

**THE HIGH COURT
JUDICIAL REVIEW**

[2019 No. 621 J.R.]

BETWEEN

S.O. (NIGERIA)

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

(No. 2)

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 21st day of October, 2019

1. In *S.O. (Nigeria) v. Minister for Justice and Equality (No. 1)* [2019] IEHC 573 (Unreported, High Court, 23rd July, 2019) I dismissed a challenge to a review decision refusing leave to remain under s. 49(7) of the International Protection Act 2015. The applicant now seeks leave to appeal. Since then a deportation order has been made against the applicant who has now brought a second set of judicial review proceedings against the Minister challenging that latest adverse decision [2019 No. 735 J.R.]. However, that is a separate case and it would simply be pandering to a delaying tactic to adjourn the present leave to appeal application pending the outcome of that new case, as the applicant sought.
2. I have considered the law in relation to leave to appeal as set out in *Glancre 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), *I.R. v. Minister for Justice and Equality* [2009] IEHC 510 [2015] 4 I.R. 144 per Cooke J. and *M.A.U. v. Minister for Justice Equality and Law Reform (No. 3)* [2011] IEHC 59 (Unreported, High Court, 22nd February, 2011) per Hogan 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).
3. The applicant's first proposed question of exceptional public importance is "*Must an applicant's medical condition "engage" Article 8 ECHR in the assessment of the right to respect for private life under s.49(3) of the International Protection Act 2015 (the "Act") and, if so, what is the threshold for engagement?*"
4. That is a rerun of the tired old argument that s. 49 of the 2015 Act is different to art. 8 of the ECHR. So what? No-one is contending otherwise. The question is based on a completely false premise. Page 6 of the review states that the applicant's case "*was considered under Section 49 ... Consideration was also given to private and family rights under Article 8 of the ECHR.*" It is expressly stated that both were considered. The Minister did not find that the applicant's medical condition had to engage art. 8 in order to be relevant to s. 49. Thus the question simply does not arise. For good measure the Supreme Court addressed this area recently in *D.E. v. Minister for Justice and Equality*

[2018] IESC 16 [2018] 3 I.R. 326. So there is no immediately apparent benefit in further appellate clarification, notwithstanding that the applicant has dreamed up a new legal basis to make the point that his medical condition warrants permission to remain in the State.

5. The applicant's second proposed question is "*What are the parameters of the Minister's obligations in the consideration of non-refoulement under s. 50(2) of the Act?*"
6. First and foremost, this is not an appropriate case to raise such an issue because the applicant did not make any submissions whatsoever regarding *refoulement*. Secondly, the proposed question is an open-ended, write-an-essay type question. That comforting fog of generality was presumably adopted because a more precise question would make it obvious that the actual proposition of law argued for by the applicant under the heading of *refoulement* lacks any common sense basis whatever: see in particular para. 17 of the No. 1 judgment. Finally, it is worth mentioning in this context that the *D.E.* case also touches on the non-*refoulement* issue insofar as relevant to art. 3 of the ECHR, so again there is no immediately apparent benefit in repeated appellate clarification of this area.
7. Accordingly, the leave to appeal application is dismissed.