**THE HIGH COURT**

**JUDICIAL REVIEW**

**[2018 No. 870 J.R.]**

**BETWEEN**

**L.R.K. (NIGERIA)**

**APPLICANT**

**AND**

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

**RESPONDENTS**

**JUDGMENT of Mr. Justice Richard Humphreys delivered on the 28th day of May, 2019**

1. The applicant is a Nigerian national born in 1965. She claims to have arrived in Ireland on 6th November, 2007. She applied for asylum and subsidiary protection and those applications were rejected. A deportation order was made on 18th November, 2009. The applicant failed to present as required and evaded the deportation order for a number of years. On 31st August, 2015, the applicant sought residency on the basis of alleged dependency on her niece, who is a German citizen. At question 1.21 of that application, when asked if she was subject to a deportation order the applicant denied being so subject. The form EU 1 submitted did not contain an INIS number, GNIB reference number, PPS number or old Department reference number. It left blank the question as to date of arrival in the State and as noted above positively replied "no" to the questions as to whether she was subject to a deportation or transfer order. The address given was one that had never been notified previously to the Minister.

2. On 26th November, 2015, additional evidence was sought and that was replied to on 18th December, 2015. The application was then considered and refused and the applicant was so notified by letter of 15th June, 2016, which was addressed to the applicant at an address which had been notified subsequent to the making of the application. That refusal letter was returned marked "*unknown at this address*". The applicant did not request a review of that refusal or challenge it in any other way. On 12th October, 2016, the applicant was invited to make representations for permission to remain in the State. That letter was predicated on the fact that the applicant hadn't drawn the Minister's attention to the pre-existing deportation order. That letter was copied to the applicant's solicitor but the letter to the applicant herself was returned marked "*unknown at this address".*

3. On 7th April, 2017, the applicant did submit an application seeking permission to remain and submitted further representations on 20th June, 2018. The Department then realised that there was a deportation order already in existence and wrote to the applicant on 5th July, 2018 stating that therefore the original invitation for submissions had been issued in error and that the representations would be considered as a revocation application. That deemed revocation application was refused on 19th September, 2018, in a letter received by the applicant on or about 24th September, 2018.

4. The present proceedings were filed on 22nd October, 2018, the primary relief sought being an order of *certiorari* quashing the decision affirming the deportation order. I granted leave on 5th November, 2018. A statement of opposition was filed on 22nd March, 2019. I have now received helpful submissions from Mr. Garry O'Halloran B.L. for the applicant and from Ms. Helen-Claire O'Hanlon B.L. for the respondents.

**Context**

5. There are two important contextual matters that need to be emphasised here. Firstly, the applicant is an unsettled migrant and it is well-established that deportation breaches art. 8 in the case of unsettled migrants only in exceptional circumstances. Secondly, this is a challenge to a revocation application, or at least a deemed revocation application given that it could be alternatively viewed as a decision rejecting an application to remain that was launched on the essentially fraudulent premise that the applicant did not disclose the prior existence of a deportation order and the Minister was left to work that minor detail out for himself. All the same, it is well-established that the extent to which a court will overturn a s. 3(11) decision is very limited and indeed much more so than in the case of an original deportation order (see e.g. K*ouyape v. Minister for Justice, Equality and Law Reform* [2005] IEHC 380 [2011] 2 I.R. 1 *per* Clarke J. (as he then was), *P.O. v. Minister for Justice and Equality* [2015] IESC 64 [2015] 3 I.R. 164 at para. 16 *per* MacMenamin J. and at para. 30 *per* Charleton J.).

**Grounds upon which relief is sought**

6. The first ground is "*In considering the interference with family life and making the pivotal finding* "Ms. [K] has not established that his (sic) involvement in her brother's family constitutes de facto family life", *the Minister erred in law in placing the precondition on the establishment of de facto family life that the brother of the Applicant* "is failing or unable to discharge his parental duties" *or has* "neglected or abdicated his parental responsibilities".

7. The sentence used in the decision is that "*while it appears that [the applicant] is useful in assisting with the upbringing of these children there is no suggestion that their father … has ever neglected or abdicated parental responsibilities so it is considered that [the applicant] has not established that his (sic) involvement in her brother's family constitutes* de facto *family life within Article 8".* That is not a precondition in the sense pleaded but simply an assessment on the facts of this particular case, especially having regard to the minimal information submitted in relation to living and domestic arrangements which is averted to in the decision. The Minister's decision must be viewed in the context of the point that exceptional circumstances are required to show a breach of art. 8 in the case of unsettled migrants and that has not been demonstrated here.

8. The second ground is "*further and in the alternative the Minister's affirmation decision is lacking in clarity as to the reasoning behind the decision".* However, it is not lacking in clarity.

9. The third ground is that *"the decision of the Minister to affirm the deportation order is disproportionate due to the failure to strike a fair balance when assessing the relative weight of the competing factors and including the constitutional rights of the Irish citizen family members of the applicant*". The balancing of the various factors involved is primarily a matter for the Minister and the result of that exercise is not manifestly disproportionate in the present case having regard to all the circumstances.

**Discretion**

10. As pleaded in para. 22 of the statement of opposition, this is a case where in the light of the consistent efforts of the applicant to undermine the immigration law of the State through misleading the Minister and evasion of the deportation order it would not be in the interests of justice to afford discretionary relief. She lied and evaded her way through the system all along the line. Hence even if, counterfactually, I thought she had a legal point here, I would have refused relief on discretionary grounds (see B.*S. v. Refugee Appeals Tribunal* [2019] IESC 32 (Unreported, Supreme Court, 22nd May, 2019) *per* Charleton J., at para. 18, *C.R.A. v. Minister for Justice, Equality and Law Reform* [2007] 3 I.R. 603 *per* MacMenamin J., at para. 28).

**Order**

11. The application is dismissed.