# THE SUPREME COURT

**Keane C.J.**
**Denham J.**
**Murphy J.**
**Murray J.**
**McGuinness J.**
***04 & 17/02***

**BETWEEN**
**BABY OLADAPO (SUING BY MOTHER AND NEXT FRIEND IYABODE ABIMBOLA OLADAPO) AND IYABODE ABIMBOLA OLADAPO**
**APPLICANT**
**AND**
**MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, IRELAND, AND THE ATTORNEY GENERAL AND JAMES NICHOLSON**
**RESPONDENTS**

**JUDGMENT delivered the day of , 2002 by Keane C.J.**

## Introduction.

On the 14th February last, the court announced that the appeals in this case would be dismissed and the orders of the High Court affirmed. I now in this judgment give my reasons for agreeing with that decision.
The second named applicant, who is a Nigerian national, arrived in this jurisdiction on either the 24th or 25th December 1999. She thereupon applied for refugee status and, in completing the questionnaire furnished to her by

the refugee application centre, said that she feared her life would be in danger if she returned to Nigeria. The danger to her life, she claimed, arose from the activities of a body called the "Ogboni Fraternity" of which her father had at one time been a member and which, she alleged, had made threats to her life.

The second named applicant was then interviewed by an officer of the first named respondent ("the Minister"). He concluded that the application should be considered, in the words of the procedure then applicable in such cases and known as "the Hope Hanlon procedure", as "manifestly unfounded".
(The effect of such a recommendation, if upheld, was that the application would be dealt with under the "accelerated procedure", which would mean that any appeal would be on the basis of the relevant papers.) That recommendation was upheld by another officer, Enda Hughes, who said
"*I am satisfied that this case is manifestly unfounded and should be dealt with in accordance with the Hope Hanlon procedures. The following sections at paragraph 14 apply to this case:*

> *14(a) it does not show on its face any grounds for the contention that the applicant is a refugee*
> *14(c) the applicant's reason for leaving or not returning to her country of nationality does not relate to a fear of persecution.*
> *14(e) the applicant, without reasonable cause, made deliberately false or misleading representations of a material or substantial nature in*

*relation to the application;*
*14(f) the applicant, without reasonable cause and in bad faith, destroyed identity documents, withheld relevant information or otherwise deliberately obstructed the investigation of the application."*
[1]

The applicant having been notified of this decision, the solicitor then acting on her behalf, Mr. Mark Graham of the Refugee Legal Service, submitted an appeal which came before the then appeals authority, i.e., the fourth named respondent (hereafter "the appeals authority".) In his written recommendation, dated the 30th May 2000, the appeals authority recommended that the appeal should be dismissed. The applicant was then informed that the officer authorised by the Minister had decided to uphold the original decision and had refused the appeal and that, as a result, the Minister proposed to make a deportation order in respect of the second named applicant under the power given to him by s.3 of the Immigration Act 1999 (hereafter "the 1999 Act"). She was also informed that, in accordance with s.3 of the 1999 Act, she was entitled to make written representations to the Minister setting out any reasons as to why she should be allowed to remain in the State, provided this was done within 15 working days of the sending of the letter notifying her of the determination of the appeal. On July 24th, 2000, her solicitor wrote to the immigration division of the Minister's department setting out reasons why, in his submission, she should be granted leave to remain in Ireland.

On the 3rd January 2001 Ms. Wendy Murray, an officer

of the repatriation unit, immigration division of the Minister, wrote to the second named applicant enclosing a copy of a deportation order made by the Minister in respect of her. The deportation order was dated the 11th December 2000. On the 17th January 2001 a legal aid certificate was granted to the second named applicant relating to the institution of judicial review proceedings by her in respect of the making of the deportation order, but limited to the ground that the Minister had failed to give reasons, or any adequate reasons, for his decision to make a deportation order. The legal aid board refused an application by her solicitor to review the decision to limit the legal aid certificate to proceedings instituted on that ground in a letter of 19th January 2001.

On the 19th January 2001, the second named applicant applied by motion on notice for leave to institute proceedings by way of judicial review claiming inter alia an order of certiorari quashing the deportation order on the ground that the Minister had failed to give reasons, or any adequate reasons, for the making of the deportation order. Thereafter, those proceedings were adjourned from time to time as other proceedings had been brought in the High Court, which were the subject of an appeal to this court, challenging the validity of deportation orders on that ground, i.e., the failure to give reasons or adequate reasons for the making of the order. On the 2nd January 2001 the High Court had refused to grant leave on that ground in the other proceedings and that decision was upheld by this court on 30th July 2001(*P, L and B -v- The Minister for Justice. Equality, Law Reform and Another*; [2002] 1 ILRM 16. Since it was clear that the latter decision effectively disposed of the only ground on which the second named applicant was seeking leave in

the proceedings instituted on her behalf, those proceedings were struck out by consent on 23rd October 2001 without any order as to costs.

On the 26th October 2001, a further deportation order was made in respect of the second named applicant which was served on her by registered post on that day. On 30th November 2001, a notice of motion was served on the respondents by another firm of solicitors. Those are the proceedings which are now before this court by way of appeal from two orders made in the High Court in respect of them by Smyth J. on the 20th December 2001 and 18th January 2002 respectively. At the time these proceedings were instituted, the second named applicant was pregnant and among the reliefs now being sought was an order restricting the deportation of both the first named applicant and the second named applicant on the ground that it would be in contravention of Article 40.3.3° of the Constitution guaranteeing the right to life of the unborn.

The notice of motion claiming the various reliefs was in two parts. Part A sought leave pursuant to s.5 of the Illegal Immigrants (Trafficking) Act 2000 (hereafter "the 2000 Act") and Order 84 of the Rules of the Superior Courts for
(1) an order of certiorari in respect of the notification of the making of the deportation order by the Minister on 26th October 2001 and what was described as a "purported decision" that s.5 of the Refugee Act 1996 was satisfied in the case of the first named applicant;
(2) an order of certiorari quashing the notification of the 3rd January 2001 of the making of a deportation order on the 11th December 2000 and what was described as the

"purported decision" that s.5 of the Refugee Act 1996 was satisfied in the case of the first named applicant;
(3) an order of certiorari in respect of the deportation order made by the Minister on the 11th December 2000;
It was accepted on behalf of the applicants that the application for these reliefs was necessarily made by way of motion on notice to the respondents, having regard to the provisions of s.5 of the 2000 Act.

Part B of the notice of motion consisted of an application for certain reliefs which, it was claimed on behalf of the applicants, did not have to be made on notice in accordance with s.5 of the 2000 Act, could be made ex parte pursuant to Order 84 of the Rules of the Superior Courts and were included in the same notice of motion as a matter of procedural convenience.

The reliefs sought in part B included
(1) Declarations that the first named applicant was a person whose constitutional rights would be interfered with by the deportation of the second named applicant;
(2) An order of mandamus directed to the Minister requiring him to revoke the deportation order of the 26th October 2001 or alternatively requiring him to reconsider the order in the light of what were described as the "changed circumstances" of the applicant;
(3) A declaration that the Immigration Act 1999 (Deportation) Regulations, 1999 SI No. 319 of 1999) are ultra vires and void;
(4) Damages for breach of duty, unlawful detention and breach of constitutional right;
(5) Orders of certiorari in respect of the decisions of the Minister dated 15th May 2000 and the 4th July 2000 rejecting the second named applicant's application for

refugee status and her appeal against the refusal of refugee status and the decision of the appeals authority dated 30th May 2000 to recommend rejection of the second named applicant's appeal against the refusal of refugee status;
(6) Insofar as necessary, an order extending the time for applying for leave to apply for such reliefs pursuant to Order 84 of the Rules of the Superior Courts 1986;
(7) A stay and/or an interim and/or interlocutory and thereafter permanent injunction restraining the respondents from requiring the applicants to leave the State or otherwise acting on the said purported deportation order.

The grounds on which those various reliefs were sought will emerge at a later stage in this judgment when I come to consider the arguments advanced on behalf of the applicants.

On the 20th December, Smyth J. granted leave to the applicants in respect of part A of their application to apply for the relief specified at paragraph 1 above and, in respect of part B of their application, the relief specified at paragraphs 1 and 2 above. The learned judge refused to grant leave for the bringing of an appeal to this court from his decision to refuse the application for leave in respect of the other reliefs.

A notice of motion was then served on behalf of the applicants claiming the reliefs in respect of which they had been granted leave to institute the proceedings. They also came on for hearing before Smyth J. and in a written judgment delivered on the 18th January 2001 he refused the application for leave in respect of each of the reliefs

claimed. On the 22nd January, he certified that his decision involved a point of law of exceptional public importance and that it was desirable in the public interest that an appeal should be taken to this court, the point of law being whether the Minister has the legal right or entitlement to deport a person who had failed to secure a declaration of refugee status from the State because she alleges she is, or is, pregnant. The applicants then served a notice of appeal to this court pursuant to the leave thus granted.

The applicants also served a purported notice of appeal in respect of the order of Smyth J. of the 20th December 2001 in which he refused to give leave to the applicants to institute proceedings in respect of the other reliefs claimed by them and refused to grant leave for the bringing of an appeal to this court.

The court having been informed that the second named applicant was expected to give birth in the early part of May, an expedited oral hearing of the appeals was granted and took place on the 5th and 6th February last. As already noted, the court on the 14th February last announced that both appeals would be dismissed and that the court would give its reasons at a later date.

Certain procedural difficulties which arise in the case of the appeal from the order of 20th December 2001 should be mentioned at the outset.

It is conceded on behalf of the applicants that leave was required to bring the appeal in respect of the refusal by Smyth J. on the 20th December last to grant the reliefs in respect of part A mentioned at paragraphs (2) and (3) above, i.e., the orders of certiorari in respect of the first

deportation order made by the Minister on the 11th December 2000. The applicants argued that they were entitled to appeal to this court from the refusal by the High Court to grant such a certificate.

At this point, it is necessary to refer to the precise wording of s.5(3)(a) of the 2000 Act, which is as follows: "*The determination of the High Court of an application for leave to apply for judicial review as aforesaid or of an application for such judicial review shall be final and no appeal shall lie from the decision of the High Court to the Supreme Court in either case except with the leave of the High Court which leave shall only be granted where the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.*"

In *Irish Asphalt Limited -v- An Bord Pleanala* [1996] 2 IR 179, this court held that the effect of s.82 s.3A(b)(i) of the Local Government (Planning and Development) Act 1963, which is in identical terms to s.5(3)(a) of the 2000 Act was to exclude all appeals from the High Court to the Supreme Court in judicial review proceedings contemplated by s.82(3A) unless the High Court issued the necessary certificate and that the High Court alone had power to issue such a certificate. An attempt to reopen the issue in *Irish Hardware Association -v- South Dublin County Council* (Unreported; judgments delivered 23rd January 2001) was rejected by the Court.

The applicants sought to distinguish the two latter decisions on two grounds. The first was that, in the context of the constitutional right to personal liberty,

security and bodily integrity, the right of appeal could not be excluded save by what was described as "the most express language". I am satisfied that, as found by this court in *Irish Asphalt Limited -v- An Bord Pleanala* and *Irish Hardware Association -v- South Dublin County Council*, the language of s.5(3)(a) is perfectly clear and unambiguous and that the right of appeal has been excluded, save where the necessary certificate is granted by the High Court. Secondly, it was submitted that statements of the Minister during the course of the debate in the Oireachtas on the committee stage of the Illegal Immigrants (Trafficking) Bill 2000 could be relied on as indicating that the intention of the Oireachtas was not to exclude an appeal from the refusal by the High Court of a certificate. Having regard to the clear and unambiguous language of the provision, I am not satisfied that the court would be justified in having any regard to what was said in the Oireachtas, in the light of the judgments delivered by this court in *Crilly -v- T & J Farrington Limited & Another* (Unreported; judgments delivered 11th July 2001.) It was, accordingly, clear that no appeal lay from the refusal of the High Court to grant the relief sought under part A at paragraphs (2) and (3) above.

As to the reliefs under part B, referred to in paragraph 5 above, the applicants argued that, since these related to decisions of the Minister and the fourth named respondent made before the coming into force of the 2000 Act, they were unaffected by the provisions of s.5(2) of that Act. In the result, it was argued, the application for this relief could be made ex parte and it did not have to be shown that there were "substantial grounds" for contending that the relevant decisions were invalid or ought to be quashed nor, it was said, was leave

required to appeal the order of the High Court to this Court.

That submission gave rise to two problems. First, although the decisions sought to be challenged were undoubtedly made before the 2000 Act came into operation, the deportation order of 26th October 2001 was made after that Act came into force and, accordingly, under s.5, its validity could only be questioned in judicial review proceedings to which the provisions of s.(5)(2) of the 2000 Act apply. That, in turn, would preclude the bringing of any appeal to this court save with the leave of the High Court, which has been granted only in respect of the reliefs already mentioned. Accordingly, even if this court were to grant leave to the applicants to challenge the three determinations made in relation to the refugee status of the second named applicant prior to the coming into force of the 2000 Act and that challenge succeeded, it would avail the applicants nothing, since there would still be in existence a valid deportation
order requiring the removal of the second named applicant from the State. Secondly, the application for these reliefs is affected by the provisions of Order 84, rule 21(1) of the Rules of the Superior Courts, i.e.
*"An application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose, or six months where the relief sought was certiorari, unless the court considers that there is good reason for extending the period within which the application shall be made."*

In this case, the application for leave was made eighteen

months after the first of the decisions sought to be quashed. The agreed note of the learned High Court judge's judgment of that day does not contain any reference to the fact that the application for these reliefs was out of time, although we were invited by counsel for the applicants to infer that his refusal to grant leave was, effectively, a refusal to extend the time. Naturally, one could not exclude the possibility that he may also have been of the view that the granting of leave, for the reasons already given, would in any event have been futile and that, even if that consideration did not arise, the applicants had not satisfied him that they had an arguable case to make in support of the grant of these reliefs.

Approaching the case, however, on the basis suggested by counsel for the applicants - i.e. that this was in effect a refusal to extend the time - the grounds on which this court was urged to come to a different view was the quality of the legal advice which she received at the relevant time. The first criticism is that the judicial review proceedings were limited exclusively to the question of the reasons or lack of reasons: this was stated to be "in defiance of counsel's opinion obtained at the time." Counsel, in the course of his opinion dated 18th January 2001, had said,

*" 'Failure to give reason or adequate reason' is an important question currently before the courts and I appreciate that it is perhaps the most compelling ground available to the applicant. However, it will be appreciated that some or all of the other matters I have referred to have not been considered by the court and accordingly it is not possible to give a definitive view as to the likelihood of success on those grounds."*

In the light of that opinion the Legal Aid Board, as appears from their letter of the 19th January 2001 decided to limit the certificate. I find it difficult to understand, in those circumstances, how it could be said that the decision to limit the judicial review proceedings to the question of reasons or lack of reasons was made "in defiance of counsel's opinion".

The second criticism is that no appeal was taken from the decision of the Legal Aid Board to limit the certificate granted in that manner. In view of the advice of counsel, it is hardly surprising that no such appeal was taken, although it is clear from Mr Graham's letter to the second named applicant of the 19th January that he informed her of her right to appeal. She did not appeal and, in the absence of any evidence to the contrary, I am not prepared to assume that she was not fully advised in relation to this matter by Mr Graham at the time.

I am satisfied that, given the repeated emphasis in the decisions of this court on the importance of instituting judicial review proceedings promptly, if, as the applicants contend, the High Court judge effectively refused to extend the time in respect of the application for these reliefs, that was a decision he was entitled to arrive at as a matter of law and it has not been shown that he erred in principle in declining to extend the time.
The third difficulty that arises is that, the proceedings by way of judicial review in respect of the decisions in question having been struck out by consent with no order as to costs, the matter is now res judicata and cannot be reopened by the institution of a second set of judicial review proceedings brought on different grounds. I am

satisfied that, on this ground also, the application for leave was properly refused.

In the light of those findings, it is not strictly necessary to consider whether, on the merits, the applicant had in any event established an arguable case for the granting of leave in respect of these reliefs. However, since the issues debated before us arise with considerable frequency in the High Court, the views of this court on those issues in the light of the submissions advanced may be of assistance.

It is not in dispute that the Minister at the relevant time was, as a matter of law, obliged to give effect to what are normally known as the "Hope Hanlon procedures" and which were set out in a letter from the Department of Justice, Equality and Law Reform to Ms Hanlon, as the representative of the United Nations High Commissioner on Refugees, on the 10th December 1997.

It is also clear from the judgment of Denham J., speaking for this court in *Stefan v Minister for Justice, Equality and Law Reform and Others* (unreported; judgment delivered 30th November 2001) that the fact that under the procedures then in force an appeal could be brought from the decision of the Minister to refuse refugee status to the appeals authority did not preclude a challenge to the earlier stages of the process on the ground that fair procedures had not been observed.

The grounds on which the second named applicant was seeking refugee status were set out in her answers to the questions put to her by Mr Michael Leahy, an officer of the Department of Justice, Equality and Law Reform and related to her involvement with a cult known as the

"Ogboni Fraternity" in Lagos, to which she was introduced by her father. She said that she was informed by the high priest of the cult that she should bring three human heads as soon as possible for "rituals" and that the mark of death was placed on her for not carrying out this order. She said that she had been studying business and administration at the University of Lagos since 1996 and had also worked as a sales manager for a company involved in fish products, on whose behalf she had travelled all over Nigeria. She produced no identification of any sort at the interview and said that she could not get any from Nigeria. She also said that she had arrived in Ireland on December 25th 1999, having flown from Paris to Belfast. It was subsequently ascertained that Belfast Airport was in fact closed on Christmas Day. Mr Leahy concluded that the application lacked credibility, did not show on its face any grounds for the contention that, the second named applicant was a refugee and that it did not appear to him that her reasons for leaving or not returning to Nigeria related to a fear of persecution.
In arriving at that conclusion, Mr. Leahy, in accordance with procedures normally adopted in dealing with applications of this nature, had regard to what information was available to him as to the conditions in the country of origin which would be relevant to a conclusion as to whether the applicant was genuinely in fear of persecution if she returned. In that connection, he said that the information he received as to the "Ogboni Fraternity" was that it was a movement which was religious in character and was not in the habit of resorting to violence. He was also of the view that the applicant seemed to misunderstand the nature of the "Ogboni Fraternity Society".

The assessment by Mr. Leahy was criticised on a number of grounds but particularly because, as it was claimed, he had not invited the applicant to comment on these matters before sending his conclusions to his superior officer. It was also said that it was adopting an unnecessarily harsh approach in treating her application as lacking credibility because she said that she had arrived in Belfast on Christmas Day, when it might have been another day. It was also urged that Mr. Leahy had made a mistake in referring to her as having three brothers and one sister, whereas in fact she had said that she had fifteen half brothers and sisters, four girls and eleven boys.

It is inevitable that a determination under procedures of this nature as to whether a person is genuinely in fear of prosecution, if he/she returns to his/her country of nationality, will be based on the assessment by the interviewing officer of that person's credibility. That is what has been frequently been referred to as the necessarily "subjective" element in determining whether the fear of persecution genuinely exists. It is also clear that an interviewing officer in such circumstances must also have regard to what objective evidence is available to him as to the conditions in the country of origin which might give rise to a fear of persecution.

Unless it can be shown that there was some breach of fair procedures in the manner in which the interview was conducted and the assessment arrived at by the officer concerned or that, in accordance with the well established principles laid down in *The State (Keegan) -v- The Stardust Victims Compensation Tribunal* [1986] IR 6421 and *O'Keeffe -v- An Bord Pleanala* [ 1993] 1IR

39, there was no evidence on which he could reasonably have arrived at the decision, there will be no ground for an order of certiorari in respect of the decision. In this case, it was entirely a matter for Mr. Leahy to assess the weight that should be given to the various matters to which I have referred and it could not be said that there were no grounds on which he could not have reasonably arrived at the decision that her application for refugee status was manifestly unfounded.

The same considerations are applicable to the further assessment of her case by Mr Enda Hughes and to the recommendation by the appeals authority. It follows that, even if the procedural difficulties to which I have already referred could be overcome, the second named applicant had not advanced any arguable ground under which she would have been entitled to obtain the reliefs under Part B referred to in paragraph five above.

The point of law involved in the decision of the High Court which Smyth J. certified as being of exceptional public importance and in respect of which he gave leave to appeal to this Court must next be considered.

There were before the High Court affidavits by Jo Murphy Lawless, PhD, a sociologist and research fellow at the Centre for General Women's Studies in Trinity College, Dublin and Dr. Adeyemi Coker, a consultant obstetrician and gynaecologist at Harold Wood Hospital, Essex, England. Dr. Lawless deposed as to risks which would arise in relation to the pregnancy in the event of the second named applicant returning to Nigeria because of the lack of adequate ante-natal and hospital care available to her in Nigeria. Dr. Coker said that

> *"As the difference in health care and maternity services in Nigeria compared with the Republic of Ireland is significant, where [the second named applicant] delivers her baby will significantly influence the outcome in terms of prenatal mortality and morbidity. If her baby was born premature (below thirty weeks) it would have little chance of survival in Nigeria".*

Counsel for the applicants relied on Article 40.3.3° of the Constitution which provides inter alia that

> *"the State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and so far as practicable, by its laws to defend and vindicate that right".*

Counsel argued that, given the uncontradicted evidence just referred to, the deportation of the second named applicant, while pregnant, to Nigeria would constitute a failure by the State to defend and vindicate the right to life of the unborn in this case.

The learned High Court judge, in rejecting that argument, said that

> *"... This case has nothing to do with abortion or the right to life of the unborn or what is sometimes referred to as a woman's right to choose.. "The case is concerned about the legal right or entitlement of the Minister for Justice to deport a person who has failed to secure a declaration of refugee status from the State because she alleges she is, or is pregnant."*

I have no doubt that the learned High Court Judge was entirely correct in so holding. The passage from Article 40.3.3° on which counsel relied, as explained by the judgments of the majority in this court in *Attorney General v. X* [1992] 1 IR 1, was intended to prevent the legalisation of abortion either by legislation or judicial decision within the State, except were there was a real and substantial risk to the life of the mother which could only be avoided by the termination of the pregnancy. In this case, neither the State nor any of its organs was seeking to terminate the second named applicant's pregnancy and the fact that the standard of ante or postnatal care available to her in Nigeria was less than would be available to her in this country was entirely irrelevant to the legality of her deportation. If the second named applicant had arrived in this country accompanied by a young infant, and both of them had been refused refugee status and ordered to be deported, the life expectation of the infant, and for that matter the second named applicant herself, might have been less. That would plainly not be a ground for interfering with the deportation. If the State's right to deport persons who

have been refused refugee status and who have no legal right to remain in this country were thus circumscribed, it would be, in a great range of cases, virtually negated. It is obvious that the rights of the born, in this context, cannot be less than those of the unborn.

Counsel on behalf of the applicants conceded that, if his submission were well-founded it would necessarily follow that every woman or girl of child bearing age would have to submit to pregnancy testing before she was deported or extradited to a country with less developed pre and postnatal services than are available in this country. No such gross violation of the privacy of women and girls could possibly have been intended by the enactment of Article 40.3.3° of the Constitution.

Three further grounds were relied upon in the High Court and, while in neither case did the learned High Court judge certify that any point of law of exceptional public importance was involved, the case was approached, in this court, on the basis, the court would not confine its consideration of the appeal to the point of law certified by the High Court.

The first of these grounds related to s.5 of the Refugee Act, 1996 which, under the cross heading, “Prohibition of Refoulement”, provides that
*"(1) A person shall not be expelled from the State or returned in any manner whatsoever to the frontiers of territories where, in the opinion of the Minister, the life or freedom of that person would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion.*

*(2) Without prejudice to the generality of s.s.(1), a person's freedom shall be regarded as being threatened if, inter alia, in the opinion of the Minister, the person is likely to be subject to a serious assault (including a serious assault of a sexual nature.)"*

As already noted, lengthy submissions in writing were made on behalf of the second named applicant in support of the application made on her behalf for leave to remain in Ireland on humanitarian grounds, notwithstanding the failure of her application for refugee status. It was submitted on behalf of the second-named applicant that consideration of this application necessarily involved a determination by the Minister as to whether s.5 of the 1996 Act had been satisfied. The requirement that fair procedures should be observed by the Minister in arriving at such a decision meant that he was also obliged to give reasons for holding that s.5 had been satisfied, and this had not been done in this case. The decision in *P. -v Minister for Justice, Equality and Law Reform*, it was said, had no application to a decision such as this.

I am satisfied that this submission is also without foundation. S.5 of the 1996 Act does not require the Minister to give any notice to a person in the position of the second named applicant that he proposes to make a decision under the section: it simply requires the Minister to satisfy himself as to the refoulement issue before making a deportation order. In this case, representations having been made to the Minister as to why the second named applicant should not be deported, she was informed that
*"the Minister has satisfied himself that the provisions of s.5 (Prohibition of Refoulement) of the Refugee Act 1996*

*are complied with in your case."*

I am satisfied that there is no obligation on the Minister to enter into correspondence with a person in the position of the second named applicant setting out detailed reasons as to why refoulement does not arise. The Minister's obligation was to consider the representations made on her behalf and notify her of his decision: that was done and, accordingly, this ground was not made out.

It was further submitted that the Minister was obliged to consider s.4 of the Criminal Justice (United Nations Convention Against Torture) Act 2000 before making the deportation order. That provides
*"(1) A person shall not be expelled or returned from the State to another State where the Minister is of the opinion that there are substantial grounds for believing that the person would be in danger of being subjected to torture.*
*(2) For the purposes of determining whether there are such grounds, the Minister shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights".*
Consideration by the Minister of refoulement in this case necessarily involved the consideration by him of whether there were substantial grounds for believing that the second named applicant would be in danger of being subjected to torture within the meaning of s.4(1) of the Criminal Justice (United Nations Convention Against Torture) Act 2000. That the consideration of the issue of refoulement under s.5 of the Refugee Act 1996 extended to considerations arising under s.4 of the former Act was

made clear in the affidavit of Mr. Terry Lonergan in these proceedings. This ground, accordingly, also fails.

Finally, it was urged that the Minister should have taken into account what were said to be changed circumstances which should have led him to revoking the deportation order pursuant to s.3(11) of the Immigration Act 1999. Those circumstances were alleged to be the second-named applicant having become pregnant and the assassination on the 23rd or 24th December 2001 of the Attorney General and Minister for Justice of Nigeria, who was stated to be a prominent Yoruba politician. (The applicant was herself a member of the Yoruba tribe).

By letter dated 28th December 2001 addressed to the applicant's solicitors, the Chief State Solicitor said *"I am instructed that the Minister is not aware of any change of circumstances that would lead him to revoke the deportation order dated 11th December 2000 against the second named applicant or to undertake a full reconsideration of this case."*

It was entirely a matter for the Minister to determine whether the circumstances relied on were such that he was obliged to revoke the deportation order already made. I was satisfied that neither the High Court nor this Court on Appeal had any jurisdiction to interfere with the Minister's determination that the change of circumstances referred to would not justify him in revoking the deportation order.

For these reasons, I was satisfied that both appeals should be dismissed and the orders of the High Court affirmed.