THE HIGH COURT

[2019 217 JR]

BETWEEN

NICHOLAS LOCKWOOD AND BASEBALL IRELAND DEVELOPMENT COMPANY LIMITED BY GUARANTEE

APPLICANTS

AND

THE MINISTER FOR JUSTICE AND EQUALITY AND THE COMMISSIONER OF AN GARDA SIOCHANA

RSPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 8th day of April, 2019

1. The first-named applicant arrived in the State on 1st April, 2019 at 10.10 am on a flight from Washington D.C. Mr. Saul Woolfson B.L., who appeared for the applicants, says that his instructions are that Mr. Lockwood stated that he was here on holiday and to coach baseball. The immigration officer to whom he spoke says that only a holiday was mentioned and that coaching only came up under further questioning. It is accepted that Mr. Lockwood failed to state clearly at the outset that he was here in a volunteering capacity as a baseball coach; and Mr. Woolfson explains the apparent contradiction between that and his instructions that the applicant did say he was here to coach baseball by saying that a lack of clarity arose because the first-named applicant said he was here on holiday and failed to state that the primary reason for the trip was baseball coaching.

2. One piece of common ground between the parties is that the only mention of this coaching being on behalf of Baseball Ireland came on further questioning and was not volunteered. The first-named applicant said that he was not getting paid. Correspondence later indicated that he was getting what are described as "expenses" at the hardly breadline level of approximately €12,000.

3. A search of the first-named applicant's phone took place under s. 7(3) of the Immigration Act 2004. Mr. Woolfson says that his instructions are that WhatsApp messages were identified which were construed negatively by the immigration officer. Correspondence from the Department states that an email was identified "*instructing Mr. Lockwood to lie to immigration and not to mention that he would be working, that he was only in Ireland on a holiday*". I stress that that is only their interpretation and I will come shortly to Mr. Lockwood's interlocutor's alternative interpretation. Mr. Woolfson suggests that the reference to an email is an error and that a WhatsApp message was intended. What are said to be the relevant WhatsApp messages have been produced and the applicants have undertaken to put those on affidavit. According to Mr. Woolfson, the other party to those messages is a colleague from Baseball Ireland, a Mr. Christopher Saint Amand. The exchange includes the following from Mr. Saint Amand: *"Hey, been working on getting your Comp finalised and we are good. 12k Euro which is the pro rata 15k for 3 months, (11,250), plus your flight (and a little bit extra)"… "Also when you come into the country, remember you are not a paid employee!".* To this the first-named applicant replied "*Nope, 90 day tourist*."

4. Mr. Saint Amand has since stated that these comments "*were intended as light hearted words of warning from one US Citizen to another, intended to emphasise to Nick that he must explain his voluntary coaching status clearly to immigration officials. if asked*". The inference drawn by the immigration authorities was however that the first-named applicant was here to engage in paid work and thus required a permit. Accordingly, he was refused leave to land, the two grounds involved being firstly, that he intended to take up employment without a permit and secondly, that there was reason to believe that the non-national intended to enter the State for purposes other than those expressed. He was given notice under s. 14(1) of the 2004 Act and is currently detained by GNIB officers at Terminal 2 in Dublin Airport with a view to his removal to Washington D.C. on a flight scheduled to depart at 12.55 today.

5. On 4th April, 2019 the applicant's solicitor applied for revocation or withdrawal of the refusal of leave to land and later made a renewed application for such leave. On 5th April, 2019 the Department of Justice and Equality replied outlining why leave to land was refused and maintaining their view that such refusal was lawful. The applicant's solicitor replied and provided additional information. That was acknowledged and on 7th April, 2019. She sent a further letter requesting a decision. On 8th April, 2019 she was advised that the Department was not willing to alter its position and was also advised that a volunteer worker was required to hold a permit, although the applicants dispute whether this is legally correct.

6. The issue now before the court is whether to grant an injunction restraining the first-named applicant's removal from the State and the test in that regard is set out in the Supreme Court judgment in *Okunade v. Minister for Justice and Equality* [2012] IESC 49 [2012] 3 I.R. 152 and I have considered the factors discussed in that case. The following are particularly noteworthy. There is in this case no irreparable harm to the applicant. On the contrary, it would harm the orderly operation of the State's borders for the High Court to operate some sort of alternative leave to land system whereby persons refused entry at the border can simply nullify that outcome and enter the State without ministerial permission on foot of an order obtained on the hoof from any given judge.

7. Furthermore, while I am not dealing with the ultimate merits of the case, I can place some reliance on whether the arguments advanced have much in the way of weight. Virtually nothing has been put forward to displace the position that the refusal of leave to land was well within the jurisdiction of the Minister. The applicant has the probably insuperable problem that even on his own account he sought to enter the State on grounds other than those clearly expressed by him. On that basis no clear reason has been made out to show why the refusal of leave to land was unlawful and in fairness to Mr. Woolfson, while it is formally part of the case, he certainly didn't regard it as his strongest point.

8. As regards the subsequent correspondence from the first-named applicant's solicitors, it is simply not an appropriate procedure to suggest that an applicant can attempt to come in on a deceptive basis and then wipe that entirely from legal relevance by writing a letter with correct information and calling it a fresh application which demands immediate approval and injunctive relief in the meantime. Any good faith re-application would have to be made from outside the State. On that basis any legalistic points made on behalf of the applicants in the context of a fresh application for leave to land at a time while the first-named applicant is in custody due to having improperly attempted to enter the State do not have the consequence that the applicants have demonstrated any particularly weighty basis for injunctive relief. To grant such an order would be for the court to interfere with what is *prima facie* a perfectly lawful refusal of leave to land to a non-national who was deceptive even on his own account when he sought to enter the country. The balance of convenience and justice is therefore massively against granting an injunction, which is accordingly refused.