Neutral Citation [2012] IEHC 458

THE HIGH COURT

JUDICIAL REVIEW

[2012 No. 575 J.R.]

IN THE MATTER OF THE IMMIGRATION ACT, 1999 AND IN THE MATTER OF THE CONSTITUTION AND, IN THE MATTER OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS ACT 2003, SECTION 3(1)

BETWEEN

P.U.O AND C.M.

APPLICANTS

AND

THE MINISTER FOR JUSTICE AND EQUALITY AND ATTORNEY GENERAL

RESPONDENTS

AND

THE HUMAN RIGHTS COMMISSION

NOTICE PARTY

JUDGMENT of Mr. Justice Paul McDermott delivered on the 6th day of November, 2012

1. Introduction

1.1 This is an application for leave to apply for judicial review. It arose in circumstances in which application was made to this Court on the 20th June, 2012, for an interim injunction restraining the first named respondent from deporting the first named applicant. An interim injunction was granted to that effect. It remained in force during the hearing of the application for leave to apply for judicial review made on notice to the respondents and continues in force until today's judgment.

2. Background

2.1 The first named applicant, a citizen of Nigeria, was born on the 8th August, 1985, and arrived in Ireland on the 5th September, 2010. The second named applicant is a citizen of Ireland with whom the first named applicant formed a relationship in December, 2010. The applicants decided to marry in or about February, 2011. In the meantime, the applicant had failed in an application for asylum in Ireland made on her arrival at Dublin Airport. During the course of that process, a number of documents were submitted as part of the application; a passport or expired passport was not amongst them. In the course of that application, the first named applicant maintained that a Nigerian man had been paid money by her family to arrange her passage to Ireland and that he had provided her with a passport which was taken from her just before she landed in Dublin. In the course of a s. 11 interview, she denied that she had ever possessed her "own genuine Nigerian passport".

2.2 The basis of her claim for asylum was a fear of persecution by reason of her membership of a particular social group. This was based on the asserted fear that her life was in danger in Nigeria due to her partner's threats of violence. There was no motive for this abuse that related to any of the Convention grounds of religion, nationality or membership of a particular social group. The Refugee Applications Commissioner concluded that s. 13(6) of the Refugee Act 1996 (as amended) applied to the applicant because "the applicant showed either no basis or a minimal basis for the contention that the applicant is a refugee" and recommended that the applicant not be granted refugee status on the 9th November, 2010. The first named applicant was notified of this decision by letter dated the 12th November, 2010. A notice of appeal against this decision was submitted to the Refugee Appeals Tribunal dated the 24th November, 2010. There was no oral hearing in respect of this appeal: it was determined entirely on the basis of the papers furnished and submissions made to the Tribunal.

2.3 This appeal was determined against the first named applicant on the 14th December, 2010, and the Refugee Applications Commissioner's recommendation was affirmed. The decision was communicated to the first named applicant by letters dated the 6th and 20th January, 2011. Meanwhile in December, 2010 the applicant had commenced a relationship with the second named applicant. In February, 2011 they decided to marry and applied during that month to the Registrar of Marriages to arrange their marriage.

2.4 By letter dated the 17th February, 2011, the first named applicant was informed that the Minister had decided to refuse to declare her a refugee under s. 17(1) of the Refugee Act 1996. She was also informed that her entitlement to stay in the State temporarily had, therefore, expired. The letter also stated that the Minister now proposed to consider her deportation under s. 3 of the Immigration Act 1999, as she was a person whose application for asylum had been refused. She was offered the option of leaving the State before a decision on deportation was made, or the option of consenting to a deportation order or the option of applying for subsidiary protection and/or to submit representations to the Minister under s. 3 of the Immigration Act 1999, setting out reasons as to why a deportation order should not be made against her.

2.5 Following receipt of this letter, an application was made by solicitors acting on behalf of the first named applicant for leave to remain in the State pursuant to s. 3 of the Immigration Act 1999, by letter dated the 10th March, 2011. There was no reference whatsoever in this application to the relationship that had been formed between the applicants or their recent decision to marry. There was very limited reference to the first named applicant's family and domestic circumstances in this application. The letter merely said that she was a single woman living at an address in Cork. Further, in respect of humanitarian considerations the first named applicant relied upon her claims in respect of domestic violence and the inadequacy of police protection available to her in Nigeria. A submission was also made in respect of the prohibition on refoulement under s. 5 of the Refugee Act 1996, in that it was contended that the first applicant's life or liberty would be at serious risk if she were to be deported.

2.6 On the 21st April, 2011, solicitors on behalf of the applicant provided further country of origin documentation in relation to domestic violence in Nigeria, the absence of state protection in that regard and difficulties concerning internal relocation in Nigeria. There was no reference to the applicants' relationship or their intended marriage.

2.7 On the 25th May, 2011, the Irish Naturalisation and Immigration Service (INIS) which was now dealing with the case received a report from An Garda Siochana concerning the proposed marriage. It outlined how on the 9th May, 2011, gardai from the Immigration Unit attended at the Registrar of Marriages office in Cork, having been contacted by one of the registrars. The Registrar showed them a Nigerian passport said to be of an "older type" and a copy of a letter allegedly issued by the Charge d'Affaires of the Nigerian Embassy dated the 21st April, 2011. This letter suggested that the Embassy had been notified of the desire of the applicants to get married on the 5th May, 2011. It indicated that the first named applicant had applied for a new "E passport in her maiden name which, in view of her wedding plans, will become irrelevant to her after the marriage because the document would have been issued in her maiden name". It then went on to state:-

> "The mission hereby seeks the indulgence of the relevant authority of the registry office in Cork City to permit the issue of the E passport to the applicant her wedding (*sic*). This is to enable the passport to bear her name under the new marital status."

There was no mention of a temporary new passport being issued in that letter. The first named applicant was in possession of a purported Nigerian passport said to have been issued on the 3rd May, 2011, and valid until the 2nd May, 2016. Gardai took possession of her passport and expressed suspicion about it. The report concluded that the Registrar of Marriages was not satisfied that the first named applicant had identified herself to its satisfaction and was refusing to marry the couple by reason of the inadequacy of the identification presented.

2.8 This was the first indication that the first named respondent received of the relationship and intended marriage of the applicants.

2.9 An examination of the first named applicant's file under s. 3 of the Immigration Act 1999, concluded on the 20th June, 2011. Having reviewed the applicant's family and domestic circumstances and the humanitarian considerations put forward on her behalf by her solicitors and all of the other submissions and documents furnished, it was concluded that there was nothing to suggest that the first named applicant should not be returned to Nigeria. An extensive review of the applicant's case under s. 5 of the Refugee Act 1996, was carried out and it was concluded that state protection was available to the first named applicant in Nigeria and that her repatriation would not be contrary to section 5.

2.10 It was also stated that a decision to deport the first named applicant would engage her right to respect for private and family life under Article 8(1) of the European Convention on Human Rights. It was accepted that the decision to deport her had the potential to be an interference with her right to respect for her private life relating to her education and other social ties formed within the State, as well as matters relating to her personal development since arrival in the State. In respect of family life, it was noted that the first named applicant was a single person with no family connections to the State. Reference was made to the garda report and that the first named applicant attended the registry office in order to get married to an Irish man. The registrar was not happy that the first named applicant had identified herself satisfactorily and it was noted that "permission to marry was refused". The conclusion was reached that a deportation order would not constitute an interference with the first named applicant's right to respect for her family life under Article 8(1) of the Convention.

2.11 It should be noted that no submission was made at that time by the first named applicant's solicitors in relation to any potential interference with her family life or, indeed, her right to marry under Article 40.3 or her family rights under Article 41 of the Constitution. Notwithstanding this omission a full consideration was given to the potential effect upon the applicant's family rights. It is difficult to understand how a complaint could now be made about the adequacy of this consideration when the first named applicant did not engage in any way with that issue or provide any information about it.

2.12 The first named respondent made a deportation order on the 9th August, 2011, in respect of the first named applicant. Notification of this order was given to the applicant on the 17th August, 2011. The first named applicant was obliged to leave the State by the 3rd September, 2011. It was now almost seven months since the applicant had been informed of the decision of the Minister to refuse her refugee status.

3. Application to Revoke the Deportation Order

3.1 By letter dated the 5th September, 2011, solicitors on behalf of the first named applicant wrote to the Minister claiming that exceptional circumstances existed as to why she should not be deported. A revocation of the deportation order was sought pursuant to s. 3(11) of the Act. It stated:-

> "Our client has entered into a relationship with an Irish man nine months ago. They wanted to get married and attended their local registration office in Cork. As the registration office was not satisfied with the first passport that she submitted, they were refused the right to get married and our client had to get another passport from Nigeria. They attended again on 9 May and on 15 August, 2011, unfortunately the garda in charge, Paul Lynch, still had reservations on the authenticity of the passport and the application has been suspended ... On 17 August, 2011, the Department of Justice issued our client with a deportation order expiring on 3rd September, 2011.
>
> Earlier this year the Leave to Remain Application of our client was refused on the basis that deporting the applicant did not constitute interference to her right to family life as permission to marry was refused.
>
> It is submitted that the permission to marry was not refused but suspended until the authentication of the second passport submitted by our client could take place."

It was claimed that deporting the first named applicant before she could demonstrate the authenticity of the documents submitted to the Registrar failed to have due regard to the applicants' right to marriage under the Constitution.

3.2 In the course of these proceedings both applicants have sworn affidavits.

3.3 The first named applicant in her affidavit of the 25th June, 2012, gave the following account in relation to her application to get married. She said that notice was given to the Registrar of Marriages in February, 2011 and that:-

> "I was required to provide a passport but the passport I obtained from Nigeria had expired. I say that when I subsequently produced this passport it was taken from me and passed to a member of An Garda Siochana. I say that I subsequently

> acquired a biometric passport and this too was passed to a member of An Garda Siochana when produced to the registrar."

3.4 The second named respondent simply states that the first named applicant's passport from Nigeria had expired and substantially agrees with the account of the first named respondent. The Court is satisfied that the issue in relation to the identification of the parties to a marriage is entirely one for the Registrar of Marriages. There is no challenge made in these proceedings to any decision on the part of the Registrar of Marriages concerning a ceremony of marriage between these two applicants. However, the difficulty encountered by the Registrar of Marriages in relation to the identification of one of the parties presenting for marriage is perfectly understandable in the light of the history given by the applicant that she never held a genuine Nigerian passport at the time of her s. 1 I interview, and now deposes on affidavit that a passport that she had obtained from Nigeria "had expired".

3.5 By letter dated the 18th November, 2011, solicitors for the first named applicant indicated to the INIS that they no longer acted for her.

3.6 On the 18th January, 2012, the INIS wrote to the applicant offering assistance in her departure from the State if she wished to avail of it. No response was received.

3.7 On the 17th April, 2012, the applicant was informed that the representations received on her behalf had been considered under s. 3(11) of the Immigration Act 1999, and that the Minister's earlier decision to make a deportation against her remained unchanged. It was stated that:-

> "P.U.O's case was fully examined under s. 3(6) of the Immigration Act, 1999, as amended, as recently as June, 2011 when her attempt to marry was considered under "family life". Her case was considered under s. 5 of the Refugee Act, 1996, as amended. Refoulement was not found to be an issue in this case ... Consideration was also given to the right to private and family life under Article 8 of the European Convention on Human Rights (ECHR) and as no information which would attest to a change in fact, or the circumstances of the applicant in relation to these issues has been submitted, other than a mere reiteration of intention to marry a Mr. C.M., a matter which was previously taken into consideration, it is not proposed to reconsider these issues."

3.8 It was concluded that there was nothing in the further submission that would warrant the revocation of the deportation order.

3.9 It is against that history, that leave to apply for judicial review is sought in this case together with an interlocutory injunction restraining the applicant's deportation. A total of seventeen grounds are set out in the statement of grounds.

4. Reliefs sought

4.1 The applicants seek leave to apply for judicial review by way of *certiorari* quashing the decision of the Minister refusing to grant the first name applicant refugee status under s. 17(1) of the Refugee Act 1996, notification of which was given to the first named applicant on the 17th February, 2011. The applicants also seek to challenge the deportation order made by the respondents against the first named applicant notification of which was furnished to her on 17th August, 2011.

4.2 A number of related declarations are also sought by the applicants. A declaration is sought that the respondents have failed to provide the first named applicant with an opportunity to seek asylum consistent with the procedures provided for by Council Directive 2005/85/EC including an effective remedy before a Court or Tribunal within the meaning of Article 39 of the Council Directive 2005/85/EC. It is claimed that if the applicant is successful in obtaining such a declaration that it follows an order must re made quashing the decision of the first named respondent to refuse a declaration of refugee status to the first named applicant under s. 17 of the Refugee Act 1996, because the procedures followed in making that decision were unlawful. Further, it is claimed that any decision made on the basis of the validity of the Minister's decision under s. 17, including decisions to deport the applicant and not to revoke that decision were also unlawful.

4.3 A declaration is also sought that ss. 3(1) and/or 3(11) of the Immigration Act 1999, as amended, are invalid having regard to the provisions of the Constitution. It is further claimed that the same provisions are incompatible with the State's obligations under the European Convention on Human Rights and Fundamental Freedoms. If successful in obtaining these declarations, the applicants claim to be entitled to orders of *certiorari* quashing the decision of the first named respondent to deport the applicant and the subsequent decision refusing to revoke the deportation.

4.4 These proceedings are by way of application for leave to apply for judicial review. Section 5(2)(a) of the Illegal Immigrants (Trafficking) Act 2000, provides that such applications be brought within fourteen days of being notified of the relevant order or decision. This time limit applies to the first named respondent's decision not to grant the applicant a declaration of refugee status under s. 17(1) of the Refugee Act 1996 as amended and the Minister's decision to make a deportation order under s. 3(1) of the Immigration Act 1999. Section 5(2)(b) of the Illegal Immigrants (Trafficking) Act 2000, stipulates that "leave shall not be granted unless the High Court is satisfied that there are substantial grounds for contending that the decision, determination, recommendation, refusal or order is invalid or ought to be quashed". The Supreme Court in *Re: Article 26 and the Illegal Immigrants (Trafficking) Bill 1999* [2000] 2 I.R. 360 stated in respect of "substantial grounds" that:

> "This is not an unduly onerous requirement since the High Court must decline leave only where it is satisfied that the application could not succeed or where the grounds relied on are not reasonable or are 'trivial or tenuous'."

4.5 The first named applicant therefore had fourteen days within which to bring an application for leave to apply for judicial review in respect of the s. 17(1) decision notified on the 17th February, 2011 and the deportation order notified on the 17th August, 2011.

4.6 The application for leave to apply for judicial review in respect of the refusal to revoke the deportation order under s. 3(11) of the Immigration Act 1999, is not subject to that time restriction. No issue as to time arises in respect of the application for leave in that regard. The application is not subject to the same test as that provided under 5(2)(b) of the Illegal Immigrants (Trafficking) Act 2000, as to whether leave to apply for judicial review should be granted. The ordinary common law test set out in *G. v. DPP* [1994] I I.R. 374 applies: the applicant must demonstrate that the facts support a "stateable ground", an arguable case for the relief sought.

4.7 The applications in respect of the s. 17(1) decision and deportation order are clearly brought well outside the 14-day period. No application for an extension of time is made. The first named applicant seeks a declaration that the time limits imposed by s. 5 of the Illegal Immigrants (Trafficking) Act 2000, and/or 0. 84 of the Rules of the Superior Courts are not in compliance with the principles of law of the European Union of equivalence and effectiveness in circumstances in which rights vested in the applicant pursuant to the law of the European Union are asserted. In effect, the applicant claimed that there is no time limit in respect of the application for

judicial review when rights under European Union law are asserted.

4.8 The applicants also submitted that the decisions to deport the first named applicant and to refuse to revoke the deportation order insofar as they involved consideration of the issue of non-refoulement under section 5 of the Refugee Act 1996 were not capable of devolution to civil servants but ought to have been taken personally by the Minister for Justice and Law Reform.

4.9 The person who has an interest in seeking these reliefs is the first named applicant. The second named applicant has a more limited interest in these proceedings, in that he contends that his right to marry has been frustrated or interfered with by reason of the orders made to deport and/or to refuse to revoke the deportation order.

5. Limitation of Time -Ground 16

5.1 In *TD, N.D. & A.D. v. The Minister for Justice, Equality and Law Reform, Attorney General & Ireland* (Unreported, High Court, 25th January, 2011) Hogan J. considered whether the time limit of fourteen days provided for under s. 5(2)(a) of the Act complied with the principles of equivalence and effectiveness in the transposition of the "Procedures Directive". He concluded that the section did not comply with the principles of equivalence since the fourteen day period was considerably shorter than the eight weeks prescribed in respect of planning and development matters under s. 50(2) of the Planning and Development Act 2000 (as amended). In respect of the court's power to extend the fourteen day period he stated:-

> "While the rigour of the fourteen day period is tempered by the power to extend time, an applicant might still be in the position whereby he or she could not predict with certainty how that power to extend time could be exercised in any given case...while common principles certainly emerge from the case law dealing with extensions of time- such as the duration of the delay, the reasons for the delay, the need to protect the integrity of the asylum system or potential prejudice
>
> - a system which depends in large measure on the application of these principles by individual judges in individual cases, each with their own special facts, will inevitably produce a certain lack of predictability and consistency."

5.2 He concluded that whereas the applicant would not otherwise be within time and would not merit an extension of time under s. 5 of the 2000 Act, he could be barred from asserting certain European Union rights by reason of domestic procedural law only "if national procedural law complies with the principle of equivalence and effectiveness". Hogan J. concluded that the 14-day limitation period could not be relied upon as against the applicant insofar as the claim based on the Procedures Directive was concerned and he granted leave to apply for judicial review.

5.3 In this case, no application has been made to seek an extension of time pursuant to s. 5 or O. 84 of the Rules of the Superior Courts.

5.4 It is difficult to see how the time limit under s. 5 and the jurisdiction to extend the time can be said to be inadequate as remedies in this case when they have been deliberately ignored and unused by the applicants. In particular, the first named applicant was legally represented and advised at all material times during the course of the asylum process. She chose to engage in it by exercising a right of appeal, applications to the Minister for leave to remain and to revoke the deportation order and, more particularly, chose not to challenge any of the orders by way of judicial review within the time allowed. She chose not to take advantage of the right of access, which she undoubtedly had, to this Court to seek relief. There is no suggestion of any kind in this case that the first applicant was inhibited in any way from making application to this Court if so advised and if she chose to do so to seek relief by way of judicial review within the times set out or to seek the extension of time provided for by law.

5.5 If the *T.D.* case applies, it is further submitted by the applicants that there is no time limit applicable to an application for leave to apply for judicial review in cases in which the applicant seeks to assert rights arising under European Union law. Thus, there will be no time limit applicable to the application for leave to apply for judicial review in respect of the orders made under s. 17 of the Refugee Act 1996, or the decision to make a deportation order under s. 3 of the Immigration Act 1999. It is contended that the provisions of 0. 84, r. 21 of the Rules of the Superior Courts would not then apply to the case. Reliance was placed upon *P.M (No.1) v. Minister for Justice, Equality and Law Reform* (Unreported, High Court, 28th October, 2011), in which Hogan J. concluded that:-

> "On the assumption ... that the procedures directive was never properly transposed in national law, it follows that, for the reasons set out in my judgment in D., the special time limits contained ins. 5 of the 2000 Act are inapplicable. Nor do the general time limits contained in 0. 84, r. 21(1) apply, since the Oireachtas clearly intended that these provisions would be supplanted by the special provisions of s. 5 of the 2000 Act."

5.6 Cross J. in *B.M.-J.L & Ors v. Minister for Justice and Equality, Attorney General & Ireland* (Unreported, High Court, 14th February, 2012), considered the decision of Hogan J. in D. and decided to follow it and, therefore, accepted that the fourteen day period was inapplicable to s. 17(1) decisions. He did so relying upon the decision of Clarke J. in *Re World Port Limited* [2005] IEHC 189, in which he stated:-

> "It is well established that, as a matter of judicial comity, a judge of first instance ought usually follow the decision of another judge of the same court unless there are substantial reasons for believing that the initial judgment was wrong...amongst the circumstances where it may be appropriate for a court to come to a different view would be where it was clear that the initial decision was not based upon a review of significant relevant authority, where there is clear error in the judgment, or where the judgment sought to be revisited was delivered a significantly lengthy period in the past so the jurisprudence of the court in the relevant area might be said to have advanced in the intervening period. In the absence of such additional circumstances it seems to me that the virtue of consistency requires that a judge of this Court should not seek to second guess a recent determination of the court which was clearly arrived at after a thorough review of all the relevant authorities and which was, as was noted by Kearns J., based on forming a judgment between evenly balanced arguments. If each time such a point were to arise again a judge were free to form his or her own view without proper regard to the fact that the point had already been determined, the level of uncertainty that would be introduced would be disproportionate to any perceived advantage in the matter being reconsidered."

5.7 Though he accepted the decision of Hogan J. in *D.* in relation to the 14-day period, Cross J. came to the view that he had to respectfully disagree with the judgment of Hogan J. in *P.M* to the effect that, following his decision in *D.*, in cases where the statutory period of fourteen days was inapplicable, no time limit applied to an application to seek leave. He noted that no authorities were relied upon by Hogan J. in *P.M* to that effect.

5.8 Cross J. relied upon the decision in *Jerry Beads Construction Limited v. Dublin Corporation* [2005] IEHC 406, in which the Supreme

Court considered the effect of a declaration that a two-month limitation period was invalid, having regard to the provisions of the Constitution. It concluded that this fact did not affect the time limitation imposed under O. 84, r. 21(1) of the Rules of the Superior Courts which was held to apply to the case notwithstanding the declaration. Cross J. also noted that s. 5(1) of the 2000 Act, required all applications for judicial review to be made "under" 0. 84 and did not amend the provisions of O. 84, r. 21(1). He concluded that the legislature under s. 5 required challenges to decisions to be brought by judicial review in accordance with 0. 84 but had imposed additional requirements (to the disadvantage of the prospective applicants). In addition, he noted the obligation under O. 84 of the Rules of the Superior Courts that an application must be made "promptly" and concluded that the applicants in *B.M-J.L.* having delayed two years, were in gross breach of the six-month period then applicable under O. 84 and also the general provisions whereby such applications must be brought "promptly".

5.9 Cross J. therefore followed *D.* to the extent that the fourteen day limit did not apply to the challenge but held that the application was brought without explanation over two years after the applicable date and clearly was not made promptly or within the six month period required at that time.

5.10 I am faced with the existence of two conflicting High Court judgments in relation to this matter. I am satisfied to adopt the reasoning of Cross J. in his application of the decision of the Supreme Court in *Jerry Beads Construction Limited* and the decisions in *White v. Dublin City Council* [2004] I I.R. 545 and *Lennon v. Cork City Council* [2006] IEHC 438. These authorities support the view that the time limitation in O. 84, r. 21(1) remains extant notwithstanding the enactment of s. 5(2)(a) of the 2000 Act. I am accepting for the purposes of this application, and having regard to the decision in *Re World Port Limited*, that the decision of Hogan J. in respect of the statutory 14-day period under s. 5 of the 2000 Act, governs the application for leave to apply for judicial review in respect of the Minister's decision under s. 17(1) of the Refugee Act 1996, and the deportation order made under s. 3(1) of the Immigration Act 1999. However, I am satisfied to adopt the reasoning of Cross. J. and consider that these applications remain subject to the limitation periods of O. 84 of the Rules of the Superior Courts. These applications for leave to apply for judicial review whether by certiorari or declaration are also well outside the periods that then applied under Order 84 and were clearly not brought "promptly". In addition, the separate challenge to the constitutionality of section 3(1) of the Immigration Act 1999 was not commenced within the 14 day period under section 5 and is clearly out of time and remains out if time even if the time limits under Order 84 were to be applied. Since no application was made to this Court to extend the time in respect of any of these applications, I do not have to consider any further the basis of the applicant's challenge in respect of those decisions. However, in deference to the arguments made and if I am incorrect in my conclusion on the issue as to time, I have also considered the further grounds advanced by the applicants.

5.12 No issue as to time arises in respect of the application to apply for judicial review in respect of the refusal to revoke the deportation order notified to the first named applicant on the 17th April, 2011 following application under section 3(11) of the Act. However, for the reasons set out below I am satisfied that no stateable grounds exist upon which to grant leave to apply for judicial review of that refusal on the basis of a constitutional challenge or otherwise.

5.13 There are four grounds of challenge which the applicants seek to advance. Firstly, there is a challenge to the constitutionality of s. 3(1) and (11) of the Immigration Act 1999. Secondly, the applicants seek a declaration that the respondents have failed to provide an opportunity to the first named applicant to seek asylum consistent with the procedures provided by Council Directive 2005/85/EC, such procedures to include an effective remedy before a court or tribunal within the meaning of Article 39 of the Council Directive. Thirdly, a challenge is made to the failure on the part of the Minister for Justice and Equality to personally consider the provisions of s. 5 of the Refugee Act 1996. Fourthly, the applicants claim that the decisions to deport the first named applicant and then to refuse to revoke that order were fundamentally flawed in that they were irrational, unreasonable and disproportionate and failed to respect the applicants' right to marry guaranteed by the Constitution and Article 8 of the European Convention on Human Rights. For the reasons set out hereafter, I would not have granted leave to apply for judicial review in respect of any of the grounds raised by the applicants.

6. The Constitutionality of Section 3 of the Immigration Act 1999 - Grounds 5, 6, 7, 8, 9, 12 and 13

6.1 Section 3(1) of the Immigration Act 1999, provides that (*inter alia*) the Minister for Justice and Equality may by order (a deportation order) require any non-national specified in the order to leave the State within such a period as may be specified in the order and to remain thereafter out of the State. Section 3(2)(t) of the Act provides that a deportation order may be made in respect of a person whose application for asylum has been refused by the Minister. Section 3(6) states that in determining whether to make a deportation order, the Minister shall have regard to (*inter alia*) the family and domestic circumstances of the person and humanitarian considerations "so far as they appear or are known to the Minister". Section 3(11) provides that the Minister may by order amend or revoke an order made under s. 3 including an order under subs. (11). There is no limitation on the period of time for which a person who is deported from the State is thereby excluded from the State. The reliefs claimed by the applicants in this case coincide with those claimed in the case of *S. & Ors v. Minister for Justice and Equality, Attorney General and Ireland and the Human Rights Commission* (Unreported, High Court, Keams P., 21st June, 2012). That decision was delivered the day after the interim injunction was granted in this case and it was brought to the attention of the court at that time that the decision in S. was imminent. The reliefs sought in that case were primarily:-

> (a) A declaration that s. 3(1) and/or s. 3(11) of the Immigration Act, 1999, as amended were invalid having regard to the provisions of the Constitution; and
>
> (b) If necessary a declaration that s. 3(1) or s. 3(11) were incompatible with the State's obligations under the European Convention on Human Rights (ECHR).

The applicants advanced grounds similar to those advanced in this case, claiming that the indefinite, potentially lifelong, duration of expulsion provided for under s. 3 of the 1999 Act, was disproportionate and that the legislature had failed to establish any principles and policies regarding the exercise of the power to revoke a deportation order under s. 3(11) of the I999 Act. The challenge failed after a full hearing. The applicants in this case have not offered any arguments that are additional to any of those canvassed before the learned President in that case.

6.2 I am satisfied to adopt the judgment of Kearns P. in *S.* as governing the issue of the constitutionality of s. 3 of the Immigration Act I999, for the reasons set out in that judgment. The provisions of s. 3 bear a presumption of constitutionality. There are no additional grounds advanced upon which to grant leave to apply for judicial review on the basis of seeking a declaration that the section is invalid having regard to the provisions of the Constitution. The Court has been offered no reason to deviate from that decision. Further, at no stage in this process did the first named applicant raise any issue in relation to the constitutionality of the power being exercised by the Minister under s. 3 of the Act and, indeed, through her solicitors engaged in that process without objection.

6.3 I would, therefore, have refused leave to apply for judicial review on the basis that s. 3(1) and/or s. 3(11) are invalid having regard to the provisions of the Constitution, even if the s 3(1) applications had been made within time.

7. European Convention on Human Rights -Grounds 10 and 11
7.1 In S., as in this case, submissions were made that a deportation of indefinite duration failed to respect the rights guaranteed by Article 8 of the Convention. The compatibility of s. 3 of the Immigration Act 1999, with Article 8 of the Convention was challenged. Kearns P. held that s. 3(I) of the Act was not per se incompatible with the Convention, particularly when that provision was considered in association with the provisions contained in ss. 3(6) and (11) of the Act. He noted that the European Court on Human Rights, in its jurisprudence, had regard to whether a fair balance is struck in a particular case and whether any decision to deport is proportionate to the aims pursued or necessary in a democratic society. He held that whilst the duration of the deportation order was clearly a factor in the jurisprudence, it was not one that was decisive when a court makes a decision as to the proportionality of any particular deportation order. In that regard, the court considered the case of *Omoregie v. Norway* [2008] ECHR 761, in which the ECHR stated as follows:-

> "Another important consideration is whether family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of that family life within the host state would from the outset be precarious. Where this is the case the removal of the non-national family member would be incompatible with Article 8 only in exceptional circumstances."

That is clearly a relevant factor in this case in which the first applicant's precarious status within the State must have been known to both applicants at the time they formed and developed a relationship.

7.2 It should be noted that not only were the circumstances of the relationship not made known by the first named applicant to the Minister in the application of the 10th March, 2011, it was only when the relationship was made part of the submission on the 5th September, 2011, that a submission was made that the relationship itself gave rise to an "exceptional" circumstance. I am satisfied that nothing in the nature of an exceptional circumstance arises in the context of issues related to Article 8 of the Convention and that the applicant had no ground for complaint in that regard. I am also satisfied to adopt the reasoning of Kearns P. and to apply the decision in S. in respect of the grounds raised in respect of the Convention.

8. Council Directive 2005/85/EC-Grounds 3 and 4
8.1 The first named applicant also claims that the respondents have failed to provide her with an opportunity to seek asylum consistent with the procedures provided by Council Directive 2005/85/EC of 1st December, 2005, on minimum standards and procedures in member states for granting and withdrawing refugee status (the Procedures Directive). A declaration is sought to that effect and an order that the refusal pursuant to s. 17(1) of the Refugee Act 1996, as amended, to grant the first named applicant refugee status should therefore be quashed by way of *certiorari*. In particular, it is submitted that the procedure adopted deprived the first named applicant of an effective remedy against the first instance determination of her application for asylum before a court or tribunal in compliance with the requirements of Chapter V of the said Directive. Consequently, it is also submitted that since the refusal of refugee status was not lawfully determined by means of a procedure that complied with the Directive, the deportation decision against the first named applicant was also made without jurisdiction. It was further submitted that this issue will be determined by the outcome of a reference to the European Court of Justice in *HID & D.A. v. Refugee Applications Commissioner, Refugee Appeals Tribunal, the Minister for Justice, Equality and Law Reform, Ireland and the Attorney General*, arising out the decision of the High Court in that case (Unreported, High Court, Cooke J., 9th February, 2011) [2011] IEHC 33.

8.2 It is clear that there was no corresponding transposition of the Procedures Directive by means of statutory instrument under the European Communities Act 1972, within the time prescribed under Article 43 of the Council Directive. The State took the view that the minimum standards for procedures required by the Directive were already appropriately catered for pursuant to the provisions and procedures of the Refugee Act 1996, as amended.

8.3 Cooke J., in *H.I.D. & D.A.* noted that this issue arose out of "the apparent dichotomy between the appeal function attributed to the Tribunal under the 1996 Act prior the Minister's determination of each application under s. 17 on the one hand; and the requirement, on the other of Article 39 of the Procedures Directive that the Member States provide an effective remedy before a court or tribunal against the first instance determination of asylum applications". The argument was made that the appeal to the Refugee Appeals Tribunal, combined with the entitlement to apply for judicial review before the High Court, did not provide an effective remedy as required by Article 39 of the Directive. It was submitted that the correct interpretation of the Procedures Directive was that the remedy must fulfil certain other requirements provided under Articles 8.3, 9.2, and I 0.1 and 15 of the Directive which were not fulfilled by the High Court procedure.

8.4 Cooke J. noted that when the original proposal for the Procedures Directive was under consideration in the Council, Ireland indicated its intention to exercise its entitlement to opt in, as provided for in Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on the European Union. It was thought appropriate at the time, in the light of the procedures that applied under the 1996 Act, to include a provision in Annex 1 of the Directive to the effect that the decision of the Refugee Appeals Commissioner should be regarded as the "first instance decision" in the procedures envisaged by the Directive. The Commissioner was, therefore, deemed to be the "determining authority" for the purpose of the decision at first instance and the recommendation was treated as being decisive in character, notwithstanding the fact that under the 1996 Act, it is the Minister who makes the decision to refuse the declaration as to refugee status under s. 17(1).

8.5 Cooke J. concluded that as a matter of Irish law, the High Court was entitled and obliged to construe the provisions of the 1996 Act in a manner compatible with this provision of the Annex. It was in respect of the first instance decision of the Commissioner that the Article 39 appellate remedy must be provided. The appeal to the Refugee Appeals Tribunal against the first instance decision of the Refugee Applications Commissioner provided a remedy by way of appeal capable of overturning the negative "recommendation" and resulting in a positive outcome for the asylum seeker (para. 49). This appeal may be one as to fact and/or law based on specific grounds that may be put forward by way of challenge to the decision at first instance. A further series of arguments advanced by the applicants in *H.I.D. & D.A.* in respect of suggested failures to comply with the requirements of Article 39 were rejected by the court. I am satisfied to rely upon the judgment of Cooke J. and to apply it to this application. I am satisfied that the "Procedures Directive" and, in particular, Article 39 thereof, was complied with for the reasons set out by Cooke J. in that decision, and I am, therefore, satisfied that as a matter of law, neither of the applicants could have established a substantial ground upon which to challenge the decision and order made in this case.

8.6 The relevant question posed by Cooke J. following delivery of the judgment in *HI..D. & D.A.* to the European Court of Justice was whether Article 39 of the Council Directive could be interpreted to the effect that an effective remedy was provided under national law when the function of review or appeal in respect of the first instance determination of applications is assigned by law to a

Tribunal established under Act of Parliament, with competence to give binding decisions in favour of the asylum applicant on all matters of law and fact relevant to the application. The Court notes that the Advocate General of the European Court of Justice delivered his opinion in this matter on the 61h September, 2012 in which he proposed that the European Court of Justice should answer the question raised by Cooke J. as follows (at para. 96):

> "Article 39 of Directive 2005/85 and Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that they do not preclude national rules such as those at issue in the main proceedings, under which an appeal against the decision of the determining authority lies to the Refugee Appeals Tribunal and to the High Court."

8.7 This persuasive opinion is based on reasons which are broadly similar to those advanced by Cooke J. in the High Court judgment delivered prior to the reference.

9. Conduct

9.1 Further, I am entirely satisfied that the first named applicant engaged fully with the appeal process available to her under the Refugee Act 1996, as amended. She did so without complaint in relation to any of the procedures available, whether by way of appeal to the Refugee Appeals Tribunal or by way of application for judicial review to this Court arising out of the decision of the Minister to refuse to grant her a declaration as to her refugee status under s. 17(1) of the Act. Indeed, following the Minister's determination under s. 17(1) the applicant in accordance with the procedures available to her made application to the Minister for leave to remain. Subsequently, when the deportation order was made and notification of it was given to the first named applicant, no objection was taken to any of the procedures applied under the Act and pursuant to which all determinations were made.

9.2 Apart from the issue of time, considered elsewhere in this judgment, I am not satisfied that the first named applicant having engaged in and availed of the procedures available under the 1996 Act can now seek to launch a collateral attack on the decision at first instance and the appeal by claiming a failure to transpose the Directive. The first named applicant has not pointed to any prejudice, whether by act or omission of the Commissioner or the Appeals Tribunal, and has not pointed to any act of unfairness such as bias either apprehended or real, that could in any respect have been the subject of an application for judicial review to this Court. The grounds of appeal following the decision at first instance by the Refugee Appeals Commissioner which were ultimately unsuccessful were confined to the assertion that the Commissioner erred in law and in fact in concluding that the applicant was not a refugee under s. 2 of the Refugee Act 1996, and secondly, that the Commissioner failed to have regard to relevant considerations and, in particular, failed to have regard to or assess detailed oral and written information provided by the applicant at the first stage of the asylum application procedures. Inadequacies of transposition of the Directive do not appear to have been contemplated at all. No want of fairness of any kind was asserted in that appeal. On the contrary, the first named applicant made application for leave to stay under s. 13(6) and ultimately sought the revocation of the deportation order made when that application was refused. Inexplicably, as already noted, the relationship of the applicants formed no part of the representations made in either respect.

9.3 The references made in *H.I.D. & D.A.* to the European Court of Justice arose in the course of the asylum process and challenges were made by way of judicial review at much earlier stages. In *H.I.D.* the first instance decision of the Refugee Appeals Commissioner was challenged. In *D.A.* the decision of the Refugee Appeals Tribunal was challenged. I am satisfied having regard to the behaviour of the first named applicant to date that she ought to be precluded from raising this challenge (see *O.T.D. and F.A.O. v. Minister for Justice, Equality and Law Reform* (Unreported, High Court, Clarke J. 25th June, 2009) and *B.M-J.L* already cited). I am not satisfied that the applicant could succeed even if granted leave having regard to the way in which she has behaved in the course of this process.

10. The Deportation Order, the Refusal to Revoke and the Right to Marry- Grounds 1 and 2

10.1 A deportation order was made in this case after a refusal by the Minister for Justice and Equality to grant the applicant a declaration under s. 17(1) of the Refugee Act 1996. No challenge was made to this decision or the previous decisions of the Refugee Application Commissioner or the Refugee Appeals Tribunal on the basis that they were not made in accordance with law, and/or with due regard to the statutory, or constitutional rights of the applicant or in violation of any right or protection to which the applicant was entitled under any Article of the European Convention on Human Rights or any provision of the law of the European Union.

10.2 The first named applicant participated fully in that legal process and was legally represented. The applicant was then given notice of an intention to deport her and then made an application to remain in the State through her then solicitors.

10.3 In seeking leave to remain in the State, the first named applicant had an obligation to put before the Minister all of the matters that she wished to have considered. A very extensive submission was made on the 10th March, 2011 by her solicitors that failed to mention her relationship with the second named applicant and failed also to mention that they had decided in February to marry. It is surprising that that aspect of her private and family life and its related importance to humanitarian considerations was not included in that application. Nevertheless, the issue of the proposed marriage was brought to the attention of the INIS by An Garda Siochána on the 25th May, 2011. It was considered in the examination of the file in the absence of any reliance at all by the first named applicant on that fact. Nevertheless, the examination contains a very full and extensive consideration of the relationship of the applicants and their intention to marry.

10.4 The next submission to the Minister followed the making of the deportation order on the 9th August, 2011, which was notified to the first named applicant on the 17th August. By the 5th September, 2011, her relationship and intention to marry the second named applicant had been elevated to an "exceptional circumstance" which she wished to bring to the attention of the Minister. In that submission a complaint was made that the examination of the file relied upon by the Minister stated that the permission to marry had been "refused" by the Registrar of Marriages, whereas in fact it had only been "suspended" pending clarification of the verification of the identification of the first applicant to the Registrar of Marriages. It was, therefore, claimed that the decision was based on a fundamental error of fact in the consideration of whether deportation constituted an interference with the first named applicant's family rights under the Constitution and/or Article 8 of the European Convention on Human Rights: this, in circumstances in which the first named applicant had not made any submission that any aspect of her family rights would be affected at all in her submission of the 10th March, 2011.

10.5 I am satisfied that criticism of the review of the file and its reference to the proposed marriage ceremony as "refused" rather than "suspended" is unwarranted. The examination of the file contains a review and consideration of all of the information available and all of the submissions made on behalf of the applicant. In ease of the first named applicant consideration was given to such aspects of her family life as were known to the authorities. This was done without any assistance from the applicant. The examination of the file contained a review of all of the issues to which the Minister is required to "have regard" under s. 3(6) of the Immigration Act 1999. The Garda report on the applicant's attempt to marry was deemed relevant to s. 3(6)(c) concerning domestic circumstances and s. 3(6)(h) humanitarian considerations "so far as they are known to the Minister". This review clearly considered

the issue of the first named applicant's right to private life and family rights under Article 8 of the European Convention on Human Rights and any submission that it did not is entirely misconceived.

10.6 When leave to remain is sought after a refusal of a declaration of refugee status, an applicant should advance all relevant grounds for relief promptly or within a reasonable time. These grounds should be submitted at that time and not put forward in a piecemeal fashion (see *M v. Minister for Equality & Law Reform* [2007] IEHC 19 and *O. v. Minister for Justice, Equality & Law Reform* [2008] IEHC 190). In this case, there was a duty on the first named applicant in making the application for leave to remain on the 10th March, 2011, to comply with this obligation and put her best case forward. It is entirely unsatisfactory that the matter is raised for the first time in the application to revoke the deportation order submitted on the 51h September, 2011. This is a matter that required an explanation, if only to enable the court to understand the level of importance of this matter in the lives of the applicants. It is also significant because the applicants seek to restrain the Minister from executing an order which he was entitled as a matter of law to make.

10.7 At this stage, it is appropriate to note that there can be no doubt that following the application to revoke the order made on the 5th September, 2011, a decision refusing that application was made, contrary to the averments in the applicants' affidavits, on the 17th April, 2012. This decision is exhibited in the affidavit of the respondent who also submits a covering letter said to have been delivered "by hand" to the address furnished by the first named applicant in her appeal. Therefore, in addressing the applicants' submissions it should be noted that the application seeking *mandamus* directing the first named respondent to make a decision in respect of the application made on the 5th September, 2011, is in error as is any relief claimed on the basis that the decision was not made.

10.8 I am satisfied that there is nothing on the evidence adduced or the submissions made by the applicants in respect of the substance of the decision to deport the first named applicant made on the 9th August, 2011, that demonstrates any substantial ground such as would have entitled the applicant to seek an order of certiorari on the basis that the decision was unreasonable, irrational, or disproportionate in respect of its consideration of the applicants intention to marry or the status of the intended marriage ceremony. Criticism, such at is, of the use of the word "refused" rather than "suspended" in respect of the marriage ceremony by the Registrar of Marriages is entirely artificial. It rings very hollow when considered against the failure of the first named applicant to mention it or advance any purported threat to her private life or family rights as part of her submissions before the deportation order was made.

10.9 The applicant also claims that the deportation order frustrated the marriage plans of the applicants in breach of Article 41 of the Constitution, Article 8 of the European Convention of Human Rights and Article 9 of the Charter or Fundamental Rights. As already noted I am entirely satisfied that the first named respondent's decision had nothing to do with the delayed marriage ceremony of the applicants. The right to marry is guaranteed by Article 40.3 of the Constitution and has not been interfered with by the first named respondent. I do not consider that there is any substantial ground for challenging the deportation order on that basis. I also consider that the Article 8 rights of the first named applicant were fully and completely considered in the course of the examination of the file, notwithstanding her failure to engage with that issue at that stage, and I am satisfied that the correct legal principles were applied to a consideration of the applicant's family rights.

10.10 This Court's role in reviewing any decision under s. 3(11) of the Immigration Act 1999, has been held to be more restricted than its role in reviewing a deportation order. In addition, the Court should have regard to whether any unusual, special or changed circumstances have been demonstrated and been made the subject of a submission on any such application. In *A. v. the Minister for Justice, Equality and Law Reform* [2007] IEHC 19, MacMenamin J. stated:-

> "Thus, an applicant making representations to the Minister for leave to remain on humanitarian grounds is obliged to actively put his or her best case forward in such representations. To address the second issue directly any such application under s. 3(11) to revoke a deportation order made having considered such representations, must advance matters which are, truly materially different from those presented or capable of being presented in the earlier application. There must be, in the words of Clarke J. in *K* "unusual, special or changed circumstances". Furthermore, the test in law must include one further test which is as to whether the material was capable of being presented earlier. To omit this latter aspect might have the effect of actually encouraging delay in the making of an application for humanitarian leave to remain and might permit the approach which was specifically criticised and rejected by Peart J. in *M*"

10.11 In this case nothing was submitted by the first named applicant on the 51h September, 2011 in respect of the right to marry or otherwise, that was materially different to what was presented or capable of being presented in the earlier application seeking leave to remain. Though the applicants have a personal right under Article 40.3.1 of the Constitution to many, it may be limited by law in accordance with the common good (see *O'Shea v. Ireland* [2007] 2 I.R. per Laffoy J., paras 31-36). The applicants contend that in refusing to revoke the deportation order, the respondent was acting in an unreasonable and irrational or disproportionate manner because the decision effectively frustrated the exercise of the right to marry within the State, in that the marriage ceremony could not now take place. I am not satisfied that the facts in this case indicate that any action on the part of the respondent resulted in the frustration of the right to marry of the applicants herein. A non-national spouse of an Irish citizen may be deported and does not have an absolute right to reside or choose to reside in Ireland. A fiancé cannot be in a stronger legal position than the married spouse. In appropriate cases, the respondent is obliged to weigh the interests of the State in protecting the country's borders and applying its immigration policy in accordance with law for the benefit of the common good with the right to marry vested in the applicants. Thus in *McHugh and Asemota and the Minister for Justice and Equality* (Unreported, High Court, Hogan J. 9th March, 2012), Hogan J. held that marriage to an Irish national does not of itself confer on the foreign national an automatic right to reside in Ireland and it could not be said that the arrest of that foreign national in advance of a wedding for the purpose of giving effect to an otherwise valid deportation order was unlawful.

10.12 In that regard, though the State has an obligation to respect family life under Article 8 of the European Convention on Human Rights in the application of its immigration policies, that duty is not considered to extend to a general obligation on the part of the State to respect the choice by married couples of the country of their matrimonial residence and to accept a non-national spouse for settlement in that country. In essence the applicants claim that their decision to marry in the absence of any other facts or special circumstances entitled them to a favourable decision. Of particular importance, in this respect, is the applicants' knowledge of the precarious status of the first named applicant in the State at the time when they formed a relationship (see *T.C. v. Minister for Justice* [2005] 4 I.R. 109, paras. 31-34). It was very clear to them in December 2011 that the first named applicant had no entitlement to be or remain in the State. No other additional fact exceptional or otherwise, was relied upon by the first named applicant. In addition, all of the surrounding circumstances insofar as they were made known were taken into consideration.

10.12 I am satisfied, having considered all of the papers in this case and the evidence and submissions made, that the applicants have not reached the threshold required and have not made out a stateable or arguable case in law as to why leave to apply for

judicial review of the decision of the 17th April, 2012, refusing to revoke the deportation order should be granted.

11. Deportation and the Carltona Doctrine-Ground 14
11.1 The applicants also contend that in making the deportation order, the Minister did not personally consider the issue of non-*refoulment*. In this case, named civil servants acted in the name of the Minister. This is in accordance with the well established principle that the Minister may devolve the making of decisions to his/her civil servants who may take decisions in the name of the Minister, save where the principle is negatived in the relevant legislation. The principle is set out in *Carltona Ltd. v. Commissioners of Works* [1943] 2 All. E.R. 560, which has been approved by the Supreme Court in *Devanney v. Shields* [1998] 11.R. 230, and *Tang v. Minister for Justice* [1996] 2 ILRM 46.

11.2 The applicants submit that the issue of non-refoulement is a matter to be personally decided by the first named respondent. Reliance is placed upon the decision of the Supreme Court in *Meadows v. Minister for Justice* [2010] 2 I.R. 701 and, in particular, upon the judgment of Murray C.J. who stated:-

> "In cases where there is no claim or factual material put forward to suggest that a deportation order would expose the deportee to any of the risks referred to ins. 5, then no issue as regards refoulement arises and the decision of the Minister with regard to s. 5 considerations is a mere formality and the rationale of the decision will be self evident.
>
> On the other hand if such material has been presented to him by or on behalf of the proposed deportee, as is the case here, the Minister must specifically address that issue and form an opinion. Views or conclusions on such issues may have already been arrived at by officers who considered a proposed deportee's application for asylum, at the initial or appeal stages, and their conclusions or views may be before the Minister but it remains at this stage for the Minister and the Minister alone in the light of all the materials before him to form and opinion in accordance with s. 5 as to the nature and extent of the risk, if any, to which a proposed deportee might be exposed. This position is underscored by the fact that s. 3 envisages that a proposed deportee be given an opportunity to make submissions directly to the Minister on his proposal to make a deportation order at that stage. The fact that certain decisions have been made by officers at an earlier stage in the course of the application for refugee status does not absolve him from making that decision himself."

11.3 This judgment was delivered before a change in administrative practice occurred. Previously the Minister personally made the decision under s. 5 but that practice changed to the extent that in the order presently challenged, the Minister did not sign the order and did not personally consider the decision to deport.

11.4 More recently the matter was considered by Hogan J. in *L.A.T. v. Minister for Justice and Equality & Ors* [2011] IEHC 404. He acknowledged the change in administrative practice in respect of the making of deportation orders and concluded that it was entirely open to the present Minister to change existing practice assuming that there was a legal basis for doing so. He concluded:-

> "15. While I accept that the decision to deport is often a complex one which has significant implications for the individual who is the subject matter of the order, I am not satisfied that it is of such intrinsic importance to the community at large that the decision can be made only by the Minister personally. It must also be recalled that the Minister for Justice has many onerous obligations. It cannot be suggested that the Oireachtas must have intended that he alone should personally take the decision to deport a given individual in every single case, as this would mean that he had responsibility for potentially hundreds of such decisions in any given year.
>
> 16. It follows, therefore, that this is also a case governed by Carltona principles and that the nominated civil servant remains free to make the decision in question..."

11.5 I am satisfied that *Meadows* is of no assistance in the application of the Carltona principles and was dealing with a case that had been personally considered by the Minister prior to the change in administrative practice. I, therefore, respectfully adopt the conclusions of Hogan J. in this regard. I am satisfied that no substantial ground arises on this submission. The applicant never made any submission in respect of the proposal to deport her: she decided to take no part in the process. She also chose to invoke her right to seek the revocation of this order by the Minister under s. 3(11) of the Act, thereby approbating the deportation order made. Apart from being out of time to challenge the deportation order, the applicant is by her conduct precluded from seeking relief in this regard at this stage. Further, I am satisfied to follow the decision of Hogan J. in *L.A.T* (a full leave decision delivered after full legal argument) notwithstanding the decision of Cooke J. in *Afolabi v. Minister for Justice and Equality & Ors* (Unreported, High Court, 17th May, 2012) in which he granted leave to apply for judicial review in respect of the first named respondent's failure in that case to personally consider whether the State's non-refoulement obligations would be breached by the deportation of the applicants.

12. Summary and Conclusion
12.1 I am satisfied that the application to seek leave to apply for judicial review in respect of the orders made by the Minister under s. 17(1) of the Refugee Act 1996, as amended, and the deportation order made under s. 3 of the Immigration Act 1999, are made well outside the time limited by O. 84 of the Rules of the Superior Courts. No application has been made to extend the time pursuant to Order 84. Accordingly, the applicants' application must fail. The applicants argued that they did not require an extension of time. They contended that if the 14-day time limit applicable under s. 5(2)(a) of the Illegal Immigrants (Trafficking) Act 2000, was not applicable to their application because it did not accord with principles of equivalence and effectiveness for the bringing of such an application in respect of rights asserted under European law, that no limitation of time applied. The Court accepts the applicants' argument in relation to the non-application of the 14-day period, but holds that the usual time limits applicable to applications for leave to apply for judicial review under O. 84 of the Rules of the Superior Courts applied in those circumstances. If that is incorrect, the Court is also satisfied that the applicants have not demonstrated substantial grounds which would warrant granting leave to apply for judicial review in respect of those matters. Further, the Court is satisfied that no stateable ground warranting the grant of leave to apply for judicial review of the refusal to revoke the deportation order has been established. Consequently, for the reasons set out above this application is refused in its entirety and the injunction is discharged.