

THE HIGH COURT

JUDICIAL REVIEW

[2012 No. 1012 J.R.]

BETWEEN

I.M. (GHANA)

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 24th day of April, 2018

1. The applicant arrived in the State in 2008 and applied for asylum unsuccessfully. In March, 2009, a proposal to deport was issued. The applicant sought subsidiary protection and leave to remain in April, 2009. On 16th August, 2012, the applicant made further applications in the form of a further application for subsidiary protection and further submissions. On 8th November, 2012, the subsidiary protection application was refused and on 16th November, 2012, a deportation order issued. On 12th December, 2012, the present proceedings were issued. On 17th December, 2012, leave was granted by McDermott J.

2. In October, 2017, the applicant applied to me for an amendment of the proceedings. The applicant's counsel pointed out that while leave had been given by McDermott J. to pursue relief 3, the order as perfected did not go on to give leave on any of the associated grounds, namely grounds 19 to 23. I rectified that inconsistency, albeit that the respondent contended that the application could have been made to McDermott J.

3. It seems necessary and appropriate that the mismatch in the order be rectified and it seemed more convenient and quicker if I did that rather than sending the applicant back to McDermott J. in the circumstances.

4. I have heard helpful submissions from Mr. Paul O'Shea B.L. for the applicant and Ms. Maeve Brennan B.L. for the respondents.

Reliefs sought

5. The primary reliefs sought are *certiorari* of the subsidiary protection refusal and the deportation order.

6. Mr. O'Shea formally moves the legalistic grounds already rejected in *N.M. v. Minister for Justice and Equality* [2018] IEHC 186 [2018] 2 JIC 2710 (Unreported, High Court, 27th February, 2018) and *F.M. v. Minister for Justice and Equality* [2018] IEHC 274 (Unreported, High Court, 17th April, 2018), leaving one fact-specific ground, the first bullet point of ground 4, a point which is confined to the challenge to the subsidiary protection decision rather than the deportation order.

Allegation that the Minister relied on material that post-dated the application without notice to the applicant.

7. The Supreme Court in *Y.Y. v. Minister for Justice and Equality* [2017] IESC 61 [2018] 1 I.L.R.M. 109, per O'Donnell J. has already clarified that mainstream country information does not need to be put to an applicant. The obligation on the Minister to consider up to date country material means there is no illegality in considering material generated after the date of the application (by way of postscript this was also the conclusion reached in *M.A.A v. Minister for Justice, Equality and Law Reform* [2011] IEHC 560 (High Court, Birmingham J, 24th March, 2011)). The Minister's reliance on material such as the BBC country profile 2012 in the subsidiary protection consideration is perfectly legitimate.

8. When confronted with the difficulty that there is in fact very little material in the decision post-dating the application, Mr. O'Shea then switched gears and suggested that the Minister had therefore failed to consider all up-to-date material. That characteristically shameless *volte face* perhaps encapsulates all one needs to know about the heads-I-win, tails-you-lose nature of asylum and immigration law. The Minister states that the material submitted by the applicant was considered and also was entitled, on top of that, to update that material by reference to further subsequent reports. No illegality has been shown under this heading. As long as the material is mainstream country material there is no obligation to engage with an applicant.

Order

9. Accordingly, I will order:

- (i). that the application be dismissed; and
- (ii). that the respondents be released from any undertaking not to deport the applicant.