THE HIGH COURT

[2023] IEHC 501

[Record No. 2022/346JR]

BETWEEN:-

N.S.

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Barr delivered on the 15th day of August, 2023.

Prologue.

1. At the outset of the hearing of this application, counsel on behalf of the applicant, Mr. Conor Power SC, indicated to the court that the issues which arose for determination on this application, had been the subject of a judgment delivered by Ferriter J. in *SH & AJ v. Minister for Justice & Ors.* [2022] IEHC 392, which was delivered on 27th June 2022. He conceded that the arguments which had been raised in that case, were identical to the arguments raised on behalf of the applicant in the present application.

2. Counsel conceded that having regard to the principles set down in *Hughes v. Worldport Communications Inc.* [2005] IEHC 189, this Court is likely to be bound by the earlier decision in the *SH* case. He conceded that he was not able to make the argument that the present application came within any of the exceptions to the general principles as outlined in the *Worldport* case.

3. Counsel indicated that, in the event that the within application was determined adversely to the applicant, it was her intention to appeal such decision to the Court of Appeal.

Introduction.

4. The key issue which arises for determination in this application, can be stated in the following way: At the time that the applicant applied for refugee status, all of her three children were under 18 years of age; by the time that she was granted refugee status and lodged her application for family reunification in respect of her children pursuant to s.56 of the International Protection Act, 2015 (hereafter "the 2015 Act"), her eldest daughter had "aged out", meaning that she was over 18 years of age at the date on which the

application for family reunification was lodged by the applicant; on which basis she was ineligible for consideration for family reunification.

5. The applicant maintains that the provisions of s.56 of the 2015 Act, are inconsistent with EU law and are contrary to the right to equal treatment enshrined in the Constitution, by virtue of the fact that the ability of a person, who is declared a refugee, to obtain family reunification in respect of children, who are under 18 years of age, is dependent upon the length of time that her application for refugee status takes to reach a determination. It was submitted that that state of affairs, is contrary to the provisions of EU law; lacks legal certainty, and is contrary to the provisions of the Constitution and the European Convention on Human Rights.

Background.

6. The applicant was born in 1982. She is a national of Zimbabwe. She arrived in Dublin Airport on 28 November 2019. She applied for international protection on arrival in the State.

7. The applicant was interviewed by the International Protection Office ('the IPO') pursuant to s.13(2) of the 2015 Act. Thereafter, she submitted the detailed questionnaire, which was received by the IPO on 23 June 2020. She was subsequently interviewed by the IPO pursuant to s.35 of the 2015 Act.

8. By letter dated 17 January 2022, the applicant was notified by the IPO that it was recommending to the Minister that she would be given a declaration of refugee status. By letter dated 2 February 2022, the Minister informed the applicant that she had been declared a refugee pursuant to s.47(1) of the 2015 Act and that the declaration would take effect on that date.

9. On 4 March 2022, the applicant submitted an application for family reunification to the Family Reunification Unit (hereafter, "FRU") in the Department of Justice and Equality. That application related to her three children; the eldest daughter having been born on 20 October 2003; the second daughter born on 7 October 2008 and the youngest daughter born on 3 May 2014.

10. On 7 March 2022, the FRU informed the applicant that her applications in respect of her minor children, being her second and third born daughters, would be processed. The applicant was informed that her application in respect of her eldest daughter, could not be processed, as she fell outside the provisions of s.56(9) of the 2015 Act, wherein the

definition of a member of the family for the purposes of family reunification included *inter alia*, the child of a sponsor who is under the age of 18 years at the date of the application for family reunification; she being aged 18 years and five months at that date.

Relevant statutory provisions.

11. The relevant provisions of s.56 of the International Protection Act 2015, are as follows: -

> *56. (1) A qualified person (in this section referred to as the "sponsor") may, subject to subsection (8), make an application to the Minister for permission to be given to a member of the family of the sponsor to enter and reside in the State.*
>
> *(2) The Minister shall investigate, or cause to be investigated, an application under subsection (1) to determine—*
>
> *(a) the identity of the person who is the subject of the application,*
>
> *(b) the relationship between the sponsor and the person who is the subject of the application, and*
>
> *(c) the domestic circumstances of the person who is the subject of the application.*
>
> *(3) It shall be the duty of the sponsor and the person who is the subject of the application to co-operate fully in the investigation under subsection (2), including by providing all information in his or her possession, control or procurement relevant to the application.*
>
> *(4) Subject to subsection (7), if the Minister is satisfied that the person who is the subject of an application under this section is a member of the family of the sponsor, the Minister shall give permission in writing to the person to enter and reside in the State and the person shall, while the permission is in force and the sponsor is entitled to remain in the State, be entitled to the rights and privileges specified in section 53 in relation to a qualified person.*
>
> *[…]*
>
> *(8) An application under subsection (1) shall be made within 12 months of the giving under section 47 of the refugee declaration or, as the case may be, subsidiary protection declaration to the sponsor concerned.*
>
> *(9) In this section and section 57, "member of the family" means, in relation to the sponsor—*

(a) where the sponsor is married, his or her spouse (provided that the marriage is subsisting on the date the sponsor made an application for international protection in the State),

(b) where the sponsor is a civil partner, his or her civil partner (provided that the civil partnership is subsisting on the date the sponsor made an application for international protection in the State),

(c) where the sponsor is, on the date of the application under subsection (1) under the age of 18 years and is not married, his or her parents and their children who, on the date of the application under subsection (1), are under the age of 18 years and are not married, or

(d) a child of the sponsor who, on the date of the application under subsection (1), is under the age of 18 years and is not married.

Submissions on behalf of the Applicant.

12. Mr. Power SC indicated that having regard to the concession that he had made at the outset in relation to the applicability of the decision in the *SH* case and having regard to the principles set down in the *Worldport* case, he proposed to rely on his written and oral submissions primarily for the purposes of grounding such appeal as may be brought by the applicant from the decision that the court was likely to hand down.

13. It was submitted that the recognition of refugee status was a declaratory act. It was submitted that that was inherent in Irish law, in EU law, and in international law. In this regard he referred to para. 28 of the UNHCR handbook, which stated that a person was a refugee within the meaning of the 1951 Convention, as soon as he or she fulfilled the criteria contained in the definition. That would necessarily occur prior to the time at which the person's refugee status was formally determined. Recognition of refugee status did not therefore make him a refugee, but declared him to be one. The handbook provided that the person did not become a refugee because of recognition, but was recognised because he was a refugee. It was submitted that s.47 of the 2015 Act, which provided that the Minister shall give a refugee declaration to a person as soon as possible after receipt of the relevant report, was a necessary reflection of EU law and of international law.

14. Counsel stated that the recognition of refugee status being a declaratory act, was also provided for under Article 18 of the European Charter of Fundamental Rights and under Recital 14 of the Qualifications Directive 2004/83EC. Counsel submitted that the

consequences of it being a declaratory act were considered in case C-550/16, A&S, where the CJEU had considered Art. 2(f) of Directive 2003/86/EC of 22 December 2003 on the right to family reunification. Counsel submitted that while Ireland was not bound by, or subject to that Directive, the observations of the court in that case were pertinent to the present application. Counsel referred to paras. 52-60 of the judgment, which supported the proposition that to make the right to family reunification under the Directive, dependent upon the moment at which the competent national authority formally adopted the decision recognising the refugee status of the person concerned, would call into question the effectiveness of that provision and would go against the aim of the Directive, which was to promote family reunification and to grant in that regard, a specific protection to refugees and would also be contrary to the principles of equal treatment and legal certainty (see para. 55).

15. Counsel further referred to the opinion of Advocate General Hogan in *Bundes Republik Deutschland v. SE* (Case C-768/19), where the Advocate General had opined that based on the *A&S* case and on the decision in *BMM v. Etat Belge* (Case C-137/19), it was established that the entitlement to make an application for family reunification, could not be made to turn on the happenstance of the dates on which certain decisions were made by third parties.

16. Counsel submitted that insofar as Ireland provided similar rights to family reunification, albeit outside the terms of the 2003 Directive, similar considerations applied. It was submitted that the State could not legislate in such a way as to undermine the declaratory nature of the declaration of refugee status under EU law. It was submitted that the impugned provision was contrary to EU law and ought to have been disapplied by the Minister.

17. Counsel submitted that the principle set down in the *A&S* case, applied with equal force in respect of the Irish Constitution and in particular in relation to Art. 40.1 therein. It was submitted that the provisions of s.56(9) of the 2015 Act, breached the principles of equal treatment and legal certainty and was therefore repugnant to Arts. 40.1 and 40.3 of the Constitution. It was submitted that the breach of the right to equal treatment arose because persons were treated differently, based on the happenstance of the duration of the determination process of their asylum application. It was submitted that in allowing applications for family reunification to be effectively determined by the happenstance of

how long the underlying refugee status application took to be determined, that constituted a disproportionate interference in the right to fair and equal treatment and the right to legal certainty.

18. Counsel noted that the decision in the *SH* case in deciding this aspect of the case had relied considerably on the decision of the Supreme Court in *A, SS & I v. Minister for Justice* [2020] IESC 70, which had considered the constitutionality of s.56(9)(a) of the 2015 Act, which limited applications for family reunification with a spouse, to those with a marriage subsisting on the date the applicant made an application for international protection; and separately, it considered the constitutionality of s.56(8) of the 2015 Act, which imposed a time limit of twelve months from the date of the grant of a refugee or subsidiary protection declaration, for the making of a family reunification application. It was submitted that the questions that had been addressed by the Supreme Court in that case, were entirely different from the issues that arose for determination on this application. Therefore, insofar as Ferriter J. in the *SH* case had relied on that decision, it was submitted that he had been incorrect so to do.

19. It was submitted that it was not the applicant's position that there was a self-standing constitutional right to family reunification; but where the Oireachtas had seen fit to make provision for it, that provision, as with any domestic provision, must comply with basic constitutional principles, including the right to equal treatment and respect for existing familial relations.

20. It was submitted that insofar as the Supreme Court decision in the *A&S* case had held that the applicant could not establish that he had been subject to unequal treatment in relation to the twelve month time limit, because it applied to all persons who had been granted refugee status; that was completely different to the position in the instant case, where the applicant for international protection, was utterly dependent on the timing of the decision that legally recognises his or her status as a refugee, for the purpose of any prospective application for family reunification. While it was accepted that even in the absence of a self-standing right to family reunification from the date of an application for international protection, the Oireachtas had to choose, as a matter of policy, provisions that treated applicants for family reunification equally and fairly, and not dependent upon the happenstance of when their actual declaration of refugee status should be made and their ensuing application for family reunification was lodged.

21. It was further submitted that the impugned provision was incompatible with the European Convention on Human Rights and in particular with Arts. 8 and 14 thereof. Counsel noted that in a number of cases, it had been held that family reunification was an "essential right" of refugees.

22. It was submitted that the impugned provision was incompatible with Art. 8 of the ECHR, in failing to vindicate the essential right of refugees to reunite with their family, including those who were children, at the date on which international protection had been applied for. In the alternative, it was submitted that the impugned provision was incompatible with Art. 8, when taken in conjunction with the provisions of Art. 14. It was submitted that the applicant had been treated differently to persons who were fortunate enough to have had their applications for international protection fully accessed and determined well in advance of their children attaining the age of 18 years.

23. Finally, it was submitted that the existence of the non-statutory scheme operated by the Minister, whereby non-EU nationals could apply for family reunification under the terms of the policy, was not an effective or certain remedy, due to the fact that the applicant in this case would not be able to comply with the monetary provisions of the policy and therefore would have to rely on the discretionary humanitarian grounds that were provided for under the policy. It was submitted that for that reason, that avenue of redress was not an effective or certain remedy.

24. Counsel also referred to a decision that had been handed down by the Supreme Court subsequent to the *SH* case, which was the decision in *A & B v. International Protection Appeals Tribunal & Ors.* [2022] IESC 35, which judgment had been handed down on 18 July 2022. In that case, the applicants had applied for international protection, which had been refused at first instance by the IPO. The applicants had failed to appeal within the requisite time limit. They subsequently submitted a late appeal to IPAT and applied for an extension of time within which to appeal. However, before that was determined, the Minister, acting on the report issued by the IPO, had refused to grant the applicants international protection and had later made orders for their deportation under s.51 of the 2015 Act.

25. The respondent in that case refused to entertain the application for an extension of time within which to appeal, on the basis that they were no longer an "applicant" within the meaning of the 2015 Act. Counsel submitted that in that case it had been recognised

that it was long established that State bodies administering statutory schemes were under a duty to act constitutionally and fairly in decision making (see MacMenamin J. at para. 123). He further noted that Charleton J. had noted at para. 16 of his judgment, that the Minister had a wide discretion in the area, which undoubtedly encompassed the possibility of suspending an order made under s.47 for the purpose of allowing the appellants in that case, who were subject to such an order, to seek an extension of time and appeal the recommendation of the IPO through IPAT, thereby ensuring the continued protection of their rights to fair procedures and a just remedy. Counsel stated that while he did not rely on this decision as taking the present case outside the ambit of the *Worldport* principles applicable to the *SH* case, it was a case that he wished to rely on in argument.

Submissions on behalf of the Respondents.

26. On behalf of the respondents, Ms. Sarah Cooney BL, began by stating that the respondents raised a preliminary objection to the applicant's application herein, on the grounds that she had not exhausted her alternative remedies. In particular, she had not sought to make an application under the Minister's policy document on Non-EEA Family Reunification. The existence of such an alternative remedy had been recognised by the Supreme Court in its decision in *A, SS & I v. Minister for Justice* [2020] IESC 70 and in *RC (Afghanistan) v. Minister for Justice & Equality* [2019] IEHC 65. Counsel also referred to the decision of the European Court of Human Rights in *MT v. Ireland* (Application No. 54387/20), where the court had held that the applicant's failure to exhaust the available domestic remedies, which are available to achieve family reunification, rendered his application inadmissible before that court. It was submitted that the applicant's application had been brought prematurely, in circumstances where she had failed to exhaust all possible means to seek admission of her adult daughter to the State; in particular, by making an application for family reunification under the non-statutory scheme.

27. In relation to the substantive arguments that had been raised on behalf of the applicant, it was submitted that all of these had been conclusively decided by Ferriter J. in the *SH* case. In particular, it was noted that he had found that a declaration of refugee status, did not have retrospective effect as regards the benefits conferred by law from the date of such declaration, including the right to family reunification conferred by s.56 of the 2015 Act.

28. It was submitted that it had been conclusively held in the *SH* case that the declaratory nature of refugee status, did not mean that the benefits and entitlements conferred on a person who has been granted such status, can automatically be applied in a retrospective manner. The court had found in the *SH* case that the Oireachtas was entitled to determine the benefits and entitlements to be provided to beneficiaries of refugee status; and crucially, to decide at what point, said benefits and entitlements were to be conferred.

29. It was submitted that the Oireachtas was entitled to decide when an applicant may seek to enforce the benefits and entitlements which had been conferred upon them as a result of a declaration of refugee status; and from what point such benefits were deemed to be applicable. It had been found that in conferring the right to apply for family reunification on a person who has obtained refugee status and making the operable date, the date on which the application for family reunification had been made, it had been held in the *SH* case, that that was a legitimate exercise of legislative power by the Oireachtas, that it was not in breach of either EU law, or the Constitution. It was submitted that that finding was binding in the present case.

30. It was submitted that the provisions of s.56(9)(d) in relation to when a person would be deemed to be a "member" of the refugee's family; *inter alia*, by being a child under the age of 18 years at the date of lodgement of the application for family reunification; did not offend against the principle of legal certainty. It was submitted that it was very clear in its terms, which children would come within that definition.

31. It was submitted that it had already been found that the provisions of s.56 in relation to the treatment of applicants and which of their children would come within the definition of member of the family, as provided for in s.56, had already been determined as not offending against the principle of equal treatment, or being otherwise repugnant to the Constitution.

32. In relation to the allegation that s.56(9) of the 2015 Act, was contrary to Art. 18 of the European Charter of Fundamental Rights, which recognised the right to asylum as a fundamental right; while it was accepted that asylum was a fundamental right under EU law; Art. 18 did not explicitly or impliedly provide for a right to family reunification, as found by Ferriter J. in the *SH* case. In addition, it was submitted that Bolger J. had held in

O v. Minister for Justice [2022] IEHC 617, that no EU law rights were engaged in the application of s.56 and that as a result, the Charter was not applicable.

33. Insofar as the applicant had referred to Recital 14 of the Qualification Directive, that related to family reunification rights for family members who were present in the relevant Member State with the declared refugee. In circumstances where the applicant's children were at all material times, living outside the State, it was submitted that the applicant could not seek to rely on that Directive. Insofar as the applicant had referred to the Family Reunification Directive, it was submitted that the decision-maker was not bound by that Directive, and as a result, reference to it could not avail the applicant. It was submitted that that point had already been considered and rejected by Ferriter J. in the *SH* case.

34. Insofar as it had been argued that s.56(9) of the 2015 Act, was contrary to Arts. 8 and 14 of the ECHR, it was submitted that that had been considered and dealt with in the *SH* case, where Ferriter J. had relied on the decision in the *A,SS & I* case, where it had been held that the provisions of s.56(8) of the 2015 Act applied without distinction to all declared refugees. There was no difference of treatment between various categories of declared refugees. It was submitted that the same determination had been made by Ferriter J. at para. 135 of his judgment. In particular, it was pointed out that the applicant could not point to any difference in treatment between her and any other person, who had applied for family reunification on the same day as she had done.

35. Finally, counsel submitted that the subsequent decision that had been referred to by the applicant, being the *AB* case, was not relevant as that judgment concerned what it meant to be an "applicant" for the purposes of the 2015 Act and whether there should be a broad interpretation of that provision in the Act. It was submitted that that case was not relevant to the within application. It was submitted that having regard to the comprehensive nature of the decision in the *SH* case and the fact that it covered all the arguments that had been raised on behalf of the applicant in this application, the court should follow that decision and refuse all of the reliefs sought by the applicant in her notice of motion.

Conclusions.

36. It is well settled at law, that a judge at one level in the hierarchy of the court system, should follow a judgment given by another judge at the same level, unless there

are good reasons for the second judge departing from the judgment given by the first judge. These principles, while recognised for a considerable period, were set down by Clarke J. (then sitting as a judge of the High Court) in *Hughes v. Worldport* [2005] IEHC 189, where he stated as follows:

> "*I have come to the view that it would not be appropriate, in all the circumstances of this case, for me to revisit the issue so recently decided by Kearns J. in Industrial Services*. *It is well established that, as a matter of judicial comity, a judge of first instance ought usually follow the decision of another judge of the same court unless there are substantial reasons for believing that the initial judgment was wrong. Huddersfield Police Authority ûv- Watson [1947] K.B. 842 at 848, Re Howard's Will Trusts, Leven & Bradley [1961] Ch. 507 at 523. Amongst the circumstances where it may be appropriate for a court to come to a different view would be where it was clear that the initial decision was not based upon a review of significant relevant authority, where there is a clear error in the judgment, or where the judgment sought to be revisited was delivered a sufficiently lengthy period in the past so that the jurisprudence of the court in the relevant area might be said to have advanced in the intervening period. In the absence of such additional circumstances it seems to me that the virtue of consistency requires that a judge of this court should not seek to second guess a recent determination of the court which was clearly arrived at after a thorough review of all of the relevant authorities and which was, as was noted by Kearns J., based on forming a judgment between evenly balanced argument. If each time such a point were to arise again a judge were free to form his or her own view without proper regard to the fact that the point had already been determined, the level of uncertainty that would be introduced would be disproportionate to any perceived advantage in the matter being reconsidered.*"

37. These principles, which have become known as the *Worldport* principles, have been consistently applied in subsequent cases: see *Kadri v. Governor of Wheatfield Prison* [2012] IESC 27 (per Clarke J. at paras. 2.1-2.3); *A, SS & I & Ors. v. Minister for Justice & Equality* [2020] IESC 70 (per Dunne J. at para. 63; Charleton J. at para. 8); *A, SS & I v. Minister for Justice & Equality* [2021] 3 IR 140 (per Charleton J. at para. 152).

38. The issues which arise for determination on this application and the arguments put forward on behalf of the parties in respect of those issues, were all canvassed before the

court and were determined in the judgment of Ferriter J. in the *SH* case. Having read that judgment, the court is satisfied that Ferriter J. gave detailed consideration to all the arguments put before him. This Court respectfully adopts the reasoning and conclusions set out by Ferriter J. in his judgment in the *SH* case.

39. Relying on the decision in the *A, SS & I* case, Ferriter J. found that there was no self-standing constitutional, ECHR or EU law right to family reunification for a member of a beneficiary's family, who resides outside the State, whether at the date of the beneficiary's application for international protection, the date of the beneficiary's declaration as a refugee, or otherwise.

40. In considering the arguments put forward on behalf of the applicant in that case, which arguments were also repeated in the present case, that the provisions of s.56 of the 2015 Act, breached the provisions of EU law, Ferriter J. found as follows at para. 114:

> "*In conclusion, in my view, article 18 of the Charter does not create a right to family reunification. There is no EU law right to family reunification from the date of a refugee's application for international protection which applies in Ireland. The provisions of the Qualification Directive as regards family reunification do not avail the applicants. The provisions of the Family Reunification Directive, as interpreted by the CJEU, cannot be availed of by the applicants as that directive is not applicable in this State. The matter is governed by Irish law and, specifically, the provisions of s.56. The terms of s.56 are a matter of policy choice by the legislature. It follows that s.56(9)(d) is not in breach of EU law.*"

41. Ferriter J. went on to come to the following conclusions at paras. 128 and 129:

> "*128. In my view, it follows from the absence of any right to family reunification outside the right created under s.56 that the appropriate comparator for the applicants is any other applicant who applied for family reunification on the same dates as they did. SH and AJ are treated precisely the same as any other such applicant. To hold that an appropriate comparator is an applicant for international protection who applied at the same time and who has a child of same age but who was granted a refugee declaration before SH or AJ would be to re-write the terms of s.56(9)(d) by effectively holding that a qualifying child within the provision is a child who was 18 not at the date of family reunification application but at the date of the sponsor's international protection application. That would involve the Court in an*

improper usurpation of its constitutional role. The legislature has chosen to provide the significant benefit of family reunification to those persons who have children under the age of 18 at the time they are declared refugees and have made a family reunification application. Once that policy choice was open to the legislature, I do not see how it can be said that it involves a breach of article 40 of the Constitution or article 14 ECHR (even assuming, without so deciding, that s.56(9)(d) relates to a matter which sufficiently concerns the applicants' human personality such as to engage article 40 at all). An applicant for international protection who successfully achieves a declaration of refugee status is objectively in a different category, for the purposes of conferral of benefits, such as family reunification, from those applicants for international protection status who have not yet achieved such a declaration. The status of a parent with a minor child is capable of being objectively differentiated from the status of a parent with an adult child.

129. In the absence of a self-standing right to family reunification from the date of an application for international protection, it was open to the Oireachtas to choose as a matter of policy those children of beneficiaries of international protection status who would be conferred with the right to family reunification. The law is replete with examples of a differentiation in treatment (in respect of the conferral of benefits) as between persons who have been recognised as having refugee status, and those who have made applications for international protection but who have not yet been declared to be refugees. Accordingly, there is on the face of it an objective justification for the Oireachtas choosing to confer the benefit of family reunification on those children who were under eighteen at the date of applying for family reunification but not conferring such a benefit on children who were adults at that date. The selection of that date as the "cut-off" for conferral of a benefit as a declared refugee's children seems to me to be within the margin of appreciation afforded to the Oireachtas in considering how rights such as a right to respect for family life should have been vindicated."

42. Ferriter J. went on to hold that all declared refugees are treated equally as of the date of their family reunification applications. There was no difference of treatment within that class. He noted that while there would always be cases that would fall just outside the cut-off dates or time limits imposed, such as to create what might be perceived as a harsh

result for persons in that category, he held that it did not follow that the provision was unconstitutional, or in breach of the ECHR.

43. Ferriter J. also found that the decisions in *BK (A Minor) v. Minister for Justice* [2011] IEHC 526 and *Michael (A Minor) & Ors. v. Minister for Social Protection* [2019] IESC 82, were consistent with the principle that a declaration of refugee status did not have retrospective effect, as regards the benefits conferred by law from the date of such declaration, including the benefit of the right to family reunification conferred by s.56.

44. The court is satisfied that, having regard to the comprehensive nature of the judgment given in the *SH* case, this Court is bound to follow that judgment in terms of its findings and the consequences that flow from them.

45. In relation to the issue of the existence of an alternative remedy under the non-statutory scheme, while Ferriter J. noted the existence of such alternative remedy and indeed, noted that due to the delay that had occurred in that case, *SH* may have a strong case to make under that scheme; he did not specifically hold that the existence of such an alternative remedy was a bar to the granting of relief in the case before him.

46. While not departing from the analysis of Ferriter J. in that regard, I would be inclined to go further, and hold that the existence of such an alternative is an additional ground on which the court would refuse the reliefs sought by the applicant in her notice of motion. The court is satisfied that bringing an application for reunification with her adult child pursuant to the non-statutory scheme, would not have prejudiced the applicant's position in respect of this application. Therefore, she should have brought that application prior to proceeding with the substantive hearing of her application herein. Thus, if it were necessary to do so, the court would hold that the applicant's application herein is premature.

47. However, as the court holds itself bound by the decision in the *SH* case*,* the court has determined that the applicant is not entitled to the reliefs sought in her notice of motion, for the reasons set out in the *SH* judgment.

48. As this judgment is being delivered electronically, the parties shall have four weeks within which to furnish brief written submissions on the terms of the final order and on costs and on any other matters that may arise.

49. The matter will be listed for mention at 10.30 hours on 11th October 2023 for the purpose of making final orders.