

THE HIGH COURT

JUDICIAL REVIEW

[2018 No. 216 J.R.]

BETWEEN

X. Z. (CHINA)

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY, THE CHIEF INTERNATIONAL PROTECTION OFFICER, THE ATTORNEY GENERAL AND IRELAND

RESPONDENT

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 23rd day of March, 2018

1. The applicant arrived in the State from China *via* Malaysia in June 2011 and was detained at Dublin Airport. He then applied for asylum on 17th June, 2011. In these proceedings, the applicant's sister has averred that he stated that the asylum application related to his membership of Falun Gong. In fact, the s. 8 interview has been produced and it clearly involves a claim that the applicant was a persecuted Catholic in China. On 8th July, 2011, an interview was scheduled but the applicant did not appear, nor did he complete the questionnaire and his application was deemed withdrawn on 19th July, 2011.

2. A deportation order was made on 12th March, 2012. An amended deportation order was made on 27th March, 2012, which provided for two aliases for the applicant as well as his original name. That order was not challenged.

3. On 2nd October, 2017, the European Union (Subsidiary Protection) Regulations 2017 (S.I. 409 of 2017) came into force allowing a 30-day time limit for a subsidiary protection application from certain persons who did not have a previous effective opportunity to seek such protection. That period expired no later than 13th November, 2017.

4. Regulation 6(4) allowed an extension of time if (a) special circumstances existed as to why the application could not have been made in time and (b) it would be unjust not to allow the application to be made.

5. On 13th February, 2018, the applicant was arrested under s. 5 of the Immigration Act 1999. On 22nd February, 2018, his solicitor attended him in Cloverhill Prison and on the same date he lodged an application for subsidiary protection, claiming to be involved with Falun Gong. That application was received on 26th February, 2018.

6. The application gave no explanation as to why it could not have been made earlier as required by reg. 6(4) of the 2017 Regulations.

7. On 27th February, 2018, the applicant was informed that his application was out of time and was informed that reasons were required for a late application. On 28th February, 2018, the application was formally rejected on the grounds of failure to set out such exceptional reasons.

8. On 12th March, 2018, the applicant applied for and was granted leave to seek judicial review, the primary relief sought being *certiorari* of the decision of 28th February, 2018. I also granted an interim injunction until 13th March, 2018, restraining the removal of the applicant from the State.

9. The applicant then applied for an interlocutory injunction and I heard helpful submissions from Mr. Gavin Keogh B.L. for the applicant, and Ms. Eilis Brennan B.L. for the respondent. On 13th March, 2017 I declined to grant that order and I now give more detailed reasons for having done so.

Evidence received

10. On behalf of the applicant, I received an affidavit of Mr. Donal Quigley, Solicitor, grounding the leave application and an affidavit of the applicant's sister of 13th March, 2018.

11. On behalf of the respondent, I received an affidavit of Mr. Tom Doyle, Assistant Principal in INIS, and Mr. Phillip O'Sullivan of the International Protection Office; and oral evidence from Ms. Ann-Marie O'Reilly, HEO in the Legal Service Support Unit as to the applicant's s. 8 interview under the Refugee Act 1996.

Application of *Okunade* criteria

12. The criteria for a deportation injunction are set out in the Supreme Court decision in *Okunade v. Minister for Justice, Equality and Law Reform* [2012] IESC 49 [2012] 3 I.R. 152, *per* Clarke J.

13. Factors against the applicant are:

- (i). Firstly, the weight to be attached to the unchallenged deportation order.
- (ii). Secondly, in terms of an assessment of the strengths and weaknesses of the applicant's case, on the basis of the limited argument I have heard so far, the case seems to be of limited strength insofar as it appears at this point in time. I should add that that may of course change on substantive argument in which case the applicant can be brought back.
- (iii). Finally, the applicant's failure to apply for injunctive relief immediately on his arrest on 13th February, 2018, and the fact that that application was not made until 12th March, 2018, in the context of a proposed deportation on 14th March, 2018, certainly does not help his position.

14. In terms of factors in favour of the applicant I would view the position as follows:

(i). The weight to be attached to consequences to the applicant in the event of deportation seems limited given that his credibility is in tatters, in the light of the completely inconsistent nature of the applications for protection made, the fact that he appears to have told his sister incorrectly that the original application related to Falun Gong, the failure to pursue the asylum application and the fact that the subsidiary protection application was only made when in custody and thus is *prima facie* abusive.

(ii). In terms of the impact of the consequence of the deportation order on the applicant's partner and children, very little information has been put before the court in this regard. The partner, who apparently is also unlawfully present in the State, is not referred to in the subsidiary protection claim as a dependent. The two children appear to have been born in Northern Ireland according to Mr. Keogh, thus at least raising the question as to how that came about and perhaps as to where they are ordinarily resident. No information whatsoever in this regard is put on affidavit, and indeed nothing is referred to as to the consequences for the partner and children in relation to deportation apart from the sister's averment that she is concerned about those unspecified consequences.

15. On balance, therefore, it seems to me that the factors against the applicant outweigh those in his favour. Although in principle I would give due weight and regard to the consequences to the partner and children by virtue of *K.R.A. and B.M.A. v. Minister for Justice and Equality* [2017] IECA 284 (Unreported, Court of Appeal, 27th October, 2017), those consequences (whether or not they are automatically decisive) have only minimal evidential support in this case.

Order

16. For those reasons, the order I made on 13th March, 2017 was to decline to continue the injunction against the deportation of the applicant.