THE SUPREME COURT

[S.C. No:484 /2006]

Murray C.J.
Denham J.
Fennelly J.
Kearns J.
Finnegan J.

Between/

George Dimbo (suing by his mother and next friend Ifedinma Dimbo), Ifedinma Dimbo and Ethelbert Dimbo

Applicants/Respondents

and

The Minister for Justice, Equality and Law Reform

Respondent/Appellant

Judgment delivered the 1st day of May, 2008 by Denham J.

1. Two Issues

There are two issues before the Court in this case. First, there is an appeal from the determination of the High Court to quash the decision of the Minster under the Irish Born Child Scheme 2005 (IBC 05 Scheme). Secondly, there is an appeal from the judgment of the High Court quashing the decision of the Minister to make a deportation order under s.3 of the Immigration Act, 1999, as amended.

2. First Issue

The first issue in this case is the decision of a Minister of the Government, made in an administrative scheme, established as an exercise of executive power, to deal with a unique group of foreign nationals. It is submitted on the one hand, that, *inter alia*, in this scheme the Constitutional and Convention rights of applicants were required to be considered in accordance with law. On the other hand, it was submitted that neither Constitutional nor Convention rights arose to be considered. Thus the nature of the scheme is at the core of the appeal, and, with it, the nature of any judicial review. Also, at the kernel of the matter is the fact that the position of a foreign national, who failed in an application under the scheme, remains the same as it was prior to the application, Constitutional and Convention rights remaining yet to be considered. The central issue is the refusal by the Minister of the second and third named applicant's application under the IBC 05 Scheme. In this, and the related judgments, the term 'foreign national' means a national other than an Irish citizen.

3. Eight Cases
The Minister for Justice, Equality and Law Reform, the respondent/appellant, hereinafter referred to as 'the Minister', has appealed from the judgments of the High Court (Finlay Geoghegan J.) in seven cases where the High Court quashed the decision of the Minister to refuse applications for permission to remain in the State to foreign national parents of Irish born children under a scheme which he had introduced. In an eighth case the Minister is appealing against the order for costs made in the High Court. No submissions have yet been heard on this latter case. In two cases, this being one of them, the High Court also quashed the decision of the Minister to make a deportation order, under s.3 of the Immigration Act, 1999, as amended, which the Minister has also appealed, and which is the second issue in this judgment.

4. These related cases are:

(i) Bode v. The Minister, Appeal No. 485/2006
(ii) Oguekwe v. The Minister, Appeal No. 489/2006
(iii) Dimbo v. The Minister, Appeal No. 484/2006
(iv) Fares v. The Minister, Appeal No. 483/2006
(v) Oviawe v. The Minister, Appeal No. 480/2006
(vi) Duman v. The Minister, Appeal No. 482/2006
(vii) Adio v. The Minister, Appeal No. 481/2006
(viii) Edet v. The Minister, Appeal No. 005/2007

The Minister was represented in all the cases by the same counsel. The same affidavit of Maura Hynes, a Principal Officer in the Department of Justice, Equality and Law Reform, was filed in all cases on behalf of the Minister. Similar written submissions were filed in all cases.

5. Judgment on the appeals in **Bode**, **Fares**, **Oviawe**, **Duman** and **Adio** were delivered by this Court on the 20th December, 2007. The general facts and law relating to this first issue in all eight cases were set out in the **Bode** judgment. The particular facts, law and decision of this case are set out herein.

6. Parties
George Dimbo (suing by his mother and next friend Ifedinma Dimbo) is the first named applicant/respondent, and is referred to hereinafter as 'the first named applicant'. Ifedinma Dimbo is the second named applicant/respondent, and is referred to as 'the second named applicant' hereinafter. Ethelbert Dimbo is the third named applicant/respondent, and is referred to as 'the third named applicant' hereinafter.

7. Particular Facts
The particular matter raised on the first issue in the case relates to the requirement of continuous residence under the IBC 05 Scheme, which issue was considered also in the **Bode** case.

The first named applicant was born in Ireland on the 6th May, 1996 and is an Irish citizen. His mother is the second named applicant and his father is the third named applicant. The second and third named applicants are married to each other and are

nationals of Nigeria.

The second and third named applicants applied under the IBC 05 Scheme. Their applications were refused on the 16th August, 2005, by reason of their failure to establish continuous residency in the State since the birth of the first named applicant. The facts are considered in detail later in the judgment.

8. High Court Proceedings

The applicants brought High Court proceedings to challenge the refusal of the Minister on the 16th August, 2006 of the applications of the second and third named applicants under the IBC 05 Scheme.

9. High Court Held

The High Court held on the 14th November, 2006, that there were significant factual differences between this case and **Bode**, but that there was no substantive difference in the analysis and conclusions in relation to the alleged breach of the citizen child's rights under article 40.3 of the Constitution. The learned High Court judge pointed out that in **Bode** the conclusion in the analysis relating to article 8 of the European Convention on Human Rights, that the citizen child has a private right in the State which demanded respect from the Minister, was based in part on the fact that the child had lived in the State since its birth. The High Court held:-

"The first named applicant herein has not lived continuously in the State since birth. In August, 2005, he was nine years old. As it appears from the facts set out later in August, 2005, he had spent approximately three and a half years in the State. Most recently he had been in the State since February, 2005. He had been attending a school in Co. Meath which he had previously attended when he had been in the State in 2003. On the evidence in these proceedings I am satisfied that the first named applicant had, by August, 2005, re-established a private life in the State which demanded respect from the [Minister]. It is clear that he actively participated in his school and school related activities, in which relationships had been formed in this period".

The High Court decision was based on the application of Constitutional and Convention rights of the Irish born child:-
"I am also satisfied, on the evidence presented, that the applicant has discharged an onus of establishing that the refusal of his parent's application under IBC/05 without a consideration of his rights for those reasons set out in the **Bode** judgment were in breach of Article 8 of the Convention.

Accordingly, *prima facie* by reason of the conclusions reached in the **Bode** judgment, the applicants herein are entitled to orders of *certiorari* quashing the decisions of the [Minister] dated 16th August, 2005 in respect of the second and third named applicants as sought at paragraph 4(c) of the statement of grounds."

The High Court referred to the untruths sworn by the second named applicant in relation to her time of residency in the State and decided not to exercise its discretion to refuse an order of *certiorari* on this basis. Contrary to what was sworn in affidavit, the second named applicant admitted that they had left the State in January, 2004, returning with the first named applicant in February, 2005. The High Court held:-

"My reason for so deciding is that, as appears from the **Bode** judgment, the primary ground upon which I have determined that the decision taken by the [Minister] on those dates under the IBC/05 Scheme were invalid, is by reason of a breach of the first named applicant's rights guaranteed by Article 40.3 of the Constitution and by reason of a breach of the Minister's obligations under s. 3 of the European Convention on Human Rights Act of 2003, having regard to the State's obligations under Article 8 of the Convention in relation to the first named applicant's right to respect for his private life. Accordingly, notwithstanding the very serious breach by the second named applicant of her obligations to this court and having regard to the apology tendered, it does not appear to me that I should deprive, in particular the first named applicant, of relief in relation to a matter which is of concern to him and which I have determined by reason of a breach of his rights guaranteed by Article 40.3 of the Constitution and Article 8 of the Convention."

10. Appeal
The Minister has appealed against the judgment and orders of the High Court.

11. Decision on the IBC 05 Scheme decision
I would allow the appeal of the Minister on this issue. My general reasons are set out in the **Bode** judgment. The particular facts of this case are as follows.
The second named applicant came to the State in 1995 on a student visa and she attended University College Cork. Her son, the first named applicant, was born on the 6th May, 1996. On the 29th September, 1997, she was granted leave to remain in the State on the basis of her citizen child. She and the first named applicant left the State and returned to Nigeria in 1998. She appears to have returned to the State with the child in 2002 and sought to have her earlier residency extended. This was refused. The third named applicant visited the State while his wife was a student. He then came on a visitor's visa in early 2003. Thereafter the three applicants lived in the State until January, 2004. The second named applicant admitted that they left the State in January, 2004. They returned in February, 2005.

On their return in 2002 and 2003 applications were made to renew the second named applicant's right to reside and the third named applicant made an application to reside based on their citizen child. A notice of intention to deport was served in August, 2003.

The fact that the applicants were not continuously resident in the State was not contested. The High Court found that the second named applicant admitted that such was the situation.

The terms of the IBC 05 Scheme were established clearly by the Minister. The scheme included a requirement of continuous residence in the State, with the child. The applicants did not meet that criteria. Therefore the Minister acted within the terms of the scheme in refusing their application.

The appeal was misconceived. The IBC 05 Scheme was an administrative scheme established by the Minister exercising executive power to deal with a unique group of foreign nationals in a generous manner, on general principles. The parameters of the scheme were set out clearly, and included a requirement of continuous residence in the State since the birth of the child. The scheme was administered by the Minister

within the terms of the scheme.

At no time was it intended, within the ambit of the scheme, that the Minister would consider, or indeed did the Minister consider, Constitutional or Convention rights of applicants. Thus the grounds of the application and of the appeal relating to Constitutional or Convention rights were misconceived, and premature. Applicants who were unsuccessful in their application under the IBC 05 Scheme were in the same position as they had been prior to the application.

It is manifestly clear on the facts that the applicants do not come within the criteria of the IBC 05 Scheme and that the Minister was entitled to so hold. Consequently, I would allow the appeal of the Minister on this issue. The Constitutional and Convention rights of the applicants remain to be considered.

12. Second Issue, Deportation Order pursuant to S.3 Immigration Act, 1999, as amended

The applicants also challenged two decisions of the Minister made on 1st February, 2006, to affirm deportation orders made in respect of the second and third applicants. The deportation orders were made on the 28th June, 2004. The second and third named applicants sought orders of *certiorari* quashing the decisions of 1st February, 2006 to affirm the deportation orders. In the proceedings they did not seek orders of *certiorari* of the deportation orders, though that had been sought in the statement of grounds.

13. Background facts

The background facts are as follows. In the summer of 2005 the second and third named applicants applied for asylum. This was refused, and the applicants did not appeal.

By letter dated 17th October, 2005, it was indicated that the 2004 deportation orders remained in place and that the Minister was then of the view that they should be enforced, but he gave a final opportunity to the applicants to submit written representations as to why the deportation orders should not be effected. Submissions were made on behalf of the second and third applicants and the first applicant by a solicitor then acting for them by letter dated 24th October, 2005. Supporting documentation was also included.

On the 8th November, 2005, an examination was made of the files of the second and third named applicants. A decision was made, first by a Clerical Officer and then by an Executive Officer. Of the second named applicant's file the conclusion was:-
"Therefore, on the basis of the foregoing, I recommend that the Minister, having also had regard to Section 3(1) of the European Convention on Human Rights Act, 2003 in making his decision affirms the previously issued deportation order in respect of Ms Ifedinma Dimbo dated 28 June, 2004."

An Assistant Principal considered the file on 11th and 21st November, 2005.
In November, 2005 the first named applicant wrote three letters to the Minister telling of his progress in school, stating his wish to remain in Ireland, and in effect asking the Minister to permit his parents to remain in Ireland.

It appears that the same Assistant Principal considered the first of these letters and formed the view that there was nothing in that letter which would warrant the Minister altering his view to sign the deportation order and the Assistant Principal made the decision to affirm the deportation order. The decision of the official was accepted by both parties as the decision of the Minister.

14. Judicial review challenge to deportation orders
The applicants challenged the decisions to reaffirm the deportation orders.

The principal grounds were:

1. The decision to deport was taken in breach of the first named applicant's rights as a citizen under Article 40.3 of the Constitution in that

(i) it failed to give due consideration to the facts and factors relating to the personal rights including the right to remain in the State and the welfare rights of the first named applicant; and

(ii) it failed to identify a grave and substantial reason favouring deportation

2. The decision is invalid in that the Minister failed to take into account relevant considerations including the change in the citizenship laws and the IBC 05 Scheme and the positive decisions made thereunder.

3. The decision to deport is in breach of the Minister's obligations under s.3 of the European Convention on Human Rights Act 2003 as it was not taken in a manner compatible with the State's obligation under article 8 of the Convention.
Other grounds were advanced, but the High Court considered it unnecessary to consider them.

15. Minister's decision
At issue was the exercise of discretion by the Minister pursuant to s.3 of the Immigration Act, 1999, as amended.
The decision of the Minister was communicated on the 1st February, 2006. It was stated:-

"The representations have been considered under Section 3(6) of the Immigration Act, 1999, as amended and Section 5 of the Refugee Act, 1996, as amended (Prohibition of Refoulement). The outcome of these considerations is that the Minister's earlier decision to make a deportation order remains unchanged as there is nothing contained therein, that would cause the Minister to alter his decision. Enclosed is a copy of the deportation order and a copy of the Minister's further considerations."

16. High Court judgment on the deportation orders
The High Court held:-

"I have carefully considered each of the above documents and have firstly concluded that the decision taken was in breach of the first named applicant’s rights, in that it failed to give due consideration to the facts and factors relating to the constitutionally protected personal rights of the first named applicant.

Even if one were to consider this only in relation to the personal right of the first named applicant to live in Ireland and not to consider the additional welfare rights, I would reach the same conclusion. In the two examinations on file the only reference to the citizen child is a standard statement in identical form to that in the examination on file in the **Oguekwe** proceedings that the child is a citizen of Ireland; is not or could never be subject to deportation and that it is presumed that if the Minister agrees to deport the parent that she will preserve the family unit by taking the child with her thereby preserving the child's right to the care and protection of his family under Article 41 of the Constitution.

Detailed representations had been made as to the child's schooling. He was by November 2005 nine and a half years old and in fourth class in a Dublin school and demonstrated to be fully participating and achieving.

The first named applicant wrote a letter dated 12th November 2005 directly to the [Minister] requesting that his family not be deported.
There is no factual consideration of the circumstances of a nine year old citizen boy at school in the State, who has a right to live in the State and does not wish to leave the State.

Furthermore, there is no consideration of the factual matters relating to the right of the first named applicant to be educated and reared with due regard to his welfare as I have concluded is necessary to comply with the State's guarantee of his rights under Article 40.3 of the Constitution.

The documents do not expressly identify any interest in the common good which or grave and substantial reason which is stated to require deportation as required by the decision in **A.O. & D.L. v. Minister for Justice** 1 I.R. [2003] 1.

However, the examination on file in considering the matters set out at s. 3(6)(j) of the Act of 1999 under the head of the common good states:

'It is in the interest of the common good to uphold the integrity of the asylum and immigration procedures in the State.'"

The learned High Court judge referred to **A.O. & D.L. v. Minister for Justice** [2003] 1 I.R. 1, and held that in November, 2005, the IBC 05 Scheme and decisions taken thereunder were part of the immigration procedures in the State, and were directly relevant to the applicants. The learned High Court judge referred to Hardiman J.'s words that 'the consideration of individual cases should as far as possible be consistent one with the other'.

The High Court concluded that the Minister had failed to have regard to relevant considerations and that accordingly the decision was not taken in a proper manner. It was held:-

"Finally, I have concluded that this decision was also made in breach of the obligations of the [Minister] under s. 3 of the European Convention on Human Rights Act 2003 for the following reasons.

As already concluded the citizen child had a private life in the State in November 2003 which demanded the respect of the [Minister].

Prima facie, the decision to deport the mother (and the father) is an interference with the right of the citizen child to respect for his private life in the State. The result of the deportation is that the child has to leave the State to maintain his family life with his parents, with the consequent interference in his private life in the State.

The *prima facie* interference does not of course mean that a decision to deport either the father or the mother will necessarily be in breach of Article 8 of the Convention. It does however mean that the applicants have discharged the onus of establishing that the [Minister] was obliged by Article 8 of the Convention to consider and determine the questions set out in the **Oguekwe** judgment, if this decision is to be justified under Article 8. Those questions were not addressed in the examination on file, nor was there any submission made seeking to justify the decision in accordance with article 8. Accordingly, the decision taken must be considered to be in breach of the citizen child's right to respect for his private life under Article 8 and the [Minister] to be in breach of s. 3 of the Act of 2003.

I have assumed that as no separate submissions were made in respect of the examination on file and other considerations leading to the decision in respect of the third named applicant, that they were identical to those of the second named applicant and the same conclusions apply.

Having concluded that the process by which the decision was taken was in breach of the first named applicant's rights and the [Minister's] constitutional and statutory obligations, it is unnecessary for me to consider any further submissions, including the challenge to the so-called rule of law as determined in **O'Keeffe v. An Bord Pleanála** [1993] 1 I.R. 39."

The High Court granted orders of *certiorari* of the decisions communicated to the second and third named applicants by the letters of 1st February, 2006, affirming the deportation orders made in 2004.

17. Grounds of Appeal

The Minister has appealed from the orders of the High Court quashing the deportation orders. The grounds stated in the Notice of Appeal were similar to those filed in **Oquekwe and Ors v. Minister for Justice, Equality and Law Reform**. However, they are not identical, and the later grounds are case specific.

The initial grounds of appeal related to the IBC 05 Scheme, and are not recited. The grounds filed relating to the deportation orders are:-

… …

24. The learned High Court Judge erred in law or in fact in the weight that she attached to the rights of the Irish citizen child in the context of the [Minister's] responsibility in the formation, implementation and enforcement of the State's immigration policies and enforcement of its immigration laws;

25. The learned High Court Judge erred in law or in fact by holding that the [Minister] was required to conduct an inquiry into the family circumstances of a proposed

deportee beyond a consideration of the representations, documents and information submitted by the proposed deportee or already in the possession of the [Minister];

26. In particular, the learned High Court Judge erred in law or in fact by holding that the [Minister] was required to inquire into and take into account the educational facilities and other conditions available to the Irish citizen child of a proposed deportee in the country of return in the event that that child was to accompany the proposed deportee;

27. The learned High Court Judge erred in law or in fact in holding that in any case of the proposed deportation of a foreign national parent of an Irish citizen child, the [Minister] must carry out a detailed fact specific consideration of the child in relation to his age, current educational progress, development and opportunities within the State in the context of his family circumstances in the State as well as the educational and other relevant conditions and development opportunities that would be available for him in the country of return;

28. The learned High Court Judge erred in law or in fact in holding that the [Minister] had not adequately considered the facts and circumstances concerning the [applicants] prior to affirming the deportation orders;

29. The learned High Court Judge erred in law or in fact in holding that the [Minister] had not adequately considered the [first named applicant's] rights prior to making the deportation orders;

30. The learned High Court Judge erred in law or in fact in holding that the [Minister's] decision to affirm the deportation order in respect of the [second and third named applicants] failed to identify any grave and substantial reason favouring their deportation;

31. Furthermore, the learned High Court Judge erred in law or in fact in failing to consider the Departmental submissions of the 8th November 2005 and 21st November 2005 as a whole;

32. Further or in the alternative, the learned High Court Judge erred in law in holding that the [Minister] or his officers, prior to making or affirming deportation orders, must expressly record a consideration of the following matters set out by the judge at pages 16-17 of her judgment, namely:

1. Whether or not the proposed decision will constitute an interference with the exercise of the applicants' or other family members' rights to respect for his or her private and family life.

2. Unless a conclusion is reached that the proposed decision will not constitute interference, as that term has been construed by the European Court of Human Rights, then:

> i) Is the proposed decision being taken in accordance with law; and
>
> ii) Does the proposed interference pursue a legitimate aim i.e. one of the matters specified in article 8.2

iii) Is the proposed interference necessary in a democratic society, i.e. is it in pursuit of a pressing social need and proportionate to the legitimate aim being pursued.

Issue of Proportionality

33. The learned High Court Judge erred in law or in fact by holding that the [Minister] was required to carry out a decision-making process under which, prior to making or reaffirming a deportation order, he had to determine that the deportation order was a reasonable and proportionate decision having regard to the personal rights of the Irish citizen child;

34. The learned High Court Judge erred in law in holding that the [Minister] was required to demonstrate that deportation of the [second and third named applicants] was reasonable and proportionate by measuring the grave and substantial reason favouring deportation against the rights of the Irish citizen child;

Grounds of Appeal relating to the Judge's findings in relation to the decisions to reaffirm the deportation orders in light of the European Convention on Human Rights

35. The learned High Court Judge erred in law or in fact in holding that the [Minister] had failed to consider whether or not the deportation of [the second and third named applicants] would constitute an inference with the applicant's family life or with the private life of the [first named applicant];

36. The learned High Court Judge erred in law or in fact in holding that *prima facie*, the decision to reaffirm the deportation orders in respect of the [second and third named applicants] was an interference with the right of the [first named applicant] to respect for his family or private life;

37. The learned High Court Judge erred in law or in fact in holding that the [Minister] had not considered the matters referred to in Article 8(2) of the European Convention on Human Rights either adequately or at all;

Grounds relating to the Learned High Court Judge's findings of the relevance of the IBC 05 Scheme to the decision whether or not to affirm the deportation orders

38. The learned High Court Judge erred in law or in fact by holding that by introducing the IBC 05 Scheme, the [Minister] bound himself to consider the issue of whether or not to make or affirm deportation orders in respect of the non national parents of Irish citizen children in any way differently from that previously pertaining;

39. The learned High Court Judge erred in law or in fact by characterising the IBC 05 Scheme and decisions taken under them as constituting a part of the immigration procedures in the State in November 2005;

40. The learned High Court Judge erred in law or in fact by holding that the [Minister] was bound to consider whether or not to affirm the deportation orders made against

the [second and third named applicants] in a manner consistent with the IBC 05 Scheme as the learned High Court Judge characterised it;

41. The learned High Court Judge erred in law or in fact by limiting or fettering the [Minister's] discretion in the determination whether or not to make or affirm a deportation order in respect of the non national parent of an Irish citizen child;

42. The learned High Court Judge erred in law or in fact by holding the creation of the IBC 05 Scheme to be material to the [Minister's] consideration whether or not to affirm the deportation orders in respect of the [second and third named applicants] in circumstances where their applications under the scheme had been refused on the ground that they did not meet the conditions of the scheme;

Grounds relating the to use of untruthful submissions and evidence on the part of the [second named applicant]

43. The learned High Court Judge erred in law and in fact in granting an order of certiorari of the [Minister's] decisions to refuse the applications under the IBC 05 Scheme notwithstanding that the [second and third named applicants] had provided misleading information in their applications;

44. The learned High Court Judge erred in law and in fact by failing to accord any or any sufficient weight to the obligation on the [second and third named applicants] not to provide untruthful information in their application under the IBC 05 Scheme;

45. The learned High Court Judge erred in law or in fact in failing to accord any or any sufficient weight to the fact that the [second and third named applicants] had provided misleading information to the [Minister] in their submissions as to why they should be permitted to remain in the State;

46. The learned High Court Judge erred in law or in fact or in the exercise of her discretion in granting relief to the [applicants] notwithstanding the misleading information furnished by them and the misleading contents of the grounding affidavit of the [second named applicant]."

These grounds of appeal raise several specific issues: the nature of the consideration required to be made by the Minister of the facts relevant to the rights of the citizen child; the type of consideration to be given to issues relating to the child, including the education of the child in the State and in a prospective other country; the type of inquiry which is required of the Minister; the identification of a reason for the deportation; whether the Minister should record specific considerations prior to making deportation orders; the issue of proportionality; the European Convention on Human Rights; the relevance of the IBC 05 Scheme; and the untruthful submissions and evidence of the second named applicant.

18. <u>Law and the Constitution</u>

The law relevant to this appeal includes the Constitution of Ireland, statutory law, and the European Convention on Human Rights.

18.1 Statutory Law

The relevant statutory law on deportation referable to this case is to be found in s.3 of the Immigration Act, 1999, as amended by s.10 of The Illegal Immigrants (Trafficking) Act 2000, which provides:-

"**3.**—(1) Subject to the provisions of section 5 (prohibition of *refoulement*) of the Refugee Act, 1996 , and the subsequent provisions of this section, the Minister may by order (in this Act referred to as "a deportation order") require any non-national specified in the order to leave the State within such period as may be specified in the order and to remain thereafter out of the State.

… … …

(3) (*a*) Subject to subsection (5), where the Minister proposes to make a deportation order, he or she shall notify the person concerned in writing of his or her proposal and of the reasons for it and, where necessary and possible, the person shall be given a copy of the notification in a language that he or she understands

(*b*) A person who has been notified of a proposal under paragraph (a) may, within 15 working days of the sending of the notification, make representations in writing to the Minister and the Minister shall—

(i) before deciding the matter, take into consideration any representations duly made to him or her under this paragraph in relation to the proposal, and

(ii) notify the person in writing of his or her decision and of the reasons for it and, where necessary and possible, the person shall be given a copy of the notification in a language that the person understands.

(4) A notification of a proposal of the Minister under subsection (3) shall include—

(*a*) a statement that the person concerned may make representations in writing to the Minister within 15 working days of the sending to him or her of the notification,

(*b*) a statement that the person may leave the State before the Minister decides the matter and shall require the person to so inform the Minister in writing and to furnish the Minister with information concerning his or her arrangements for leaving,

(*c*) a statement that the person may consent to the making of the deportation order within 15 working days of the sending to him or her of the notification and that the Minister shall thereupon arrange for the removal of the person from the State as soon as practicable, and

(*d*) any other information which the Minister considers appropriate in the circumstances.

(5) The provisions of *subsection (3)* shall not apply to—

(*a*) a person who has consented in writing to the making of a deportation order and the Minister is satisfied that he or she understands the consequences of such consent,

(*b*) a person to whom *paragraph (c), (d)* or *(e)* of *subsection (2)* applies, or

(*c*) a person who is outside the State.

(6) In determining whether to make a deportation order in relation to a person, the Minister shall have regard to—

(*a*) the age of the person;

(*b*) the duration of residence in the State of the person;

(*c*) the family and domestic circumstances of the person;

(*d*) the nature of the person's connection with the State, if any;

(*e*) the employment (including self-employment) record of the person;

(*f*) the employment (including self-employment) prospects of the person;

(*g*) the character and conduct of the person both within and (where relevant and ascertainable) outside the State (including any criminal convictions);

(*h*) humanitarian considerations;

(*i*) any representations duly made by or on behalf of the person;

(*j*) the common good; and

(*k*) considerations of national security and public policy,

so far as they appear or are known to the Minister.

(7) A deportation order shall be in the form prescribed or in a form in the like effect.

… … …

(11) The Minister may by order amend or revoke an order made under this section including an order under this subsection.

… … …"

18.2 <u>Constitution</u>
Article 40.3.1 of the Constitution of Ireland provides for the personal rights of citizens, which includes the third named applicant. It states:-
"The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen."

These rights include unspecified personal rights: **<u>Ryan v. The Attorney General</u>** [1965] IR 294. A non-exhaustive list of such personal rights embraces the right to live in the State, the right to privacy, the right to travel, the right to bodily integrity, the

right to freedom from torture or inhuman or degrading treatment, the right to earn a livelihood, and the right of access to the courts.
Also relevant is Article 41 of the Constitution, which protects the family. It provides:-
"1.1 The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.

1.2 The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State."

In addition, while the first named applicant is a citizen to whom all the rights established by the Constitution apply, the second and third named applicants, even though they are foreign nationals, are entitled to protection under the Constitution. As stated by this Court in **The Illegal Immigrants (Trafficking) Bill 1999** [2000] 2 IR 360 at p.410:-

"… a person who is not entitled to be in the State cannot enjoy Constitutional rights which are co-extensive with the Constitutional rights of citizens and persons lawfully residing in the State. There would, however, be a Constitutional obligation to uphold the human rights of the person affected which are recognised expressly or by implication, by the Constitution, although they are not co-extensive with the citizen's Constitutional rights."

18.3 European Convention on Human Rights
Article 8 of the European Convention on Human Rights provides:-
"Right to respect for private and family life.
1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Convention was introduced into domestic law by the European Convention on Human Rights Act, 2003, s.3(1) of which provides:-
"Subject to any statutory provision (other than this Act) or rule of law, every organ of the State shall perform its functions in a manner compatible with the State's obligations under the Convention provisions."

This imposes an obligation on the Minster to exercise his discretion in a manner compatible with the Convention provisions.
The Court was referred to cases of the European Court of Human Rights and of Ireland. Reference was made to **Cirpaci v Minister for Justice** [2005] 2 I.L.R.M. 547 where Fennelly J. pointed out at p.549 that:

"The legitimate interest of the State in the control of immigration frequently conflicts with claims of migrants based on family reunification. This has been recognised for more than 20 years by the European Court of Human Rights."

In that case a marriage took place in Romania between an Irish citizen wife and a Romanian citizen husband just over three months after the deportation of the husband from the State. The Minister refused to revoke his deportation order so as to enable the parties live together in the State, which decision was upheld by the High Court and this Court.

The competing and conflicting considerations which may arise in such decisions were summarised by Lord Phillips of Worth Matravers M.R. in **R (Mahmood) v. Secretary of State for the Home Department** [2001] 1 WLR 840. Fennelly J. found them very useful in **Cirpaci v. Minister for Justice**, as do I. In the summary, at p.861, the judgment of Lord Phillips M.R. states:-

"From these decisions I have drawn the following conclusions as to the approach of the Commission and the European Court of Human Rights to the potential conflict between the respect for family life and the enforcement of immigration controls: (1) A State has a right under international law to control the entry of non-nationals into its territory, subject always to its treaty obligations. (2) Article 8 does not impose on a State any general obligation to respect the choice of residence of a married couple. (3) Removal or exclusion of one family member from a State where other members of the family are lawfully resident will not necessarily infringe art 8 provided that there are no insurmountable obstacles to the family living together in the country of origin of the family member excluded, even where this involves a degree of hardship for some or all members of the family. (4) Article 8 is likely to be violated by the expulsion of a member of a family that has been long established in a State if the circumstances are such that it is not reasonable to expect the other members of the family to follow that member expelled. (5) Knowledge on the part of one spouse at the time of marriage that rights of residence of the other were precarious militates against a finding that an order excluding the latter spouse violates article 8.(6) Whether interference with family rights is justified in the interests of controlling immigration will depend on (i) the facts of the particular case and (ii) the circumstances prevailing in the State whose action is impugned."

The above summary is addressed primarily to the issue of family reunification, whereas this case is centred on the issue of the Irish born child's rights, but the principles overlap and are helpful to the analysis.

At all times the State retains the right to control immigration. Thus in **Abdulaziz, Cabales and Balkandani v. United Kingdom** (1985)7 E.H.R.R. 471 the European Court of Human Rights stated, at p.497, at para 67:-

"Moreover, the Court cannot ignore that the present case is concerned not only with family life but also with immigration and that, as a matter of well established international law and subject to its treaty obligations, a State has the right to control the entry of non-nationals into its territory"

The approach of the European Court of Human Rights (E.H.C.R.) may also be seen in **Poku v. United Kingdom** (1996) 22 E.H.R.R. C.D. 94, where it was noted at p.97:-

"However, the Commission notes that the State's obligation to admit to its territory aliens who are relatives of persons resident there will vary according to the circumstances of the case. The Court has held that Article 8 does not impose a general obligation on states to respect the choice of residence of a married couple or to accept the non-national spouse for settlement in that country (**Abdulaziz, Cabales and Balkandali** (1985) 7 E.H.R.R. 471, para 68). The Commission considers that this applies to situations where members of a family, other than spouses, are non-nationals. Whether removal or exclusion of a family member from a Contracting States [sic] is incompatible with the requirements of article 8 will depend on a number of factors: the extent to which family life is effectively ruptured, whether there are insurmountable obstacles in the way of the family living in the country of origin of one or more of them, whether there are factors of immigration control (e.g. history of breaches of immigration law) or considerations of public order (e.g. serious or persistent offences) weighing in favour of exclusion. …"
Having considered the facts of that case, the Commission found that there were no elements concerning respect for family or private life which outweighed the valid considerations relating to the proper enforcement of immigration controls. It concluded that the removal did not disclose a lack of respect for the applicants' right to family or private life under article 8.

The connection between parent and child was a relevant fact in **Berrehals v. The Netherlands** (1989) 11 EHRR 322. In that case a Moroccan national was refused permission to reside in the Netherlands after his divorce from his Dutch wife. He and his daughter (who was represented by her mother) applied to the European Court alleging a breach of article 8. The very close ties between father and daughter were noted by the Court, and expulsion of the father threatened to break those ties. It was held that in those circumstances a proper balance was not achieved between the interests of the State, which were limited to 'the economic well-being of the country', and respect for family life. It was held the expulsion was not 'necessary in a democratic society' and that it was a breach of article 8.

This Court was referred to many other cases of the E.C.H.R., including **Boujlifa v. France** (2000) 30 EHRR 419 which related to a Moroccan who arrived in France at the age of 5 and whose parents and 8 eight brothers and sisters were lawfully resident in France, but who had been convicted of two criminal offences and on whom an order of deportation was made. The E.C.H.R. reiterated that it was for the contracting states to maintain public order, in particular by exercising their right, as well established in international law and subject to treaty obligations, to control the entry and residence of aliens. To that end they have the power to deport aliens convicted of criminal offences. However, their decisions in this field must, insofar as they may interfere with a right protected under article 8(1), be necessary in a democratic society, that is to say, justified by a pressing social need, and, in particular, proportionate to the legitimate aim pursued. It is a question of striking a fair balance between the relevant interest, namely the applicant's right to respect for his private and family life, on the one hand, and the prevention of disorder or crime, on the other. The Court held, by six votes to three, that there had been no breach of article 8 of the Convention in the making of the deportation order.

Thus it is a matter of striking a fair balance in each case. In this case the balance sought is between the first, second and third named applicants' rights to respect for private and family rights, on the one hand, with particular reference to the rights of the Irish born child, and the public policy issues of the State on the other, as being necessary in a democratic society, justified by a pressing social or other public need, and proportionate to the legitimate aim pursued.

19. Decision

I would dismiss the appeal of the Minister on this second issue and affirm the decision of the learned High Court judge granting an order of *certiorari* of the decisions communicated to the second and third named applicants in the letter of 1st February, 2006, to affirm the deportation order made in 2004.

The High Court stated in **Oguekwe**:-

"It is not in dispute that the discretion given to [the Minister] by s.3 of the Act of 1999 is further constrained by the obligation to exercise that power, in a manner which is consistent with and not in breach of the constitutionally protected rights of persons affected by the order. It is further not in dispute that the power of the Minister is also constrained by the provisions of s. 3 of the European Convention on Human Rights Act 2003."

I agree with the learned High Court judge, and would affirm this approach.
The High Court held further in **Oguekwe**:-

"It is difficult to state in the abstract in clear terms the nature of the consideration which must be given by [the Minister], to the facts relevant to the rights of the citizen child to live in the state and to be educated and reared with due regard for its welfare and have its welfare, including what is in its best interest, taken into account in the decision making. It will always depend to some extent upon the factual circumstances of the citizen child and his parent or parents in the State."

I would affirm this analysis in **Oguekwe.** There can be no exclusive list of factors for the Minister to consider. Each case should be determined on its own circumstances, in accordance with the law and the Constitution.

20. Dispute

The real dispute between the parties in this case is as to the nature of the consideration required to be made by the Minister of the facts relevant to the rights of the citizen child. While I would dismiss the appeal of the Minister, my reasons for this decision are somewhat different to those of the learned High Court judge in certain specific areas.

21. Educational Factors

One specific area is the type of consideration required to be given to issues relating to the child including the education of the child in the State and another prospective State. The High Court held in **Oguekwe** that the consideration should:-

"(i) Be fact specific to the individual child in relation to his age, current educational progress, development and opportunities within the State in the context of his family circumstances in the State; and

(ii) It must include some factual consideration of the educational and other relevant conditions and development opportunities available for the citizen child in the country to which his parents are being deported."

The High Court continued in **Oguekwe**:-

"As a matter of common sense, unless the factual matters considered are such as to give the [Minister] an understanding, of what in reality in most cases will be the lesser educational and other development opportunities for the citizen child in the country to which his parents are being deported, how can the [Minister] form a view (as appears to be required by the decision in **A.O & D.L. v. Minister for Justice**) that having regard to the identified grave and substantial reason and the child's constitutionally protected personal rights the decision to deport is proportional or reasonable."

I would affirm the decision that the consideration should be fact specific to the individual child, his or her age, current educational progress, development and opportunities. This consideration relates not only to educational issues but also involves the consideration of the attachment of the child to the community, and other matters referred to in s.3 of the Act of 1999.

The extent of the consideration will depend on the facts of the case, including the age of the child, the length of time he or she has been in the State, and the part, if any, he or she has taken in the community. Thus, his or her education, and development within the State, within the context of his or her family circumstances, may be relevant. If the child has been in the State for many years, and in the school system for several years, and taken part in the community, then these and related facts may be very pertinent. However, if the child is an infant then such considerations will not arise.

However, I respectfully disagree with the learned trial judge, and I believe the High Court erred, in holding that the Minister was required to inquire into and take into account the educational facilities and other conditions available to the Irish born child of a proposed deportee in the country of return, in the event that the child accompany the deportee. I am satisfied that while the Minister should consider in a general fashion the situation in the country where the child's parent may be deported, it is not necessary to do a specific analysis of the educational and development opportunities that would be available to the child in the country of return. The Minister is not required to inquire in detail into the educational facilities of the country of the deportee. This general approach does not exclude a more detailed analysis in an exceptional case. The decision of the Minister is required to be proportionate and reasonable on the application as a whole, and not on the specific factor of comparative educational systems.

The Minister is required to consider the facts of the situation in a fair manner, and if appropriate, to identify a substantial reason for a deportation order.

22. <u>Decision of Minister</u>
In this case, the decision of the Minister was communicated by letter dated 1st February, 2006. It referred to representations made and then stated:-

"The representations have been considered under Section 3(6) of the Immigration Act, 1999, as amended and Section 5 of the Refugee Act, 1996, as amended (Prohibition of Refoulement). The outcome of these considerations is that the Minister's earlier decision to make a deportation order remains unchanged as there is nothing contained therein, that would cause the Minster to alter his decision. Enclosed is a copy of the deportation order and a copy of the Minister's further considerations."

The High Court held:-

"I have carefully considered each of the above documents and have firstly concluded that the decision taken was in breach of the first named applicant's rights, in that it failed to give due consideration to the facts and factors relating to the constitutionally protected personal rights of the first named applicant.

Even if one were to consider this only in relation to the personal right of the first named applicant to live in Ireland and not to consider the additional welfare rights, I would reach the same conclusion. In the two examinations on file the only reference to the citizen child is a standard statement in identical form to that in the examination on file in the **<u>Oguekwe</u>** proceedings that the child is a citizen of Ireland; is not or could never be subject to deportation and that it is presumed that if the Minister agrees to deport the parent that she will preserve the family unit by taking the child with her thereby preserving the child's right to the care and protection of his family under Article 41 of the Constitution."

I agree with and would affirm this finding. As the High Court pointed out, detailed submissions had been made on the child's schooling. The first named applicant himself wrote to the Minister, and there was no reference to the factual matters relevant to the Irish born child's rights, including his right to be educated and reared in Ireland.

23. <u>Substantial Reason</u>
One of the objections to the validity of the decision to deport was that it fails to identify any 'grave and substantial' reason for the deportation. In **<u>Oguekwe</u>**, the learned High Court judge held that this objection was made out. I agreed in that case, and I agree in this case. The documents do not expressly identify any interest in the common good which was stated to require the deportation of the parents of the Irish born child.

The appropriate test is whether a <u>substantial</u> reason has been identified requiring a deportation order. The term 'grave' is tautologous, and while it reflects the serious nature of a 'substantial' reason, it is not an additional factor to 'substantial', and there is the danger that it could be so construed.

In circumstances such as this the Minister is required to give a substantial reason for the decision to make a deportation order. Thus I would dismiss the appeal on this

ground.

24. <u>Format</u>
In **<u>Oguekwe</u>**, and in this case where the High Court followed the reasoning of that case, the learned High Court judge held that the following questions must be addressed, where it is accepted that applicants enjoy a family and/or private life in the State so as to engage the rights under article 8(1) of the Convention, by the person determining whether or not to make a deportation order under s.3 of the Act of 1999:-

" 1. Whether or not the proposed decision will constitute an interference with the exercise of the applicants' or other family members' rights to respect for his or her private and family life.

2. Unless a conclusion is reached that the proposed decision will not constitute an interference, as that term has been construed by the European Court of Human Rights then:
(i) Is the proposed decision being taken in accordance with law; and
(ii) Does the proposed interference pursue a legitimate aim i.e. one of the matters specified in article 8.2
(iii) Is the proposed interference necessary in a democratic society i.e. is it in pursuit of a pressing social need and proportionate to the legitimate aim being pursued."

I affirm the general approach of the High Court, however, the issues and questions are interrelated. This type of micro specification is not required of the Minister in the decision making process, as long as the general principles are applied to the circumstances of the case. In the exercise of his discretion the Minister is required to consider the Constitutional and Convention rights of the parents and children and to refer specifically to factors he has considered relating to the position of any citizen children. The factors and circumstances will vary from case to case. Such a formal approach with specific questions as required by the High Court is not necessary, for each case will depend on its own relevant facts.

25. <u>Other issues</u>
The other issues on the appeal, that is the issue of proportionality, and The European Convention on Human Rights, were decided in **<u>Oguekwe v. Minister for Justice</u>**, I have already touched on, and I will refer to in the list of relevant matters.
As to the relevance of the IBC 05 Scheme to the issue of a deportation order, I am satisfied that while it may be noted that a parent has not succeeded under the IBC 05 Scheme, it is not a factor in the deportation process. The IBC 05 Scheme was an entirely separate and discrete process. It was an executive scheme to meet a specific situation. It was not part of the process under s.3 of the Act of 1999.

The learned High Court judge indicated that she would grant relief to the applicants on the IBC 05 Scheme. This decision has been reversed in general in the **<u>Bode</u>** case and in particular in this judgment.

26. <u>Untruths</u>
The Minister also raised the issue of the untruths by the second named applicant in her affidavit relating to her residency in the State and the exercise of discretion by the High Court. The High Court allowed the reliefs stating:-

"The granting of reliefs by way of judicial review is a matter of discretion. Even where the illegality of a decision is determined it does not follow that the court is bound to grant an order of *certiorari*. There may be exceptional circumstances in which the court will refuse to exercise its discretion in favour of granting such relief.

The swearing by an applicant of a false affidavit is undoubtedly potentially such an exceptional circumstance. It is an extremely serious matter and one which might well disentitle an applicant to a relief to which he or she might otherwise be entitled. However, I have decided on the facts herein that I should not exercise my discretion to refuse to all three applicants the relief sought, namely the order of *certiorari* quashing the decisions of the respondent dated 16th August, 2005 in respect of the second and third named applicants.

My reason for so deciding is that, as appears from the Bode judgment, the primary ground upon which I have determined that the decision taken by the respondent on those dates under the IBC/05 Scheme were invalid, is by reason of a breach of the first named applicant's rights guaranteed by Article 40.3 of the Constitution and by reason of a breach of the respondent's obligations under s. 3 of the European Convention on Human Rights Act of 2003, having regard to the State's obligations under Article 8 of the Convention in relation to the first named applicant's right to respect for his private life. Accordingly, notwithstanding the very serious breach by the second named applicant of her obligations to this court and having regard to the apology tendered, it does not appear to me that I should deprive, in particular the first named applicant, of relief in relation to a matter which is of concern to him and which I have determined by reason of a breach of his rights guaranteed by Article 40.3 of the Constitution and Article 8 of the Convention."

This ground of appeal is no longer relevant as the appeal of the Minister on the IBC 05 Scheme has been successful on the basis of the nature and application of the scheme, as set out previously in this judgment.
However, while it may be appropriate to enable a judicial review proceed as an exercise of discretion in circumstances where there has been lying and dishonesty, such discretion should, as here, be exercised cautiously. In most circumstances such dishonesty may be fatal to an application. However, if the rights of other parties, such as a citizen child, under the Constitution and the Convention are in issue, then it may be it appropriate on balance to favour the weight of the rights of a child. But any such dishonesty remains a factor in the circumstances as a whole.

27. <u>Decision on Appeal</u>
I would affirm the decision of the High Court as to the orders for deportation. However, my reasons are, as referred to in the above paragraphs, somewhat different to those of the learned High Court judge.

28. <u>Relevant Matters</u>
I set out a non exhaustive list of matters which may assist, and which relate to, the position of an Irish born child whose parents may be considered for a deportation order. Bearing in mind the Constitution, the Convention, the statutory law and the case law, I am satisfied that the following, while not an exhaustive list, includes matters relevant for consideration by the Minister when making a decision as to deportation under s.3 of the Act of 1999 of a parent of an Irish born citizen child.

1. The Minister should consider the circumstances of each case by due inquiry in a fair and proper manner as to the facts and factors affecting the family.
2. Save for exceptional cases, the Minister is not required to inquire into matters other than those which have been sent to him by and on behalf of applicants and which are on the file of the department. The Minister is not required to inquire outside the documents furnished by and on behalf of the applicants, except in exceptional circumstances.
3. In a case, such as this, the relevant factual matrix includes the facts relating to the personal rights, of the Irish born citizen child, and of the family unit.
4. The facts to be considered include those expressly referred to in the relevant statutory scheme, which in this case is the Act of 1999, being:-
(a) the age of the person/s;
(b) the duration of residence in the State of the person/s;
(c) the family and domestic circumstances of the person/s;
(d) the nature of the person's/persons' connection with the State (if any);
(e) the employment (including self-employment) record of the person/s;
(f) the employment (including self-employment) prospects of the person/s;
(g) the character and conduct of the person/persons both within and (where relevant and ascertainable) outside the State (including any criminal convictions);
(h) humanitarian considerations;
(i) any representations duly made by or on behalf of the person/persons;
(j) the common good; and
(k) considerations of national security and public policy;

so far as they appear or are known to the Minister.
5. The Minister should consider the potential interference with rights of the applicants. This will include consideration of the nature and history of the family unit.
6. The Minister should consider expressly the Constitutional rights, including the personal rights, of the Irish born child. These rights include the right of the Irish born child to:-

(a) reside in the State,
(b) be reared and educated with due regard to his welfare,
(c) the society, care and company of his parents; and
(d) protection of the family, pursuant to Article 41,

The Minister should deal expressly with the rights of the child in any decision. Specific reference to the position of an Irish born child of a foreign national parent is required in decisions and documents relating to any decision to deport such foreign national parent.

7. The Minister should consider the Convention rights of the applicants, including those of the Irish born child. These rights overlap to some extent, and may be considered together with the Constitutional rights.
8. Neither Constitution nor Convention rights of the applicants are absolute. All rights require to be considered in the context of the factual matrix of the case.
9. The Minister is not obliged to respect the choice of residence of a married couple.
10. The State's rights require also to be considered. The State has the right to control the entry, presence, and exit of foreign nationals, subject to the Constitution and to international agreements. Thus the State may consider issues of national security,

public policy, the integrity of the Immigration Scheme, its consistency and fairness to persons and to the State. Fundamentally, also, the Minister should consider the common good, embracing both statutory and Constitutional principles, and the principles of the Convention in the European context.

11. The Minister should weigh the factors and principles in a fair and just manner to achieve a reasonable and proportionate decision. While the Irish born child has the right to reside in the State, there may be a substantial reason, associated with the common good, for the Minister to make an order to deport a foreign national who is a parent of an Irish born child, even though the necessary consequence is that in order to remain a family unit the Irish born child must leave the State. However, the decision should not be disproportionate to the ends sought to be achieved.

12. The Minister should consider whether in all the circumstances of the case there is a substantial reason associated with the common good which required the deportation of the foreign national parent.

In such circumstances the Minister should take into consideration the personal circumstances of the Irish born child and the foreign national parents including, in this case, whether it would be reasonable to expect family members to follow the third named applicant to Nigeria.

13. The Minister should be satisfied that there is a substantial reason for deporting a foreign national parent, that the deportation is not disproportionate to the ends sought to be achieved, and that the order of deportation is a necessary measure for the purpose of achieving the common good.

14. The Minister should also take into account the common good and policy considerations which would lead to similar decisions in other cases.

15. There should be a substantial reason given for making an order of deportation of a parent of an Irish born child.

15. On judicial review of a decision of the Minister to make an order of deportation, the Court does not exercise and substitute its own discretion. The Court reviews the decision of the Minister to determine whether it is permitted by law, the Constitution, and the Convention.

29. <u>Conclusion</u>

On the first issue, the decision of the Minister made under the IBC 05 Scheme, for the reasons given, I would allow the appeal of the Minister, and reverse the decision of the High Court. The criteria of the IBC 05 Scheme included a requirement of continuous residence and the Minister was acting within the parameters of the Scheme in refusing residence on that basis. The Constitutional and Convention rights of the applicants remained to be considered.

On the second issue, that is the decision of the Minister to make deportation orders under s.3 of the Immigration Act, 1999, as amended, for the reasons given, I would dismiss the appeal. The Minister is required in this process to consider the Constitutional and Convention rights of the applicants. This includes express consideration of, and a reasoned decision on, the rights of the Irish citizen child. This was not done. Thus I would affirm the decision of the High Court granting an order of *certiorari* of the decisions communicated in the letters of 1st February, 2006, to affirm the deportation orders made in 2004.