

THE HIGH COURT

JUDICIAL REVIEW

[2011 No. 200 J.R.]

BETWEEN

S.O.U. (NIGERIA)

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

[2012 No. 983 J.R.]

BETWEEN

F.M. (PAKISTAN)

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 17th day of April, 2018

1. These are two further *M.M.*-related challenges to subsidiary protection refusals (see *M.M. v. Minister for Justice and Equality* [2018] IESC 10). I have heard helpful submissions from Mr. David Leonard B.L. (with Mr. John Finlay S.C.) for the applicant and Ms. Kilda Mooney B.L. for the respondents in *S.O.U.*, and from Mr. Michael Conlon S.C. (with Mr. Leonard) for the applicant and Mr. Daniel Donnelly B.L. for the respondent in *F.M.*

2. The first question is whether reg. 4(5) of the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006) applies to the ultimate decision-maker or to intermediate officials, so as to preclude preparing draft deportation papers prior to finalisation of the protection claim. The respondents rely on the judgments of Cooke J. in *O.O. v. Minister for Justice, Equality and Law Reform* [2011] IEHC 165 (Unreported, High Court, 16th March, 2011), *O.O. v. Minister for Justice, Equality and Law Reform* [2011] IEHC 175 (Unreported, High Court, 4th May, 2011) and *N.D. (Nigeria) v. Minister for Justice and Equality* [2012] IEHC 44 (Unreported, High Court, 2nd February, 2012) and as followed by O'Regan J. in *B.I. v. Minister for Justice and Equality* [2016] IEHC 642 (Unreported, High Court, 8th November, 2016). The applicant's interpretation is that officials of the Department of Justice and Equality should not be permitted to prepare a deportation order proposal prior to a final decision on subsidiary protection. However, there is clearly no legal problem with them doing so. I entirely agree with the judgments of Cooke J. and O'Regan J. and follow them.

3. The second point is that there is an appearance of bias because resources have been expended on deportation reasoning before a final subsidiary protection refusal. That is also dealt with by Cooke J. in the foregoing judgments and again I entirely agree with and follow those decisions.

4. A third point is made about legitimate expectation but that issue is not strongly pressed and seems to be of no substance.

5. Insofar as there is any implicit suggestion that the subsidiary protection/deportation procedures should not be related procedurally, I rejected that in *N.M. v. Minister for Justice and Equality* [2018] IEHC 186 [2018] 2 JIC 2710 (Unreported, High Court, 27th February, 2018).

6. Mr. Conlon helpfully agrees that if I take the approach of following previous High Court jurisprudence, then his application should be dismissed. The overall point is that officials can prepare for a number of scenarios and that does not bind the Minister or the ultimate decision-maker. It is often highly appropriate and helpful in terms of efficient public administration to have such preparatory work done. That does not prejudice an ultimate decision. It is certainly not appropriate for the court as part of the judicial branch of government to interfere with that or to dictate how such matters of public administration are organised; and certainly not to interfere in such a negative way as to preclude the doing of legitimate and reasonable preparation for a number of possible outcomes in any process, whether administrative or otherwise.

Order

7. Both applications are dismissed.