

**THE HIGH COURT
JUDICIAL REVIEW**

[2007 No. 1143 J.R.]

BETWEEN

**D. U. (AN INFANT ACTING BY HER FATHER AND
NEXT FRIEND, C.I.)**

APPLICANT

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

RESPONDENT

Judgment of Mr. Justice Paul Butler delivered the 17th day of October, 2007.

1. The Applicant is an Irish citizen having been born in the State on 27th July, 2001, since when she has resided with her mother, a Nigerian citizen who was granted permission to remain in the State.
2. The Applicant's father, the Next Friend in these proceedings, applied for asylum in the State in March, 2007. He lied in his application. It was found that he had made a previous unsuccessful application for asylum in the United Kingdom.
3. By letter dated 24th July, 2007 the Applicant, through her solicitors, applied to the Respondent for permission for her father to remain and work in the State. While there is evidence of this letter having been sent to the Respondent by facsimile communication, it appears that the Respondent has no record of having received the same and was not aware of its contents until these proceedings.
4. In the interim the Respondent issued a Transfer Order to the United Kingdom under Council Regulation 243/2003.
5. The Applicant, through her Next Friend, seeks by way of judicial review to apply, *inter alia*, for an order of *mandamus* directing the Respondent to consider the application of the Applicant that her father be permitted to remain in the State and a declaration that the implementation of the Transfer Order issued in respect of the Applicant's father at this juncture would be unlawful. Further ancillary reliefs are sought.
6. I am quite satisfied that the Next Friend in this case has not got any merits in his favour. He lied to the authorities, he has only lived with the Applicant since March of this year, for seven months of her six years and three months life. There must be a suspicion that he is using her for the purpose of seeking to remain in the State.
7. Nevertheless, the position is that the Applicant is entitled to have her application (that her father remain in the State) properly considered. The Respondent agrees and the only issue is whether the Next Friend should be permitted to remain pending that consideration.
8. The Transfer Order when it was made was perfectly valid and the Respondent has acted properly and was within his powers throughout. It is, however, substantially arguable that the Applicant, who is of course entirely innocent in all of this, could be deprived of her family law rights in the event that the Next Friend is transferred from the jurisdiction and subsequently found to be entitled to return. The decision process should not take long and it is my view that what amounts to interim relief is merited when balancing the undoubted right of the Respondent against those of the infant Applicant.
9. I am therefore satisfied that this is a proper case to grant leave to apply for a declaration that the implementation of the Transfer Order issued in respect of the Next Friend should be deferred pending the consideration of the Applicant's application by the said letter of 24th July, 2007.
10. As it has been agreed between the parties that this application may, in the event of it being successful or partially successful, be treated as the substantial hearing I propose to go on and to grant relief as aforesaid.