim injunction was granted.

22. On 25th April 2013, (the return date for the interlocutory application to restrain deportation) the defendants indicated that they wished to bring the present motion to dismiss the proceedings. I decided that the motion to dismiss should be determined in advance of the application for interlocutory relief to restrain deportation because if these plenary proceedings were legally deficient, no interlocutory relief could be granted.

23. At the hearing of the defendants' motion, some other matters emerged which seem relevant. On receipt of the deportation order, it was open to the plaintiff to institute judicial review proceedings within 14 days to challenge its validity. Instead, her solicitors opted to seek administrative revocation pursuant to s. 3(11) and to do so on the basis that the plaintiff was desirous of making an application for subsidiary protection. Counsel for the plaintiff confirmed that as yet, no application for subsidiary protection has been presented. It was also indicated by counsel for the plaintiff that the reason the validity of the deportation order was not challenged in judicial review proceedings was because the view was taken that administrative revocation could only be pursued where the proposed deportee accepted the validity of the deportation order.

24. It also emerged at the hearing that the plaintiff has been living under the supervision of and with the financial support of the State since the determination of her asylum application. These circumstances have continued even since the termination of the judicial review proceedings which unsuccessfully challenged her negative asylum determination. The State was aware of the plaintiff's circumstances and where she lived. This is borne out by the fact that the State had no difficulty in writing to the plaintiff to inform her of the making of a deportation order on 31st January 2013.

25. From the description of the background facts, it seems to me that the following matters are relevant to the determination of the present application. The focus of these plenary proceedings is the plaintiffs desire to make an application for subsidiary protection and their premise is that the deportation order should not be implemented until this process is complete. However, no reasonable explanation has been provided as to why the plaintiff or her lawyers never made and still have not made an application for subsidiary protection. On receipt of the three options letter in 2007, the plaintiff's solicitors informed the authorities that judicial review proceedings challenging the negative asylum determination had been instituted. As an application for subsidiary protection may only be entertained where a person does not qualify as a refugee, proceedings challenging such determination suspend the subsidiary protection process. Although the plaintiffs solicitors requested that the three options letter be ignored by the plaintiff because of the existence of the judicial review proceedings, in my opinion, this was not a valid much less appropriate response by a firm of solicitors to the three options letter. Such letters may never be ignored and seeking such permission cannot create an entitlement so to do. The time limits may be suspended if the refugee decision is challenged. That this was understood by the plaintiff's solicitor is indicated by the plaintiff's evidence that her solicitor informed her, following the negative determination of the judicial review proceedings, that the next step would be for her to seek subsidiary protection and/or humanitarian leave to remain.

26. Four years elapsed between the plaintiff's solicitors so informing her and the next action taken by her solicitors. The plaintiff says that she was waiting to hear from her solicitors about the application. No explanation has been provided why they never progressed that application.

27. An application for subsidiary protection is available to a person who fears serious harm and needs the protection of a foreign State. Genuine apprehension of serious harm could scarcely be associated with the apparent torpor of the plaintiff. Keane C.J. in *Re Article 26 of the Constitution and Sections 5 and 10 of the Illegal Immigrants (Trafficking) Bill 1999* [2000] IR 360, says, at p. 395, in response to an argument that a 14-day period to challenge a negative asylum decision was too short as its addressee might have changed address and might not have received the notification, said:

> "He or she is not a passive participant in that process."

Those comments are equally applicable in respect of a person desirous of seeking subsidiary protection from the risk of serious harm. I am not satisfied that the plaintiff is entitled to wait four years to hear from her solicitors about her application for subsidiary protection. The failure to apply for protection is not the fault of the defendants. Though they had constructive knowledge of her presence in the State (as they were paying her a small weekly allowance and paying for her so called 'direct provision' accommodation) there was no moral or legal requirement on the authorities to chase down her application for subsidiary protection or her application for leave to remain temporarily in the state.

28. I should also note that a further justification for not having made a claim for subsidiary protection was sought to be addressed by reference to what are perceived by the plaintiff's solicitors and counsel to be deficiencies in the Irish system for assessing claims for subsidiary protection. I am not persuaded that this explanation is the genuine reason why no application for subsidiary protection was ever made. Where there is a statutory requirement to make application for this protection within a particular period, the fact that one is dissatisfied with the manner in which the system is operated does not negative the time limits. The obvious course of action is to make an application subject to submissions that the system is deficient. In any event, had this been the real reason why no such application was made, there would be some evidence of communication between plaintiff and solicitor about this matter.

29. At the hearing of this motion counsel for the plaintiff could not indicate when it was intended to make application for subsidiary protection, if ever, as the plaintiffs legal advisors stuck fast to the position that the perceived inadequacies of the system justified the refusal to make application, notwithstanding the obvious perils this entails for the plaintiff.

Is the Validity of the Deportation Order Questioned?

30. Section 5 of the Illegal Immigrants (Trafficking) Act 2000 requires proceedings questioning the validity of deportation orders, inter alia, to be in the form of judicial review commenced within 14 days of notification of the decision. The defendants argue that these plenary proceedings offend this requirement and should be struck out.

31. In *Nawaz v. The Minister for Justice, Equality & Ors* [2012] IESC 58, a similar application was made in somewhat analogous circumstances. The decision of the Supreme Court answered two appeals. The first arose in judicial review proceedings which complained that the plaintiff was precluded from seeking subsidiary protection until refugee status had been refused. This matter is now the subject of a reference to the Court of Justice in Luxembourg.

32. The second appeal arose from plenary proceedings commenced by the plaintiff in which he sought declarations that s. 3 of the Immigration Act 1999 was inconsistent with the Constitution because no opportunity is given to a plaintiff who makes submissions on humanitarian leave to remain, to voluntarily leave the State where such submissions are rejected. The State sought to have those

aspects of the plenary proceedings which sought to question the validity of the relevant provisions of the 1999 Act struck out on the basis that the proceedings were said to have been wrongly commenced contrary to s. 5 of the 2000 Act. The High Court declined to strike out the proceedings and found that the reliefs sought by the plaintiff fell outside the scope of s. 5 of the 2000 Act. A notable feature of the proceedings is that they addressed circumstances in which the Minister had yet to make a deportation order. In the Supreme Court, Clarke J. reviewed the relevant authorities and he addressed his conclusions as follows:

> "6.1 It seems to me to follow from that case law that the question of whether a provision such as that contained in s. 5 of the 2000 Act is engaged is one to be looked at as a matter of substance rather than as a matter of form. As Kelly J. pointed out in *Goonery* the reliefs sought in that case (which were declaratory in nature) *'would undoubtedly mean in practical terms that the decision of Meath County was invalid'*. It seems to me that the approach of Kelly J. in that case was correct. The question to be asked is whether, if the relief is granted, it will amount to a determination to the effect that a particular type [of] measure specified in the section is invalid or, to use the words of s. 5 itself, has had its validity successfully questioned.
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> 6.2 ... It seems to me that an action, brought in the context of the relevant process which is being applied to Mr. Nawaz, which seeks a declaration of invalidity of the underlying legislation under which the particular measure can be adopted, can be described as a challenge which has the potential to question the validity of the relevant measure. The only purpose of Mr. Nawaz questioning the constitutionality of s. 3 of the 1999 Act is so that any measures which might be adopted under that section will be regarded as invalid. If Mr. Nawaz were not exposed to the risk of orders being made under s. 3 then he would, of course, have no *locus standi* to challenge the constitutionality of the section in the first place. It is only because he is exposed to such orders ... that he could have *locus standi*. However, that very fact seems to me to place Mr. Nawaz in a category where it can be said that the only purpose of his constitutional challenge is to render any such measures as might be adopted by the Minister invalid. It is a pre-emptive strike designed to prevent the Minister from making a deportation order at the same time as communicating a decision to decline humanitarian leave (assuming that such be the Minister's decision). It seems to me that such a pre-emptive strike is clearly designed to question the validity of any order which might be made.
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> 6.3 That overall view is, in my judgment, strengthened by a consideration of the fact that Mr. Nawaz did seek, in the plenary proceedings, an interlocutory injunction restraining the Minister from issuing a deportation order. ..
>
> 6.10. In those circumstances it seems to me that two conclusions can be reached. First, the substance of the challenge to s. 3 brought in these plenary proceedings does involve a questioning, albeit indirectly, of the validity of measures which were feared might be taken in Mr. Nawaz's case which measures come within those listed in s. 5 of the 2000 Act. The second consequence of that analysis is that there was no reason in practice why appropriately constituted judicial review proceedings could not have been maintained."[emphasis added]

33. In *Nawaz*, Clarke J. posed two questions to determine whether the plenary proceedings were a collateral attack on a proposed deportation order. The first question examined whether the reliefs sought would, if granted, amount to a determination that a deportation order had had its validity successfully questioned. Secondly, the court examined the purpose of the plenary proceedings. In other words the approach of the Supreme Court enquires whether the object or effect of the plenary proceedings questions the validity of a measure which can only be questioned under judicial review.

34. What would be the effect of the plaintiff winning these plenary proceedings? It is clear to me that if she succeeds, the effect of this must be that she would be entitled to have her (as yet non existent) application for subsidiary protection determined prior to being deported. Inescapably, this means that the deportation order could not be implemented and that it was unlawful on the day that it was made as it precluded such application being made and determined with the presence of the plaintiff in the State. That this is so is made plain by the terms in which the third declaration sought by the plaintiff is expressed. It seeks a declaration that *the deportation* of the plaintiff prior to a decision on subsidiary protection being made is unlawful. An unlawful deportation could not happen on the back of a lawful deportation order. The deportation and the deportation order are as inseparable as the dancer from the dance, to borrow a phrase. If the deportation would be unlawful because there had been no prior determination of an application for subsidiary protection, that implies a defect in the deportation order. I therefore conclude that the effect of success by the plaintiff in these proceedings would require an actual or implied finding of invalidity in a deportation order and therefore the proceedings would have the effect of questioning the validity of that order. Such an outcome is only permissible if the proceedings comprise judicial review under Order 84 RSC as contemplated by section 5 of the 2000 Act.

35. Having considered the effect of success in the plaintiff's proceedings I now turn to consider the object or purpose of the proceedings. It seems to me that the timing of these proceedings indicates their true purpose. The plaintiff was arrested and detained on 22nd April 2013 and these proceedings commenced the next day and interim interlocutory relief was sought. Once that relief was granted, it had the effect of preventing deportation. I find that the purpose of the institution of the proceedings was to prevent the deportation order from having effect. These proceedings, which are couched in terms critical of the subsidiary protection regime, could have been instituted at any point over the past few years. If there was a genuine concern as to the deficiency in the Irish regime for subsidiary protection, why was no action taken from the spring of 2009, when the plaintiff's solicitor indicated that such application was required? I find that the purpose of these proceedings, having regard to this timing, is to prevent a deportation order from having effect. Preventing such an order from having the force of law because of an error allegedly extant on the date it was made inevitably questions its validity. The same analysis is applicable to the fourth declaration sought by the plaintiff regarding the alleged requirement to disclose the actual deportation date. The purpose of this declaration is to prevent the deportation taking place until the plaintiff has taken legal advice or, as the statement of claim puts it, to give her an opportunity to vindicate her rights. The facts relevant to this fourth declaration are worthy of comment. The decision to deport the plaintiff, a copy of the deportation order and a copy of the section 3 report were sent to the plaintiff and under separate cover, also sent to her solicitors on January 31st 2013 and she was requested to leave the state by the 17th of February. This gave the applicant and her lawyers more than the 14-day statutory period to challenge by judicial review the deportation order. Thus the absence of a date for deportation on the order or in any letter sent to the Plaintiff did not prevent her from having access to legal advice. She sought legal advice immediately and her lawyers applied to revoke the deportation order pursuant to section 3(11) on the basis of the absence of a subsidiary protection decision, rather than to seek judicial review of the deportation order. This fourth declaration sought by the plaintiff does not seek to protect her from any harm suffered. Its sole purpose is to ground an application for an injunction to restrain deportation, which as I have indicated may only happen where there is a deficiency in the order and such deficiency may only be prosecuted by way of judicial review.

36. The plaintiff has sought to persuade me that there is authority for the proposition that the validity of a deportation order is severable from its enforcement and these proceedings which affect enforcement only do not question the validity of the deportation order. Reference was made to the ex tempore judgment of O'Neill J. in *Mekudi Yau v. Minister for Justice, Equality and Law Reform*

and Governor of Cloverhill Prison [2005] IEHC 360. This was an application for habeas corpus where the plaintiff was detained pursuant to a transfer order by which the State sought to remove the plaintiff from Ireland and to place him in the hands of the Italian authorities for the determination of his asylum application. The non-EU plaintiff married an EU national subsequent to the transfer order. He withdrew his asylum application and successfully argued that there being no asylum application extant in any country in Europe, that his detention pursuant to a transfer order was invalid. O'Neill J. held as follows:

> "I am satisfied that because effect can not now be given to the transfer order, because Italy has no liability to take the applicant, the transfer order has ceased to have force and effect and that this state of affairs occurred when the plaintiff withdrew his application for asylum as of the 10th October, 2005. As a necessary consequence of this, the detention order made could not retain validity when the purpose of the detention namely a transfer to Italy ceased to exist. In my view [counsel for the respondent] submission to the effect that the enforcement of the order is inseparable from the original order is incorrect. There are many instances where an order which was made validly can cease to have force an[d] effect, for example, a deportation order which is excessively delayed or which is used for an ulterior purpose."

37. The learned trial judge was not stating that a valid (transfer) order could be separated from its enforcement. He found that the underlying order had not retained its validity because of events subsequent to its making. In other words, a transfer order or a deportation order might be perfectly valid when made, but may cease to retain validity because of a subsequent event. Just as letting the air out of a tyre might render it useless, a subsequent event might deflate a valid order and render it inappropriate for enforcement. As Laffoy J. said in *Lilimo v. Minister for Justice* [2004] 2 I.R. at p. 189:

> "The enforcement process cannot be severed from and has no basis in law distinct from the [deportation] order itself."

Thus, if a deportation order and its enforcement are indivisible, and I so find, a deportation order may be unenforceable by reason of an injustice which would result from its implementation because of circumstances arising after the valid making of the order. Referring back to my analogy, this new circumstance, like the air going out of a tyre, causes the order to expire. For example, a deportation order made on the basis of a peace process in a war-torn country might lose validity on the subsequent unexpected outbreak of hostilities, and questions might arise as to its enforceability where the deportation has not been achieved. In those circumstances, a deportee's remedy is to seek the revocation or amendment of the deportation order pursuant to s. 3(11) of the Act. Such administrative process does not suspend a deportation order and it might be necessary and possible to seek injunctive relief to enjoin the implementation of the order. As such proceedings will assert that the deportation order has lost its validity, it seems to me that they would be caught by section 5 of the 2000 Act and I can see no reason why an applicant would stubbornly risk plenary proceedings instead. Any disadvantage caused by the constraints of judicial review can be cured by seeking to continue the proceedings as though commenced by plenary summons and the Rules of Court so provide.

38. My conclusion is that these proceedings constitute a collateral attack on the validity of the deportation order made by the Minister on 17th January 2013 and communicated to the plaintiff on 31st January 2013. I can find no good reason why the procedure required by s. 5 of the Illegal Immigrants (Trafficking) Act 2000 was not pursued. As is evident from earlier comments, it seems that arguments might have been available to the plaintiff to question the manner in which the administrative report underpinning the deportation order was compiled but judicial review proceedings instituted within 14 days of the notification of the deportation order would have been required. The explanation given by the plaintiff as to why this did not happen - that she was required to accept the validity of the deportation order in order to seek its revocation - is based on a mistaken understanding of the law. But even if it were correct, it hardly explains why the plaintiff's lawyers waited until 23rd April 2013 to institute proceedings which might prevent deportation. At all times they were aware that seeking administrative revocation pursuant to s. 3(11) of the 1999 Act would not suspend the deportation order and they were also aware that the plaintiff was at risk of deportation from 17th February 2013, and yet no protective action was taken. In this regard I also accept the submission made for the defendants that even if it were permissible to proceed by way of plenary action, such proceedings (questioning as they do the validity of the deportation) are caught by the time limits in section 5 of the 2000 Act, by operation of the well know principle in *O'Donnell v Dun Laoghaire Corporation* [1991] I.L.R.M. 301 that time limits for judicial review proceedings cannot be evaded by instituting a plenary action.

39. These plenary proceedings which have as their object or effect the questioning of the validity of a deportation order must now be struck out.