

**THE HIGH COURT
JUDICIAL REVIEW**

[2011 No. 830 J.R.]

BETWEEN

S.S.L.

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice McDermott delivered on the 10th day of September, 2013

1. The applicant is a national of the Democratic Republic of Congo (DRC) who arrived in the state on or about 30th October, 2009, and applied for asylum. The application was refused by the Refugee Appeals Tribunal on 8th May, 2010, and the applicant was duly notified that the Minister for Justice and Equality (the first named respondent) was proposing to make a deportation order against him which ultimately issued on 25th August, 2011. He received notification of this order on or about 29th August.
2. The applicant made an application for subsidiary protection on 16th July, 2010, together with an application for leave to remain in the state pursuant to s. 3 of the Immigration Act 1999. On 10th May, 2011, the applicant received a determination dated 5th May refusing the subsidiary protection application.
3. By notice of motion dated 8th September, 2011, the applicant made an application for leave to apply for judicial review.
4. By order of 27th March, 2012 (Cross J.), the applicant was granted leave to apply for an order of *certiorari* in respect of the decision of 5th May, 2011, and to quash the deportation order issued in respect of the applicant dated 18th August, 2011. This application was granted on a single ground namely:-

“The representations made, and the country information consulted, were read selectively against the applicant’s interests and the conclusions reached were irrational.”

Background

5. The applicant was born on 23rd December, 1987. His claim for refugee status was based on a fear of political persecution in the Democratic Republic of Congo. He was from the Matadi area in the west of the country. He claimed that his parents were killed when he was four and that he had been informed that they had been murdered by government forces following their participation in a demonstration against President Kabila, in the course of which they were arrested.
6. He claimed that his own difficulties commenced in 2000. He was working as a mechanic in Matadi. He gave quite a confused and vague account of how unspecified government forces sought him out and tried to kill him. He claimed that he went on the run for about seven years until he came to Ireland on 7th October, 2009. He claimed that his sister was killed in 2005 by persons whom he believed to be agents of the Kabila regime. He claimed that he had been stopped on a number of occasions by soldiers and punched. The first such incident occurred when he was thirteen and the last one occurred in 2007.
7. Having left the Democratic Republic of Congo the applicant went to Lusaka, Zambia remaining there for 21 days. He met a man who arranged his passage to Ireland. He arrived *via* Ethiopia and Frankfurt, Germany. He was abandoned by this man following his arrival in Ireland. In the course of his application for asylum he gave a number of accounts of the death of his siblings which were regarded as incredible. He gave different accounts as to how and why his parents were killed. He gave entirely inconsistent accounts of the number of times and circumstances in which he had been accosted by government forces. The applicant’s description of these events was disbelieved by the Refugee Applications Commissioner and the Refugee Appeals Tribunal.
8. An application for subsidiary protection was made by the applicant on 15th October, 2010, on the basis that he was at real risk of suffering the death penalty or execution or torture or inhuman or degrading treatment or punishment if returned to the Democratic Republic of Congo, and that there was a serious and individual threat to his life as a civilian by reason of indiscriminate violence in a situation of international or internal armed conflict. The application was grounded upon the same account and evidence furnished by the applicant in his asylum application. It was submitted that attacks previously suffered by the applicant supported his contention that he was at real risk of serious harm if returned and that this was supported by country of origin information.
9. The applicant relied in particular on two sources. United States Department of State “2008 Human Rights Report – Democratic Republic of Congo” dated 11th March, 2010, contains a detailed account of the abject failure of the government to uphold and respect human rights. Its forces behaved appallingly throughout the country:-

“In all areas of the country, the governments human rights record remained poor, and security forces continued to act with impunity throughout the year, committing many serious abuses, including unlawful killings, disappearances, torture, and rape. Security forces also engaged in arbitrary arrests and detention. Severe and life threatening conditions in prison and detention facilities, prolonged pre-trial detention, lack of an independent and effective judiciary, and arbitrary interference with privacy, family, and home also remained serious problems. Security forces retained and recruited child soldiers and compelled forced labour by civilians. Members of the security forces also continued to abuse and threaten journalists, contributing to a decline in freedom of the press. Government corruption remained pervasive. Security forces

at times beat or threatened local human rights advocates and obstructed or threatened UN human rights investigators. Discrimination against women and ethnic minorities, trafficking in persons, child labour and lack of protection of workers rights continued to be pervasive throughout the country....

Armed groups continued to commit numerous serious abuses – some of which may have constituted war crimes, including unlawful killings, disappearances and torture. They also recruited and retained child soldiers, compelled forced labour, and committed widespread crimes of sexual violence.”

This report also detailed the progress of intensive military campaigns throughout 2008 and into 2009 in the eastern part of the country.

10. The applicant also cited a Human Rights Watch Report “*Country Summary – Democratic Republic of Congo 2010*” in respect of events in 2009. It noted that violent attacks against human rights defenders and journalists continued throughout the country.

11. The application for subsidiary protection was refused. A determination was prepared which concluded that substantial grounds had not been shown for believing that the applicant would face a real risk of suffering serious harm if returned to Congo. The first issue addressed was whether there were substantial grounds for believing that the applicant would face a real risk of the death penalty or execution on return. Though the Democratic Republic of Congo retained the death penalty and there were reports that the government or its agents committed politically motivated killings, the conclusion was reached that there were serious credibility issues in respect of the applicant’s claim which had been recited in the Refugee Appeals Tribunal decision. In particular it had been concluded by the Tribunal that the difficulties described by the applicant were not capable of being believed and that he had no fear of returning to the Democratic Republic of Congo as claimed.

12. The determination also focuses on the credibility issues in respect of the applicant’s second point and it was not accepted that he would face a real risk of torture or inhuman or degrading treatment in his country of origin.

13. The third matter considered was whether there were substantial grounds for believing that the applicant would face a real risk of a serious and individual threat to his life by reason of indiscriminate violence in situations of international or internal armed conflict in his country of origin.

14. The country of origin information was reviewed in respect of the conflicts which had occurred and which had continued into 2008 and 2009. It was stated in a “*Country of Return Information Project Country Sheet – Democratic Republic of Congo, June 2009*” that there were no armed conflicts ongoing in the Kinshasa region. It was clear that indiscriminate violence might arise from time to time in certain parts of the Congo, however, it was not accepted that this amounted to a situation of international or internal armed conflict and consequently, it was not accepted that the applicant ran a real risk of serious and individual threat by reason of indiscriminate violence in situations of armed conflict.

15. It is the fourth issue considered in the determination that gives rise to the ground upon which leave was granted namely, whether the applicant could avail of state protection in his country of origin.

16. The determination sets out a depressing series of reports from the United States Department of State, the United Nations Organisation Mission in the Democratic Republic of Congo (MONUC), Amnesty International, Human Rights Watch and the United Kingdom Home Office indicating the fragile nature of the rule of law in all areas of the Democratic Republic of Congo. Efforts have been made at reforming the police, making them accountable and inculcating a respect for human rights and the rule of law. A rather optimistic conclusion was reached in the determination as follows:-

“Country of origin information indicates that there is a functioning police system in operation in the Democratic Republic of Congo. While it is acknowledged that corruption and human rights abuses remain a problem within the police force, efforts are being made to improve the situation, including efforts made by the United Nations Peacekeeping Mission in the country. The country of origin information outlined above from the UN Security Council states that further efforts are being made to reform the security sector with the Mission of the United Nations in the Democratic Republic of Congo (MONUC) police continuing to operate closely with partners on several projects aimed at reinforcing the operational capacity of the Police Nationale Congolaise (PNC). In addition, it is noted that there are avenues of complaint open to individuals if their complaint is not investigated.

With regard to the issue of internal relocation, the UK Home Office Report makes specific reference to Kinshasa the capital city of the Democratic Republic of Congo. According to the UK Home Office:

‘With the exception of Kinshasa (where the riots that accompanied the postponement of national elections in June, 2005 were handled in relatively impressive fashion), the police force has remained ill trained and under resourced.’

Furthermore, the Country of Return Information Project Country Sheet states:-

‘In the Kinshasa region there are no so called armed conflicts ongoing.’

In consideration of country of origin information, there is nothing to suggest that the applicant could not return to Kinshasa where rule of law exists and the authorities, with the help of many foreign countries and organisations, are trying to implement change, stability and security in the city. Thus, while taking into account the available country of origin information, it is considered that the applicant would have a viable option of internal relocation within Kinshasa.”

17. It was, therefore, concluded that there were no substantial grounds for believing that the applicant would be at risk of serious harm or individual threat to him as a civilian by reason of indiscriminate violence in situations of international or internal armed conflict. It was also concluded that there was nothing that would prevent the applicant from seeking protection from the authorities in that country.

18. The meaning and limit of the ground upon which leave was granted is best understood by reference to the judgment of Cross J. delivered on 27th March, 2012. The following is the relevant extract from the judgment:-

“The Applicant’s Challenge to the Substance of the Decision based on Credibility and Consideration of COI

38. The RAT made adverse findings of credibility against the applicant. These findings have not been challenged and the applicant cannot collaterally do so.

39. The Minister was entitled to rely upon the same credibility findings as the RAT and, indeed, as has been stated by Cooke J. and others, was obliged to do so. No challenge to the credibility decisions of the Minister in the subsidiary protection can arise.

40. The applicant through his counsel has claimed that the treatment of country of origin information was selective and irrational. It did not flow from the country of origin information as furnished.

41. The respondent in its analysis considered four points:-

(i) Whether there are substantial grounds for believing that the applicant would face a real risk of death penalty or execution in his country of origin.

(ii) Whether there are substantial grounds for believing that the applicant would face a real risk of torture or inhuman or degrading treatment in his country of origin.

(iii) Whether there are substantial grounds for believing that the applicant would face a real risk of serious and individual threat to civilian life or person by reason of indiscriminate violence and situations of international or internal armed conflict in his country of origin.

(iv) Whether the applicant can avail of state protection against such threats.

42. It is the view of the court that the decisions of the Minister in relation to the alleged real risk of death penalty or execution or inhuman or degrading treatment are unimpeachable and materially relate to country of origin information. The Minister's conclusion that in the Kinshasa region where the applicant could be sent, that there is no armed conflict pertaining is also, on its own, unimpeachable. The Minister's decision as to whether there was a real risk of serious and individual threat by reason of indiscriminate violence in situations of armed conflict of itself may also seem unimpeachable.

43. It is the view of the court however, that when the Minister went on to consider the issue of state protection that the Minister's conclusions give rise to at least arguable grounds of irrationality.

44. It is submitted by counsel for the respondent that the Minister's consideration of state protection was, given his earlier conclusions that there was no risk of indiscriminate violence etc superfluous. That may well be the case.

45. It is the view of the court however, that the conclusions in relation to state protection if they are upheld as being irrational/unreasonable may have been said to have affected the earlier conclusion as to indiscriminate violence etc.

46. The Minister cannot be accused of selecting and reviewing and setting out in his decision only reports that might produce the decision that he came to. The Minister lists a large number of quotations mainly from the US Department of State Country Report on Human Rights Practices 2008, dealing with the situation in Congo. These reports consist of what are frequently damning indictments of the situation in the DRC concerning corruption and abuses by the security forces "near total immunity for grave violations of international and humanitarian law". "Government Security Forces sometimes use the pretext of state security to arbitrarily arrest individuals and frequently held those arrested on such grounds without charging them..." "Impunity remains flagrant. The persistence of impunity has resulted in a failure to initiate judicial investigations into serious human rights violations, lack of progress on cases that have been opened...or even sham trials". And having analysed the information which was set out at length on which the Minister is to be congratulated for detailing in such a comprehensive way, the Minister comes to what on the face of it is a strange and indeed an illogical conclusion:-

"Country of origin information indicates that there is functioning police system in operation in the Congo. While it is acknowledged that corruption and human rights abuses remain a problem within the police force, efforts are being made to improve the situation including efforts made by the United Nations Peacekeeping Missions in the country...in consideration of country of origin information, there is nothing to suggest that the applicant could not return to Kinshasa where the rule of law exists and the authorities, with the help of many foreign countries and organisations are trying to implement change, stability and security in the city."

47. It is not the function of this Court at leave stage to determine the ultimate rationality or reasonableness of the Minister's conclusions. Neither is it the function of this Court to reach any conclusion whether or not the Minister's conclusions under the issue of state protection are superfluous, rather in the terms of the *Meadows* judgment one has to consider whether or not the conclusions reached by the Minister at this point actually rationally flow from the documents considered. It is the judgment of this Court that it is at least arguable that the conclusions reached in relation to the country of origin information and in particular in relation to the availability of state protection, are irrational."

19. The court applied similar reasoning in granting leave to apply for judicial review in respect of the deportation order.

20. As already noted, the determination states in respect of the first point raised that the applicant did not face a real risk of the death penalty or execution in the DRC and that the core of his claim in that regard was not credible. It also concluded in respect of the second point that the applicant did not face a real risk of torture or inhuman or degrading treatment if returned, and that his claims in that regard also lacked credibility.

21. The third issue considered was whether there were substantial grounds for believing that the applicant faced a real risk of a serious and individual threat to his life by reason of indiscriminate violence in a situation of international or internal armed conflict in DRC. The country of origin information was considered and it was found that though indiscriminate violence may arise in certain parts of DRC, notably in the east and north east, it was not accepted that this amounted to a situation of international or internal armed conflict. It was not accepted that the applicant was at risk and, in particular, it was concluded that in the Kinshasa region there were no armed conflicts ongoing.

22. Each of these three points was considered by Cross J. in the application for leave to apply for judicial review and as is clear from the extract of the judgment quoted, it was determined that the applicant had not established any stateable ground upon which to challenge the findings made by the officials and ultimately by the Minister in respect of these matters. The only remaining issue contained in the fourth point, was whether the applicant could avail of state protection in his country of origin. It is claimed that the decision in that regard is irrational and that is the subject of the ground now advanced. Cross J. in his judgment notes that if the conclusion reached on the basis of country of origin information concerning state protection was found to be irrational or unreasonable, it may be said that it affected the earlier conclusion that the applicant was not at a real risk of serious and individual threat from indiscriminate violence.

23. Regulation 2(1) of the European Communities (Eligibility for Protection) Regulations 2006, provides, *inter alia*:-

"A person eligible for subsidiary protection" means a person who:-

(a) is not a national of a member state [of the European Union],

(b) who does not qualify as a refugee,

(c) in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, would face a real risk of suffering serious harm as defined in these regulations,

(d) to whom Regulation 13 of these Regulations does not apply [excluding persons who have committed war crimes or serious wrongs], and

(e) is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country."

24. Serious harm for the purpose of the Regulations is defined as consisting of:-

"(a) death penalty or execution,

(b) torture or inhuman or degrading treatment or punishment of an applicant in the country or origin, or

(c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict."

25. The extent of the protection afforded by these provisions was considered by Charleton J. in *F.N. v. Minister for Justice* [2009] 1 I.R. 88. He noted [para. 29] that Recital 26 of the Council Directive No. 2004/83/EC stated that:-

"Risks to which a population of a country or a section of the population is generally exposed do normally not create in themselves an individual threat which would qualify as serious harm."

He concluded that:-

"...the situation giving rise to the need for international protection under the Directive must be serious if, as the legislation contemplates, those seeking subsidiary protection can be returned to an area of their country of origin under international control. The fact that such control by another country, or by an international organisation, is contemplated emphasises that the Directive is concerned with harm that may occur to people returned to countries where a serious societal breakdown has occurred. The Directive also obliges member states to provide protection against an individual threat of execution, torture or serious assault, but only where there is no safe place within the country of origin where reasonable measures of protection through criminal justice take place."

26. Regulations 7 and 8 emphasise the requirement that an application should first seek internal protection and state:-

"7(i) As part of the assessment of protection needs, a protection decision maker may determine that a protection applicant is not in need of protection if the applicant can reasonably be expected to stay in a part of his or her country of origin where there is no well founded fear of being persecuted or real risk of suffering serious harm.

(ii) In examining whether a part of the country of origin accords with para. (1), the protection decision maker shall have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.

8. For the purposes of assessing whether an international organisation controls a state or a substantial part of its territory and provides protection against persecution or serious harm, the protection decision maker should take into account any guidance which may be provided in relevant Council acts."

27. Charleton J. summarised the circumstances in which a non-citizen may be entitled to claim subsidiary protection in a member state depending on the facts of his/her case as follows:-

"33(1) No substantial part of an applicant's country of origin is capable of providing them reasonable protection, through police and criminal justice services, from a real risk of suffering serious harm, or worse, through human action arising from international or internal armed conflict;

(2) A substantial territory within the country of origin can provide an applicant with a haven, despite international or internal armed conflict, against a real risk of suffering serious harm, or worse, through human action, either under the control of the country of origin, or another country, or of a international organisation, but the conditions in that place are so serious from the point of view of resorting to police and criminal justice protection, or from an imminent risk of international or civil war, that having regard to the personal circumstances of the applicant, he or she cannot reasonably have been expected to relocate there before applying for international protection or cannot reasonably now be returned there;

(3) An applicant is likely to suffer a real risk of being executed...

(4) An applicant is likely to suffer a real risk of torture or inhuman and degrading treatment at the hands of his or her country of origin authorities or, if the apprehended harm comes from a non-state source, then (1) or (2) above applies or the situation in the country lacks any reasonably functioning police and criminal justice protection and no haven as in (2)."

28. The courts consideration of these matters is necessarily circumscribed by the ground upon which leave to apply for judicial review was granted.

29. Counsel for the respondent submits that the issue of state protection is distinguishable from the "specific and primary issue" of whether or not the applicant faced a real risk of serious harm if he returned to his home country. It is further submitted that the state protection finding was redundant because the applicant would not face a risk in Kinshasa. The respondent contends that if there is no risk of indiscriminate violence, state protection is not required. There was no armed conflict in Kinshasa and consequently the issue of state protection did not arise. It was claimed that even if the finding in relation to state protection were considered to be flawed, this could not constitute a sufficient ground to quash the subsidiary protection determination unless the applicant could also successfully challenge the other findings.

30. The applicant claims that he was entitled to claim subsidiary protection if "the conditions in that place are so serious from the point of view of resort to police and criminal justice protection...that having regard to the personal circumstances of the applicant, he or she cannot reasonably...now be returned there" (para. 2 of the Charleton J. summary).

31. Undoubtedly there was a finding based on the country of origin information that there was no international or internal armed conflict in and around the area of Kinshasa. It was also submitted that the reports in respect of internal and international conflict concerned hostilities in the north and north east of the country which remained very volatile. It is clear to the court that the rule of law was virtually non-existent in areas outside Kinshasa on any reasonable reading of the country of origin information. The focus, therefore, remains on Kinshasa and whether the country of origin information was such as to enable the Minister to conclude reasonably or rationally that it was an enclave free from internal or international conflict. It seems to be the case that this is so. If that is the case, it is important to consider what that means.

32. As noted by Cooke J. in *Ahuka v. Minister for Justice and Equality & Ors* (Unreported, High Court, 25th June, 2012) the international community refrains from intervening in the internal relationships between a state and its own nationals and will only do so where an individual claimant is outside the country of nationality by reason of the threat to him or her there of persecution or serious harm and because the government and agencies of the country in question are unwilling or unable to afford protection domestically to their own nationals in those conditions. He stated that when considering Article 6 and 7 of the Council Directive the following matters should be taken into account:-

"39. Article 7.2 and Article 6(3) must be taken together. International protection is only afforded when national protection is unavailable. National protection is to be treated as not available when the source or cause of serious harm is the state itself or its institutions, authorities, forces or agencies; or parties or organisations controlling the state or a substantial part of its territory. Where the cause or source of the fear of serious harm is one not attributable to or controlled by the state or its agencies, it lies first with the state through its own forces or agencies to protect its nationals domestically against that source of harm. Thus, Article 7.2 makes it clear that national protection in the state of nationality will be taken to be available when the "state actors" defined in paras (a) and (b) are shown to take reasonable steps to prevent serious harm. It is only when those "state actors" are shown to be unwilling or unable to protect an individual against serious harm by "non-state actors" that the individual has a call upon the international communities promise of international protection.

40. The statement in the determination that "serious harm" can only be carried out by "actors of serious harm" within the meaning of Regulation 2(1) is correct because, in practical terms, if the claim to a risk of serious harm is based upon a cause or source other than the state of nationality itself and its forces and agencies or parties or organisations controlling that state or a substantial part of its territory, national protection is taken to be available and international protection is therefore unnecessary provided it is shown that the "state actors" take reasonable steps to prevent the serious harm in question when perpetrated by "non-state actors". Thus, "non-state actors" can become "actors" of serious harm "only where it is shown that the state of nationality is unable or unwilling prevent the harm perpetrated by the non-state actors".

33. In this case the applicant's contention that he is in fear from state authorities and under threat of serious harm on the basis of his previous experience has been rejected in that his credibility is not accepted in relation to the past events. Further, there is no internal armed conflict or international conflict in the area in and around Kinshasa. In the absence of these factors the applicant is, in essence, seeking international protection against the potential eruption of indiscriminate violence against him as a citizen in and around Kinshasa because of a state of lawlessness in that city and its surroundings which will not be addressed by any reasonable attempts at law enforcement. Charleton J., noted in *F.N.*:-

"27. ...threats of the most serious kind to life or person can occur through individual criminal activity or gang warfare. That can happen in Ireland, or in Nigeria, or in any other country and in consequence people are murdered, raped and assaulted. But protection is only afforded under the legislation where this arises from either "situations of international or internal armed conflict" or where there has been such a breakdown of structure within the country of origin that there is no adequate response to violence by reasonable attempts at law enforcement. The legislation is based on a "need for international protection"..." (Emphasis Added)

34. The overwhelming evidence in the country of origin information in this case is that law and order in the Democratic Republic of Congo has essentially broken down. The ruling government abuses its power and is engaged in appalling acts of violence and violations of human rights. It is difficult to understand how a conclusion could be reached that the rule of law exists in Kinshasa when the country of origin information submitted clearly indicates that 600 civilians were killed in fighting in Kinshasa in or about March, 2007 between government forces and its opponents in which heavy weapons were used in the city centre. In a demonstration in 2007, 104 demonstrators and bystanders were shot and stabbed by police. In March, 2008, 200 opposition supporters were killed by police. The police violently suppressed political opposition in the province of Bas Congo in which the town of Matadi is situated. Further, it is clear that the police and security services upon whom any civilian must depend for the maintenance of the peace act with impunity and completely outside the law. The same country of origin information indicates there is extremely little in the way of the rule of law in the Democratic Republic of Congo beyond Kinshasa and the judicial system is in a "deplorable state". It is "rife with political interference and corruption". Two thirds of the magistrates are located in Kinshasa and Matadi (Bas Congo) and Katanga province, but the infrastructure of the judicial system has collapsed almost completely. There is little or no basis for the conclusion

reached in the determination that "there is nothing to suggest that the applicant could not return to Kinshasa where the rule of law exists and the authorities with the help of many foreign countries and organisations are trying to implement change, stability and security in the city". That conclusion is based on an isolated quotation from the United Kingdom Home Office Information Report stating that:-

"With the exception of Kinshasa (where the riots that accompanied the postponement of national elections in June, 2005 were handled in relatively impressive fashion), the police forces remained ill trained and under resourced."

The court is not satisfied that any reasonable assessment of the balance of the Home Office and other materials could lead to this conclusion. I am satisfied that the conclusion reached in the determination was (as described by Cross J.) "strange and illogical".

35. Having reached the conclusion that the determination that the rule of law exists in Kinshasa is unreasonable, it follows that any person obliged to live in an area defined by a near total collapse of civic society and the rule of law may be at risk of serious harm or violence of an indiscriminate nature from undisciplined state forces or agents or other elements, criminal or otherwise, in circumstances in which it is most unlikely that the state will take any reasonable steps to protect any potential victim of their actions. The court is satisfied that in the circumstances prevailing at the time of the decisions in this case as evidenced by the country of origin information, a decision maker could not reasonably have concluded that reasonable steps would be taken to protect the applicant as a citizen of the Democratic Republic of Congo by the police or the judiciary, or any branch of the executive. I am satisfied that the applicant has established by reference to country of origin information that matters are so chaotic and dangerous in and around Kinshasa that it would be unreasonable to conclude that the state was in a position to offer protection to its citizens against the near anarchy prevailing, or that the conditions of life in and around Kinshasa can reasonably be said not to give rise to a risk of indiscriminate violence sufficient to amount to a substantial ground for believing that the applicant, if returned, would face a real risk of suffering serious harm.

36. The court is therefore satisfied, for the reasons set out above that the applicant has established that the first named respondent's decision refusing subsidiary protection was in the circumstances unreasonable and will be quashed. It follows that since the respondent has conceded that if any challenge to the subsidiary protection decision is successful, the deportation orders also fall to be reviewed; it follows, consequently, that the deportation orders will also be the subject of an order of certiorari.