THE HIGH COURT

JUDICIAL REVIEW

[2018 No. 839 J.R.]

BETWEEN

M.N. (MALAWI)

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

(No. 2)

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 22nd day of July, 2019

1. In *M.N. (Malawi) v. Minister for Justice and Equality (No. 1)* [2019] IEHC 489 (Unreported, High Court, 21st June, 2019) I refused an application for *certiorari* of what purported to be a review decision under s. 49(7) of the International Protection Act 2015 of 14th August, 2018 and a consequent deportation order dated 7th September, 2018. The applicant now seeks leave to appeal and I have received helpful submissions from Mr. Eamonn Dornan B.L. for the applicant and from Mr. Daniel Donnelly B.L. for the respondent.

2. I have considered the caselaw on leave to appeal, including *Glancré Teoranta v. An Bord Pleanála* [2006] IEHC 250 (Unreported, MacMenamin J., 13th November, 2006), *Arklow Holidays v. An Bord Pleanála* [2008] IEHC 2, *per* Clarke J. (as he then was), and *I.R. v. Minister for Justice and Equality* [2009] IEHC 510 [2015] 4 I.R. 144, *per* Cooke J. 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) (para. 72).

Applicant's proposed question

3. The applicant's proposed question of exceptional public importance is set out at para. 20(a) of written submissions as follows: *"In his duty under s. 51(3) of the International Protection Act 2015 … to notify an applicant of the reasons for making a deportation order, must the Minister disclose the matters considered in forming his opinion under s. 50 of the Act, including country of origin information".*

4. The first problem with that question is that the information *was* disclosed in the sense that it was readily ascertainable from the file, as I held in the No. 1 judgment. The obligation on the decision-maker is to enable the material considered to be ascertainable rather than to narratively list it. The suggestion that the latter is required is a proposition for which there is no authority.

5. A second problem is that independently of that point, the applicant made no submissions whatsoever prior to the decision. In the absence of such submissions or indeed of any attempt to seek particulars of the information considered, the applicant cannot reasonably expect to succeed under this heading: see for example *I.S.O.F. (A Minor) and Others v. Minister for Justice, Equality and Law Reform* [2010] IEHC 457 (Unreported, High Court, Cooke J., 17th December, 2010), *Mubango v. Minister for Justice and Equality* [2018] IEHC 653 [2016] 11 JIC 1411 (Unreported, High Court, 14th November, 2016), para. 18, *Lingurar v. Minister for Justice and Equality* [2018] IEHC 96 [2018] 2 JIC 0808 (Unreported, High Court, 8th February, 2018) para. 9, *Voivod v. Minister for Justice and Equality* [2018] IEHC 647 (Unreported, High Court, 19th November, 2018) para. 7. As eloquently put by Mr. Donnelly in his written submissions, para. 9, *"[t]his obstacle will bar the Applicant's way in the Court of Appeal just as much as it did in this Honourable Court. It is therefore highly unlikely that, if an appeal were to proceed, the Court of Appeal would actually determine the issue that the Applicant has identified".*

6. The final difficulty for the applicant is that this is well-trodden ground and that there is no uncertainty in the law requiring appellate clarification. The Supreme Court has pronounced on the question of the level of reasons required in such circumstances on a number of occasions, notably in *Baby O. v. Minister for Justice and Equality* [2002] IESC 44 [2002] 2 I.R. 169 at 183 *per* Keane C.J. and subsequently in *Meadows v. Minister for Justice and Equality* [2010] IESC 3 [2010] 2 I.R. 701 at 731 *per* Murray C.J. Even assuming in favour of the applicant that Meadows adopts a somewhat more high-watermark approach to the need for reasons than *Baby O.* in this respect, what *is* clear is that if an applicant fails to make any relevant submission, the decision in such circumstance is one of form and the rationale does not need to be expressly set out. If an applicant does make particular submissions, then naturally the reasons provided must be such as to enable the rationale for the decision to be discernible. Under those circumstances, there is nothing in the way of uncertainty that requires further clarification. Points already clarified by appellate courts do not require unending re-clarification.

Order

7. The application is dismissed.