

**THE HIGH COURT
JUDICIAL REVIEW**

[2004 No. 456 J.R.]

BETWEEN**ZIAD BADRI****APPLICANT**

**AND
THE REFUGEE APPLICATIONS COMMISSIONER
AND**

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENTS**Judgment of Ms. Justice Finlay Geoghegan delivered on the 16th day of December 2005.**

1. By order of the High Court of the 13th January, 2005, the applicant was granted leave to apply by way of judicial review for the reliefs set out at paragraph 4 (other than subparagraph(ix)) of the statement of grounds upon the grounds set forth at paragraph 5 therein. Notice of opposition dated the 14th February, 2005, was delivered. At the commencement of the hearing, the Court was informed that the first named respondent ("the Commissioner") agrees that the applicant is entitled to the relief sought at paragraph 4 (viii) namely an order of *certiorari* of the decision of the Commissioner of the 19th April, 2004. The other reliefs claimed are opposed.

Background Facts

2. The applicant is a national of Iraq and a medical doctor. He is a member of the Muslim Shia community. He arrived in Ireland with his wife and child on the 19th September, 2002, and applied for refugee status in the State. He completed the required ASY/1 form and application questionnaire on the 27th September, 2002. He was interviewed by Mr. Charles McCarron, on behalf of the Commissioner on the 19th February, 2003, and on 6th March, 2003. The applicant claimed to have a well founded fear of persecution because of his political opinion if returned to Iraq. The applicant relied upon a number of specified incidents which took place in the hospital in Tikrit, in which he was working as a surgeon prior to leaving Iraq, in support of his claim.

3. The applicant states that around the 18th March, 2003, he telephoned the office of the Commissioner and was informed that a decision on his application had been made on the 12th March, 2003, and that the decision would be sent to him within 10 days. He did not receive this. He wrote a letter to the Commissioner on the 4th April, 2003, as he describes it, "imploping" the Commissioner to send his decision to him. This was on the basis of the hard situation in which his family was living by reason of his inability to work and contributed to by his wife's ill health. In the meantime the invasion of Iraq had commenced on the 21st March, 2003. The applicant received a formal acknowledgement of his letter of 4th April, 2003, and was told that the contents had been noted.

4. The applicant appears, from this correspondence, to have learnt in the month of April from the member of the Commissioner's office who had interviewed his wife that all Iraqi cases had been suspended. He wrote again about the 5th May, 2003, seeking to know what was happening in his case. He and his wife received a response dated the 19th May, 2003, which in the operative parts stated:

"The Refugee Applications Commissioner has decided to hold, for the present, the determination of a number of applications relating to Iraqi applicants, (including cases such as yours', where the interview has already been conducted, but where no final recommendation has been made). The rationale for this decision is that it is not possible to carry out meaningful analysis of individual claims in the current circumstances. The position is in line with the most recent advice from the United Nations High Commissioner for Refugees which essentially recommends suspension of individual determinations for the present. This Office cannot comment on any position taken by the Refugee Appeals Tribunal.

The delay in reaching a determination in relation to your case, and any distress caused by this delay, is sincerely regretted. The situation will be kept under review and a recommendation will be made in your case as soon as it is considered practical to resume determination of Iraqi applications."

5. In the meantime on the 9th May, the Refugee Legal Service had written on the applicant's behalf seeking a copy of all documentation in relation to his application for asylum. On the 19th May, 2003, the office of the Commissioner sent to the Refugee Legal Service a copy of the report pursuant to s. 11 (2) of the Refugee Act 1996 (as amended) relating to the applicant and a copy of a document entitled "Pursuant to Section 13 (1) of the Refugee Act 1996 (as amended) Report and Recommendation of the Refugee Applications Commissioner". This document is divided into three parts:

1. Results of investigation
2. Findings
3. Recommendation.

6. The first two parts of the document contain much detail and run to seven pages. At the end of the first two parts the document has been signed by Mr. Charles McCarron "For the Refugee Applications Commissioner" and is dated the 14th March, 2003. In the third part of the document under the heading recommendation there is typed "I have read the file and pursuant to the provisions of Section 13 (1) of the Refugee Act 1996 (as amended) I recommend that Mr. Ziad Al-Badri be declared a refugee". There is then a gap (intended it would appear for a signature) and underneath is typed the name Martin F. Grehan again "For the Refugee Applications Commissioner" and again dated the 14th March, 2003.

7. Thereafter unsuccessful attempts were made by or on behalf of the applicant to have the Commissioner complete this report and forward it to the second named respondent under the provisions of the Act of 1996. On the 12th September, 2003, the Refugee Legal Service made further submissions based on then current views being expressed by UNHCR.

8. Ultimately, by letter of the 26th February, 2004, the applicant was informed that the Office of the Commissioner would shortly recommence processing applications from Iraqi nationals. He was told that if there was any additional information he wished to have considered as part of his application to forward it before Friday 5th March, 2004. By letter dated the 22nd April, 2004, he was informed that the Commissioner "is recommending that you should not be declared to be a refugee". Enclosed was a report pursuant to s. 13 (1) of the Refugee Act 1996 (as amended). This document is in slightly different format to the earlier document. The first part of the document is divided into eight sections, the last of which is headed "Recommendation". It is then signed by a Ms. Maura

Herlihy for the Refugee Applications Commissioner and dated the 19th April, 2004. Under that signature there is then one further paragraph recommending that the applicant should not be declared a refugee and this is signed by a Mr. Chris Carroll also for the Refugee Applications Commissioner and also dated the 19th April, 2004.

9. There was then further correspondence from the applicant and Refugee Legal Service to the office of the Commissioner. By letter of the 30th April, 2004, written by Mr. Chris Carroll on behalf of the Commissioner the steps taken were explained in the following terms.

"It is regretted that a *draft* of the Report Pursuant to Section 13 (1) of the Refugee Act, 1996 (as amended) was erroneously included in the documentation concerning your application forwarded to the Refugee Legal Service by this Office on 19 May, 2003. There was no recommendation to the Minister made by the Refugee Applications Commissioner at that stage.

Shortly after the compilation of this draft report the Commissioner took a decision, in line with UNCHR advice, to suspend processing of applications for asylum from Iraqi nationals because the rapidly evolving situation in that country had made meaningful analysis of applications unfeasible. Consequently, the finalisation of the Section 13 Report, setting out the Commissioner's findings together with her recommendations as to whether you should or should not be declared a refugee was deferred."

10. By notice of motion issued on the 25th May, 2004, an application was brought for leave to seek relief by way of judicial review against the Commissioner and the Refugee Appeals Tribunal. The Tribunal was included as a notice of appeal had been lodged and it was sought to restrain the scheduling of an oral hearing or processing of that appeal until after the determination of the application for judicial review. On the 13th January, 2005, on an undertaking by the Tribunal through counsel not to schedule and/or hold and/or consider the applicant's appeal pending the determination of these proceedings, the Tribunal was struck out as a respondent to the proceedings. On the same day, by consent, the Minister for Justice, Equality and Law Reform was added as respondent and leave granted.

Statutory Scheme

11. The relevant statutory scheme established by the Refugee Act 1996 (as amended) is as follows.

1. The applicant makes an application for a declaration of refugee status under s. 8 of the Act of 1996.
2. Under s. 11 (1) of the Act it is the function of the Commissioner "to investigate the application for the purpose of ascertaining whether the applicant is a person in respect of whom a declaration should be given".
3. For the purposes of such function the Commissioner is obliged under s. 11 (2) to direct an authorised officer to interview the applicant and furnish a report in writing in relation to the interview to the commissioner.
4. The manner in which the investigation is to be carried out is prescribed by additional statutory provisions in the Act of 1996 which are not relevant to the issues herein.
5. Section 13 of the Act of 1996 provides for a report of the investigation in the following terms:

13 (1) Where the Commissioner carries out an investigation under section 11 he or she shall, as soon as may be, prepare a report in writing of the results of the investigation and such report shall refer to the matters raised by the applicant in the interview under section 11 and to such other matters as the Commissioner considers appropriate and shall set out the findings of the Commissioner together with his or her recommendation whether the applicant concerned should or, as the case may be, should not be declared to be a refugee.

6. Where a report under s. 13 (1) includes a recommendation that the applicant should be declared to be a refugee then under s. 13 (4) (d) "the Commissioner shall, as soon as may be, furnish the report to the Minister".

7. Where the report under s. 13 is furnished to the Minister and includes a recommendation that the applicant concerned should be declared to be a refugee then under s. 17 (1) (a) the Minister "shall.. give to the applicant a statement in writing (in this Act referred to as "a declaration") declaring that the applicant is a refugee".

8. Section 21 authorises the Minister to revoke a declaration of refugee status granted under s. 17 in a number of situations which include at subsection (1) (e) where the person can no longer refuse to avail himself of the protection of the country of his nationality because the circumstances in connection with which the person has been recognised as a refugee have ceased to exist.

9. Section 6 of the Act of 1996 applies the provisions of the first schedule thereto to the Commissioner. Paragraph 9 of the first schedule authorises the Commissioner to delegate to any members of the staff of the Commissioner any of his or her functions under the Act (save those conferred by s. 7 which are not relevant to the issues herein).

12. Mr. Martin O'Mahony, a Higher Executive Officer at the office of the Commissioner who swore the affidavit on behalf of the Commissioner verifying the statement of opposition, explained the general system of delegation in relation to the carrying out of an investigation under s. 11 and the preparation of a report under s. 13 as follows:

"The Commissioner assigns two or more of her staff to carry out the investigation of every application for refugee status. The responsibility for completing the report which is required to be completed pursuant to the provisions of section 13 (1) of the Refugee Act, 1996, as amended (hereinafter referred to as "the section 13 report") is assigned to two officers. The Commissioner has not permitted or authorised officers of a grade lower than Higher Executive Officer (HEO) to make recommendations on her behalf under section 13 (1) of the 1996 Act. The officer who conducted the interview with the Applicant, Mr. Charles McCarron, is an Executive Officer and was not therefore authorised to make a recommendation on the Commissioner's behalf in respect of the Applicant's application for a declaration of refugee status."

13. Discovery was sought on behalf of the applicant of all documents, notes memoranda etc. relating to the Commissioner's stated policy of not permitting officers of a grade lower than Higher Executive Officer to make recommendations pursuant to s. 13 (1) of the Act of 1996 and also in relation to the assignment of the investigation of the applicant's application to officers of the first named

respondent. No documents were disclosed in response and the Court was informed at the hearing that this application was to proceed upon the basis that there are no documents in relation to the policy nor in relation to the assignment of officers to investigate the applicant's application.

Issues

14. Having regard to the reliefs sought at paragraphs 4 (i) to (vi) inclusive of statement of grounds, the notice of opposition, admission by the respondents that the applicant is entitled to the relief sought at paragraph 4(viii) and the submissions of counsel the issues to be determined by the Court may be summarised as:

1. Is the document signed by Mr. McCarron on the 14th March, 2003, a report which includes a recommendation that the applicant should be declared to be a refugee for the purposes of s. 13 of the Act of 1996 such that the Commissioner is obliged to furnish same to the Minister under s. 13 (4) (d) of the Act of 1996.
2. Was the decision of the Commissioner to suspend consideration of all applications made by Iraqi nationals including the completion of the document signed by Mr. McCarron on the 14th March, 2003, ultra vires the powers conferred on the Commissioner.
3. If the document signed by Mr. McCarron is not a report which the Commissioner was or is now obliged to furnish to the Minister under s. 13 (4) (d) of the Act of 1996, then is the Commissioner through her officials entitled to reconsider or review the applicant's application for refugee status or is she obliged to complete the report by making a recommendation in accordance with the findings made therein.

Documents Signed by Mr. McCarron

15. The applicant, in support of his contention that the document signed by Mr. McCarron is a complete report for the purposes of s. 13 of the Act of 1996 (and one which includes a positive recommendation), relies upon factual assertions that he was told on the telephone by members of the office of the Commissioner that a decision had been taken in his case. Even if the applicant was told that a decision had been made such does not appear to me determinative of the first issue which the Court has to decide. The Court must determine the point in the prescribed statutory procedure reached when the decision to "suspend" was taken. This is a mixed question of fact and law.

16. Mr. O'Mahony on behalf of the Commissioner explains the factual position in his affidavit at paragraphs 4 and 5 as follows.

4. "The applicant applied for a declaration of refugee status within the State on 27th September 2002. Shortly thereafter, the Commissioner assigned the investigation of the Applicant's application to two officers, Mr. McCarron and his Supervisor, Mr. Martin Grehan, HEO. In accordance with the provisions of section 11 of the Refugee Act, 1996, as amended ("the 1996 Act"), Mr. McCarron conducted an interview, in two stages, on 19th February 2003 and 6th March 2003. A representative of the United Nations High Commissioner for Refugees (UNHCR) attended the interview as an observer on both dates. The interview was carried out in English, without the need for an interpreter. Mr. McCarron completed his report pursuant to section 11 (2) of the 1996 Act on 6th March, 2003.

5. Mr. McCarron then proceeded to prepare a section 13 report. Having reported on his findings, Mr. McCarron affixed his signature to the document on the 14th March, 2003, thus ending his contribution, and forwarding the file to Mr. Grehan. Later that month, before Mr. Grehan has an opportunity to examine the file and complete the section 13 report by making a recommendation, the Commissioner decided to suspend the consideration of all applications made by Iraqi nationals. I say and am advised that the Commissioner's decision was prompted by the commencement of military operations in Iraq in March, 2003 and had regard to UNHCR advice on the matter."The above factual explanation must be considered in the context of the general system as explained by Mr O'Mahony and set out at p. 7 of this judgment and the statutory scheme.

17. On the facts herein I have concluded that the procedure had reached the point where the report provided for by s.13 was in the process of being completed. The report to be prepared pursuant to s. 13 (1) is a report in writing of the results of the investigation and must refer to or include the following:

- (i) the matters raised by the applicant in the interview under s. 11 and such other matters as the Commissioner considers appropriate; and
- (ii) the findings of the Commissioner; and
- (iii) her recommendation whether the applicant should or should not be declared to be a refugee.

18. The report prepared by Mr. McCarron follows closely the required inclusions. He first sets out under a general heading of "Results of Investigation" the matters raised by the applicant and other relevant matters under sub-headings "Country of Origin; Persecution; Convention Nexus; Credibility and Internal Protection Alternative". He then moves on to the "Findings" and under that heading having referred to par.204 of UNCHR Handbook states:

19. 2.2 I have considered the information and documentation in relation to the application for a declaration made by the applicant, the report of the investigation in accordance with Section 11 and the results of the investigation and findings as set out above. Mr. Al-Badri's statements are regarded as being credible and present evidence of persecution. Available Country of Origin information indicates that state protection was not available to the applicant in Iraq. I am of opinion it would not be safe for him to be returned to Iraq. The applicant's fear, given the prevailing repression in Iraq, is well founded, based on his imputed political opinion, and as such is covered by the 1951 Convention.

20. 2.3 Accordingly I am satisfied that the applicant has established a case such as to qualify him for refugee status as defined in Section 2 of the Refugee Act 1996 (as amended)"

21. As already stated, the report with such findings was then signed by Mr McCarron for the Commissioner. There is no suggestion he was not authorised to make such findings on her behalf. Accordingly, I have concluded that the report prepared and signed by Mr McCarron contains the findings of the Commissioner as required by s.13(1).

22. The document signed by Mr. McCarron the on 14th March, 2003, includes in its type written form the third requisite of s. 13(1) i.e. the recommendation of the Commissioner. However, it is clear that the typed recommendation was intended to be signed by Mr. Grehan and not by Mr. McCarron. The undisputed evidence is that this typed recommendation was prepared by Mr. McCarron.

23. Section 13(1) of the Act of 1996 requires (*inter alia*) the report of the results of the investigation to contain two distinct but clearly related matters i.e. the findings of the Commissioner (on the investigation) and the recommendation of the Commissioner as to whether the applicant should or should not be declared to be a refugee. Each of these involve a decision making function. I have concluded that the Commissioner by the general administrative scheme established within her office and assignment of the applicant's claim had delegated to Mr. McCarron the function to make the findings on the investigation conducted under s.11 in relation to the applicant and to Mr Grehan the function to make the relevant recommendation. Further, that such separate delegation is within the Commissioner's powers under s.6 and paragraph 9 of the first schedule to the Act of 1996. Counsel for the applicant relied upon the absence of any delegation or assignment in writing of the relevant functions of the Commissioner. Whilst it may be desirable, for the purposes of clarity that the delegation by the Commissioner of particular functions to different grades or persons be recorded in writing, I accept the submission on her behalf that it is not necessary.

24. Accordingly, I have concluded that the s. 13 report prepared and signed by Mr. McCarron contains the findings of the Commissioner on the investigation but that it cannot be considered to contain a recommendation of the Commissioner that the applicant should be declared a refugee. Hence, the Commissioner is not obliged to forward the document as presently signed to the Minister under s. 13 (4) (d) of the Act of 1996.

Suspension of Consideration of Iraqi Applications

25. The decision to suspend consideration of applications from Iraqi nationals as explained by Mr. O'Mahony appears to have been "prompted by the commencement of military operations in Iraq in March, 2003," and to have "had regard to UNHCR advice on the matter". Mr. Carroll in his letter of 30th April, 2004, on behalf of the Commissioner (which was exhibited) gave a further explanation that the rapidly evolving situation in Iraq had made it not possible to carry out "meaningful analysis of individual claims". The decision to suspend consideration of applications from Iraqi nationals when taken appears to have been for an indefinite period of time. It is in this sense I am using the word "suspend" in this judgment. Quite different considerations might apply to a decision to defer consideration of a particular application for a short specified period.

26. Counsel for the applicant challenges the validity of the decision taken on two separate grounds. Firstly, it is contended that there is no power to suspend. In the alternative the decision taken to suspend processing the applicant's application was unreasonable in the legal sense as the analysis of his application had taken place and findings had been made.

27. It is common case that there is no express power given the Commissioner under the Act of 1996 to suspend processing applications. Counsel for the respondent relied upon the principles in relation to implied ancillary or incidental powers as set out by Fennelly J. in *Edobar v. Ryan* [2005] 2 I.L.R.M. 113 and the authorities referred to therein. She referred in particular to the cited passage from *Howard v. Commissioners of Public Works* [1994] 1 I.R. 101 at 112:

"It has long been established as a general principle of the construction of the powers of statutory corporations that whatever may be regarded as incidental to, or consequential upon those things which the legislature has authorised, ought not (unless expressly prohibited) to be held by judicial construction to be *ultra vires* (*Attorney General v. Great Eastern Company* (1880) 5 App. Cas. 473, 478)."

28. Counsel for the applicant, submitted that to come within this principle an implied ancillary or incidental power must be consistent with the express power or duty imposed by the relevant statute. He submitted that the obligations imposed on the Commissioner by sections 11 and 13 of the Act of 1996 are to investigate an application and "as soon as may be" to prepare a report of the results of the investigation setting out the findings of the Commissioner together with his recommendation whether the applicant should or should not be declared to be a refugee. He further submitted that the entire scheme created by the Act of 1996 required that these steps be taken in a timely manner. He submitted that the decision to "suspend" as it applied to the applicant was a decision not to prepare the report under s. 13 for an indefinite period and was inconsistent with those powers and duties.

29. This submission is in my view both a correct statement of the relevant principles and their application to the facts herein. However, it is also necessary to consider two specific submissions made on behalf of the Commissioner in relation to the validity of the decision taken before reaching a final conclusion on the *vires* of the decision.

30. Counsel for the respondent drew attention to the stated advice of the UNHCR. She submitted that having a regard to the role given the UNHCR in the procedures established by Act of 1996 and the fact that the Act of 1996 was for the purpose of implementing the Geneva Convention that it was appropriate that the Commissioner have regard to and follow the advice of the UNHCR. The right to have regard to such advice was not disputed on behalf of the applicant but the submission made that if it was not consistent with the statutory provisions then the Commissioner must act in accordance with the statute.

31. I accept this latter submission. The Commissioner is a creation of statute and may only act in accordance the powers conferred on her, either expressly or impliedly by statute. Whilst, the Commissioner may have regard to advice from the UNHCR she can only act in accordance with that advice if to do so is within and consistent with her statutory powers and duties.

32. Counsel for the respondent also relied upon the necessity to apply the forward looking test in the assessment of whether or not a person is a refugee, within the meaning of s. 2 of the Act of 1996, as justifying a power to suspend consideration of applications where there is a rapidly evolving situation in the country of origin. The application of a forward looking test is undisputed. Notwithstanding that, the clear scheme of the Act of 1996 appears to be that a person who makes an application under s. 8 of the Act of 1996 is entitled to have that application investigated and a decision made thereon by the Commissioner in a timely manner. The Commissioner must take a decision by applying the forward looking test to the situation as it pertains in the country of origin at the time of the investigation under s. 11 of the Act of 1996, make findings thereon and a recommendation consistent with those findings.

33. The Act of 1996 expressly envisages that the situation in the country of origin of a refugee may change. However, this is provided for in the power given to the Minister under s. 21 to revoke a declaration where the circumstances change. There is nothing in the Act which indicates that the Commissioner has the power to determine to "suspend" applications from nationals of a country even in a rapidly changing situation. The Commissioner is obliged to investigate, assess and determine the application on the facts known at the time of such investigation and determination.

34. Accordingly, I have concluded that the decision of the Commissioner to suspend consideration of applications from Iraqi nationals

in March, 2003, including that from the applicant was *ultra vires* and invalid.

35. The above conclusion makes it unnecessary for me to consider in detail the alternative submission on the invalidity of the decision to suspend as it applied to the applicant.

Reconsideration or Completion of Report

36. The final issue is whether the Commissioner is or was at the end of the period of suspension entitled to reconsider or review the applicant's application for refugee status in the sense of going behind the findings made on behalf of the Commissioner by Mr. McCarron. A declaration that she was not so entitled is sought at paragraph 4(vi) of the Statement of Grounds. Whilst an order of Certiorari of the decision taken in April 2004 following such a reconsideration is conceded there was no concession on this point. The April 2004 decision was also challenged on an alleged lack of fair procedures.

37. I have already concluded that the point reached in the statutory scheme on the consideration of the applicant's claim for refugee status when the decision to suspend was made was that a s.13 report had been prepared containing the findings of the Commissioner on the investigation under s.11 of the Act of 1996. It also includes the other relevant matters required to be set out as part of the results of the investigation. As appears from paragraph 5 of the affidavit of Mr. O'Mahony the only remaining step to be taken by Mr. Grehan was "to examine the file and complete the s. 13 report by making a recommendation". It is this step which was precluded by the decision now determined to have been *ultra vires*. No explanation is given as what is involved in the examination of the file.

38. There is, however, no suggestion on the affidavits that Mr Grehan had any role in determining the findings of the Commissioner on the investigation. On the contrary those findings had been signed off and dated by Mr. McCarron. Insofar as it is permissible for the Commissioner to distinguish the functions of making findings on the investigation and the recommendation (as I have held) it is clear that any recommendation included in a s.13 report would have to be consistent with the findings set out therein. Therefore, it appears from Mr. O'Mahony's affidavit that if the *ultra vires* decision had not been taken that Mr. Grehan would have examined the file and (presumably have had regard to the findings made by Mr. McCarron on behalf of the Commissioner) and complete the recommendation.

39. The findings made on behalf of the Commissioner on the investigation under s.11 of the applicant's claim to refugee status have not been impugned in any way. In the statutory scheme established by the Act of 1996 the Commissioner had a duty in March, 2003 to prepare (as soon as may be) a report of the results of the investigation carried out under s.11 of the Act. The applicant had a corresponding right to the preparation of such a report and if that report included a recommendation that he be declared a refugee that it be transmitted to the Minister under s. 13 (2) and thereafter the Minister would have been bound under s. 17 (1) to grant the applicant a declaration of refugee status.

40. The only reason for which the s. 13 report was not completed was by reason of a decision of the Commissioner now determined to have been *ultra vires*. It does not appear to me that there is any express power in the Act of 1996 for the Commissioner in such circumstances to reopen the investigation or go behind the findings made by Mr. McCarron. Further, such a power does not appear capable of being regarded as incidental or consequential to that authorised by the legislature on the principles set out above. On the contrary, it appears that the applicant must in the light of this judgment be entitled to have the s. 13 report completed by the making of a recommendation by a HEO (in the office of the Commissioner) following an examination of the file that existed in March, 2003 and consistent with the findings made and signed by Mr McCarron.

41. I recognise in making this declaration that the applicant may become entitled to a declaration of refugee status upon the basis of facts as they pertained in March, 2003. This appears necessary to do justice to the position in which the applicant finds himself following the *ultra vires* decision. It further appears to me consistent with the scheme of the Act of 1996 as in the event that he is granted a declaration of refugee status it will be upon the basis of the findings in the report prepared and signed by Mr. McCarron. Those will then be the circumstances in connection with which he has been recognised as a refugee for the purposes of s. 21 (1) (e) of the Act of 1996.

42. I will hear Counsel prior to determining the precise form of the reliefs to be granted pursuant to this judgment.