Neutral Citation: [2015] IEHC 163

THE HIGH COURT

JUDICIAL REVIEW

[No.2015/131/JR]

BETWEEN

KRISTIAN WOKE A.K.A UCHE ERNEST NWOKE

APPLICANT

AND

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENTS

JUDGMENT of Mr. Justice Mac Eochaidh delivered on the 11th day of March 2015

1. This is an application for an interlocutory injunction to restrain the deportation of the applicant which deportation is intended to give effect to an amended deportation order dated the 12th June, 2014. There is a reasonably complicated history leading to the proceedings and I shall endeavour to outline some of the relevant events.

2. The applicant appears to have arrived in Ireland in 2006 and he made an application for asylum on 26th September, 2006 in the name of Kristian Woke which was refused by the Office of the Refugee Applications Commissioner on 29th December, 2006 and that decision was appealed to the Refugee Appeals Tribunal which upheld ORAC's negative recommendation. On the 17th July, 2006 a letter was sent by the Minister informing the applicant of his intention to deport him. The applicant was also invited to make an application for subsidiary protection if he wished and/or to make representations pursuant to s.3 of the Immigration Act, 1999 as to why he shouldn't be deported.

3. At all times the applicant presented as a national Sierra Leone. His applications for leave to remain and his application for subsidiary protection were refused and a deportation order was made in respect of him on the 4th January, 2012. He was obliged by that deportation order to leave the country by 29th January, 2012. Up to that point in time the applicant had been represented by Watters Solicitors but on 13th February, 2012, John Gerard Cullen Solicitors made an unsuccessful application pursuant to s.17(7) of the Refugee Act, 1996 for readmission to the asylum process and he was informed of this negative outcome by letter dated 28th February, 2012. He was also informed of his entitlement to review that decision but that review was never pursued.

4. In December 2012 the UK Border Agency gave certain information to the Irish authorities which led the Irish authorities to believe that the applicant had presented false information in all his dealings with the State and that he was not a national of Sierra Leone but that he was a national of Nigeria and that he was a person who had previously been deported from the United Kingdom to Nigeria and that he had been holder of a Nigerian passport. Following receipt of that information from the UK authorities, the Irish Naturalisation and Immigration Service wrote to Mr. Woke and to John Gerard Cullen & Co. Solicitors by letter dated 11th February, 2013 and they informed the applicant in the following terms that,

> *"As a result of the above information; [received from the United Kingdom Border Agency] in particular the fact that you are currently or were previously in possession of a Nigerian passport and that you were in possession of three UK visas that had a different identity to the one used in this State, the Minister for Justice and Equality intends to consider this new information and amend your deportation order taking into account the information submitted by you on your original application for asylum in the State and the details supplied by the UK Border Agency."*

5. The letter goes on to say that:

> *"In the interests of fair procedures and natural justice, you are now afforded a period of 15 working days from the date of this letter to submit any observations or comments addressing the discrepancies between information you supplied to both the Irish State and UK authorities. A copy of the details supplied by the UK Border Agency is enclosed for your information."*

6. It would appear that two replies at least were received by the Irish Naturalisation and Immigration Service to this letter, one of them from John Gerard Cullen & Co. Solicitors and the other from a firm of solicitors called Sarah Ryan, practicing in Limerick. Both letters attempted to deal with the allegation and refute the claims suggested by the Irish Naturalisation and Immigration Service thereby resisting the expressed intention of the Irish authorities to amend the deportation order in a manner which would correspond with the information that they had received from the UK authorities.

7. Having considered the submissions received the Irish authorities sent a decision in a letter dated 18th June, 2014 to Sarah Ryan Solicitors and the court has been informed that a copy of the same decision was sent by fax to John Gerard Cullen & Co. Solicitors on the 20th of June 2014, although a critical page was missing from the document. The missing page contained language which addressed the refoulement issue. It appears the fact that there was a missing page was not noticed at the time.

8. An executive officer of the Repatriation Unit of the Department of Justice and Equality produced a report on the proposal to amend the deportation order and also in relation to any suggestion that the deportation order be revoked. The part of the decision which is of significance in this application for interlocutory relief is as follows:

> *"Mr. Kristian Woke's legal representatives have submit [sic] they are instructed that their client is not a Nigerian national and is not Uche Ernest Nwoke. However, as is evidenced by the information submitted by the UK Border Agency Mr. Kristian Woke a.k.a Mr. Uche Ernest Nwoke was accepted by the Nigerian authorities as a Nigerian national. Having been previously deported to Nigeria on an Emergency Travel Document issued by the Nigerian High Commission in London,*

Kristian Woke a.k.a Mr. Uche Ernest Nwoke, is aware he was accepted as Nigerian by the Nigerian authorities. Kristian Woke a.k.a Mr. Uche Ernest Nwoke has not submitted any issues in relation to Nigeria so it is considered he can return there again. Notwithstanding this, the following Country of Origin Information has been considered in relation to the general conditions that prevail in Nigeria". [emphasis in original]

9. There is then a reference in the letter to the particular country of origin information issued by the US State Department: Country Report on Human Rights Practices 2013-2014 in Nigeria. The report goes on to say as follows:

"When this office became aware of the information from the UK Border Agency Mr. Kristian Woke a.k.a Mr Uche Ernest Nwoke, was offered, in the interests of fair procedures, the opportunity to make submissions regarding same, via letters dated 11th February, 2013 and 29th October, 2013. No information has been received by, or on behalf of, Mr. Kristian Woke a.k.a Mr. Uche Ernest Nwoke, in relation to returning to Nigeria."

10. The report continues as follows:

"Having considered all of the facts of this case, as well as the preceding Country of Origin Information, it is considered that no issues in relation to Section 5 of the Refugee Act 1996, as amende,) or contrary to Section 4 of the Criminal Justice (UN Convention Against Torture) Act, 2000 arise in this case".

11. The recommendation at the end of the letter is as follows:

"Having read and considered all of the correspondence and information received, I find that there is nothing contained therein that would warrant the revocation of the Deportation Order in respect of Kristian Woke a.k.a Uche Ernest Nwoke. Accordingly, I recommend that the Minister affirms the deportation order made in respect of Kristian Woke a.k.a. Uche Ernest Nwoke.

12. There is then attached to the report an order which is signed by a person authorised by the Minister for Justice which amends the deportation order made on 4th January 2012 in respect of Kristian Woke by inserting after that name the following:

"a.k.a. Uche Ernest Nwoke"

13. The applicant seeks an interlocutory injunction to restrain deportation on the basis that fair procedures were not followed in the decision taken by the Minister to amend the deportation order and in particular that s.3(1) and s.3(6) of the Immigration Act 1999 were not complied in the process of amending the deportation Order. There is also a particular complaint made in relation to an alleged failure by the authorised officer and the respondent to comply with s.5 of the Refugee Act, 1996 which is the provision prohibiting refoulement of a person proposed to be deported. The rule provides that the Minister must be of the opinion that the person proposed to be deported will not be harmed for a Refugee Convention reason in the place of intended deportation

14. The slightly unusual feature of this case is that the decision which has given rise to the proceedings is a decision prompted by the Minister who received certain information about the applicant from the UK and who decided that it might be appropriate to amend a pre-existing deportation order. That proposal was put to the applicant and his legal representatives. Replies were received on behalf of the applicant and those were fully considered.

15. In my opinion an application to amend a deportation order complies with fair procedures where the proposal to amend is fully and carefully explained to an applicant and where an applicant has every opportunity to reply to that proposal. It is not my view that the law requires an application to amend a deportation order to revisit all of the issues which would be required to be considered on a proposal to make a deportation order in the first instance.

16. I accept the argument that there is a requirement to comply with the non-refoulement obligations pursuant to s.5 of the Refugee Act on any proposal to amend a deportation order where such amendment would have as a consequence the removal of a person to a place which had not previously been considered in the context of a s.5 refoulement analysis. If the effect of the amendment is to consider a removal from the State of a person to a territory not originally considered when making the original deportation order, it is incumbent upon the Minister on an application or on a proposal to amend a deportation order to revisit that issue.

17. I find as a fact that the Minister has fairly considered the refoulement issue in the context of the proposal to amend.

18. I cannot identify any want of due process in the making of the amended deportation order. The applicant was given extensive opportunity to deal with the proposal and he seems to have engaged two firms of solicitors to respond to the Minister's proposal to amend the order. The allegation that refoulement was not considered by the Minister is not made out.

19. It seems to me that the applicant has failed to cross the first hurdle required in respect of any application for interlocutory relief, in that there must be at least an arguable case that an illegality attaches to the underlying decision. In addition, no explanation has been offered as to why the amended the deportation order is challenged nine months after it was made, well outside the time limits for these proceedings. However, if I am wrong about these conclusions, there is a further hurdle which an applicant must overcome. An application for an interlocutory injunction to prevent a deportation must meet the standards described by the Supreme Court in *Okunade v. Minister for Justice* [2012] IESC 49. In that case the Supreme Court decided that not only must arguability as to illegality be established, but even if such is established, the default position is that a deportation is to proceed unless there is some exceptionality attaching to the circumstances of the case.

20. The applicant did not in fact open the *Okunade* decision to the court and when asked to explain what exceptionality attaches to this applicant's circumstances his counsel was not able to identify any particular circumstance which would cause anything other than the usual disruption which happens if a person is deported. An attempt was made to suggest that the applicant is in a romantic relationship but this was not stated on affidavit and the fact of the relationship was never mentioned in any of the multiple contacts the applicant has had with the State in respect of his status in this country. Even if the fact of the relationship had been established in evidence I cannot see how a romantic relationship would, of itself, reverse the default position. There being no exceptionality of any sort attaching to the circumstances of the applicant, the court has no option but to ensure that the default position applies and that the deportation proceed and I therefore refuse the application for the interlocutory injunction.