

THE HIGH COURT

JUDICIAL REVIEW

[2017 No. 873 J.R.]

BETWEEN

C.M., O.V.M., AND C.G.M. (A MINOR SUING BY HIS MOTHER AND NEXT FRIEND C.M.) (NIGERIA)

APPLICANTS

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

(No. 2)

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 5th day of June, 2018

1. In *C.M. v Minister for Justice and Equality (No. 1)* [2018] IEHC 217 [2018] 4 JIC 2501 (Unreported, High Court, 25th April, 2018) I refused *certiorari* of deportation orders against the applicants. Application is now made for leave to appeal, and I have received helpful submissions from Mr. Patrick Killian McMorrow B.L. for the applicants and Ms. Ellis Brennan B.L. for the respondent.

2. I have had regard to the law in relation to leave to appeal, in particular the judgments of MacMenamin J. in *Glancré Teoranta v. An Bord Pleanála* [2006] IEHC 250 (Unreported, High Court, 13th November, 2006) and of Clarke J. in *Arklow Holidays v. An Bord Pleanála* [2006] IEHC 102 [2007] 4 I.R. 112. I have also discussed these criteria in a number of cases including *S.A. v. Minister for Justice and Equality (No. 2)* [2016] IEHC 646 [2016] 11 JIC 1404 (Unreported, High Court, 14th November, 2016) para. 2, and *Y.Y. v. Minister for Justice and Equality (No. 2)* [2017] IEHC 185 [2017] 3 JIC 2405 (Unreported, High Court, 24th March, 2017) at para. 72.

3. The proposed question is “*how failure to present for deportation is to be defined and evaluated such that its application to consideration of a revocation application is consistent with the rule of law. In particular, should the authorities be required to prosecute relevant applicable offences under the Immigration Act 1999, as amended, to prove lack of cooperation with the deportation process*”.

4. This question is not a matter of exceptional public importance and in my view the latter element of it is clearly untenable. Mr. McMorrow submits that if an applicant is not actually convicted of an evasion-related offence, the Minister cannot have regard to evasion in making a deportation order. That is a startling and novel submission that would render the law unworkable and would provide a windfall benefit to illegality. Where a person commits a breach of the law which happens to be a criminal offence, a decision-maker can take into account the breach of the law independently of whether a prosecution is conducted or, depending on the circumstances, of the result of any such prosecution. For the purposes of the law relating to leave to appeal, no uncertainty in the area has been established: see in particular the judgments of MacMenamin J. at paras. 23 to 26 and of Charleton J. at paras. 35 and 36 in *P.O. v. Minister for Justice, Equality and Law Reform* [2015] 3 I.R. 164 [2015] IESC 64.

5. In any event, the application was dismissed not simply on the merits but also on the basis of discretion: see para. 20 of the No. 1 judgment. On that basis it is not in the public interest to allow an appeal.

6. The applicants claim to be embedded in the State but that is only so because they went on the run following the deportation orders, leaving their accommodation without a forwarding address. It took some years for them to be located. They actively obstructed the enforcement of the Immigration Act 1999. It would be perverse if an applicant could frustrate a statutory scheme and then claim relief under the same scheme. That is a very different situation to where an applicant is seeking to challenge an investigation into alleged wrongdoing. In the latter context the original wrongdoing is not a ground to withhold relief on a discretionary basis.

7. These are particularly unmeritorious applicants for that reason, having evaded for an almost eight-year period, despite the quite misleading way the case has been at times presented. For example, there were repeated denials in their solicitor’s correspondence of the plain fact that they were evaders. Furthermore, the Statement of Grounds filed in the proceedings asserts that they are stateless. That is clearly untrue.

Order

8. The application for leave to appeal is dismissed.