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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

Doherty's (Edmund) Application [2016] NIQB 62

IN THE MATTER OF AN APPLICATION BY EDMUND DOHERTY FOR JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION OF THE SECRETARY OF STATE FOR THE HOME DEPARTMENT MADE IN OR ABOUT 28 MAY 2015

COLTON J

Introduction

[1] This is an unusual and in my experience unique application. The applicant seeks to challenge the refusal by the Secretary of State for the Home Department to deport/remove him from this jurisdiction to the Republic of Ireland. Some explanation is necessary.

[2] The applicant avers that he was born in Northern Ireland and grew up in Derry. In the early 2000s he was working in the construction industry as a heavy machinery driver and found himself working increasingly in the Republic of Ireland (hereafter referred to as "ROI").

[3] As a consequence he met his partner, Deirdre Finn, in 2004. She lives in Swords, Co Dublin. The applicant states that his relationship developed to the extent that he moved into her home as her cohabitee in 2008 and he now regards this as his permanent home.

[4] In 2007 he was informed "of criminal complaints made against him". These "complaints" resulted in his conviction on 27 May 2012 for a number of sexual offences against a minor. As a result of his conviction he was sentenced to 6 years'

imprisonment, with 3 years of that sentence to be spent in custody, the remainder on licence. Since his release on or about 27 May 2015 he has been subject to an "Article 26" licence during which time he is subject to supervision by the Probation Service. One of the conditions of his licence is that he shall not travel outside the United Kingdom without the prior permission of his probation officer.

[5] Whilst in custody he began to raise issues as to whether or not he would be permitted to return to the Republic of Ireland after his release date to live with his partner.

[6] The applicant signed a declaration renouncing his British citizenship on 18 June 2013 and as of 29 April 2014 the Home Office formally recognised his renunciation and from that date onwards he is to be regarded solely as an Irish Citizen.

[7] On 15 August 2014 he asked his solicitor to explore repatriation to ROI for the duration of his custodial sentence but for various reasons this did not materialise.

[8] On 21 October 2014 the applicant's solicitor wrote to the UK Visas and Immigration office to the effect that he maintained that as he was a foreign criminal convicted of an offence in the United Kingdom which had resulted in a sentence of a term of imprisonment in excess of one year he should be removed from the United Kingdom upon the conclusion of the custodial part of his sentence. A reminder was sent on 31 October 2014 and a response was sent from the Home Office on 3 November 2014 in the following terms:

> "Dear Sirs
>
> … In your letters you are asking that your client is deported from the UK and threatening judicial review.
>
> As your letter states your client has renounced his British citizenship and is an Irish citizen.
>
> On 19 February 2007, the Home Secretary decided that the public interest was (sic) not generally be served by the deportation of Irish nationals (citizens of the Irish Republic), except in special circumstances. This agreement covers Irish nationals and anyone of dual Irish and another nationality. It does not cover non-EEA nationals who are the dependants of Irish nationals.
>
> It is rare that Irish FNO cases will be considered exceptional enough to merit deportation. Irish nationality does not provide automatic exemption from deportation regardless of individual circumstances.

> As a guide, deportation is still considered if an offence involves national security matters, or crimes that pose a serious risk to the safety of the public or a section of the public. For example, a person convicted and serving a custodial sentence of 10 years or more for:
>
> - A terrorist offence
> - Murder
> - A serious sexual or violent offence
>
> If a decision is taken to deport an Irish National under the Immigration (European Economic Area) Regulations 2006, the case is dealt with in line with other EEA Deportations and treated as if the decision was taken under Section 3(5)(a) of the Immigration Act 1971 (as amended) on the grounds that their presence is not conducive to the public good.
>
> Deportation of Irish nationals is only in the public interest in exceptional circumstances.
>
> Your client simply does not meet the current criteria for deportation as an Irish citizen. As an Irish citizen your client has a right to be in the UK as an EEA national. If your client wishes to exercise his right to leave the UK at the end of his custodial sentence he is at liberty to voluntarily leave the UK.
>
> For any avoidance of doubt any judicial review will be vigorously defended and costs will be sought."

[9] The applicant's solicitors responded by way of letter of 25 November 2014 which was described as a letter before action seeking a review of the decision of 3 November 2014.

[10] The essence of the request is set out in the letter in the following terms:

> "If the applicant were a national of any other EEA state the Home Secretary's policy would require him to be removed from the United Kingdom, albeit he would remain exempt from automatic deportation. …
>
> It is submitted that the applicant is effectively discriminated against as an Irish national by virtue of a policy that whilst offering increased protection to Irish

> nationals who wish to remain within the United Kingdom wholly failed to recognise and provide for those Irish nationals who do not wish to avail of the "Special Relationship" protection and to be removed to the Republic of Ireland upon release from custody. This clearly placed Irish nationals at a disadvantage and nationals of other EEA states or third party states who wish to return home upon release."

[11] The Crown Solicitor's Office replied on behalf of the Home Office on 8 December 2014 indicating that it would vigorously defend any judicial review application and referring back to the letter of 3 November 2014. The letter further states:

> "You state in your letter that your client shall require permission from the Probation Board for Northern Ireland before he can visit his partner in the Republic of Ireland and you state that this permission is unlikely to be forthcoming. However, it is not clear whether or not such permission shall be refused. In any case, it would appear to the proposed respondent that the imposition of licence conditions on your client and the requirement to comply with same are matters for the Department of Justice. The Home Office does not accept that the impact of the decision dated 3 November 2014 has the effect of compelling your client to remain in Northern Ireland upon the conclusion of his prison sentence. Further, the proposed respondent does not accept that in refusing to deport your client (as explained in Mr Dudman's letter of 3 November 2014) that it has behaved irrationally or contrary to Articles 8 and 14 of the European Convention on Human Rights."

[12] From the respondent's point of view it appears that there the matter rested until the applicant sought leave for judicial review on 28 July 2015. The applicant indicates in his affidavit that on 10 December 2014 an application for legal aid was lodged, that he was released on 20 May 2015 on licence for 3 years and that on 3 July 2015 a legal aid certificate was issued (received on 13 July 2015).

The Relief Sought

[13] The applicant seeks the following relief:

(i) A declaration that the aforesaid decision (i.e. the decision not to deport him) is unlawful, ultra vires, and of no force or affect.

(ii) A further declaration that the rights of the applicant under Articles 8 and 14 of the European Convention on Human Rights 1950 (hereafter referred to as "ECHR") were breached and thereby represented a breach of rights and obligations under Section 6 of the Human Rights Act 1998.

(iii) A further declaration that the aforesaid decisions represent a breach of the rights of the applicant as a citizen of the European Union (hereafter referred to as the "EU") under Articles 18 and 21 of the consolidated Treaty on the functioning of the European Union (hereafter referred to as "TFEU") and Articles 7 and 21 of the Charter of Fundamental Rights of the European Union (hereafter referred to as "CFR").

(iv) A further declaration that the "Special Agreement" policy is unlawful for failing to make provision for Irish citizens who wish to leave the United Kingdom.

[14] Arising from these declarations the applicant seeks:

(i) An order of certiorari quashing the decision of the Home Office whereby it refused to remove the applicant to his country of nationality, namely the Republic of Ireland, despite his request.

(ii) An order of mandamus directing the Home Office to reconsider its refusal to remove the applicant to the Republic of Ireland in accordance with law and in accordance with any judgment or direction of the court.

[15] I am grateful to counsel in this case for their very helpful written and oral submissions. Mr Christopher Coyle appeared for the applicant and Mr Phillip Henry for the respondent.

The Arguments

[16] The starting point is that the applicant in this case must be regarded as a European Economic Area ("EEA") Foreign National Offender ("FNO").

[17] The applicant argues that the refusal by the Home Office to deport him engages and breaches his Article 8 and Article 14 ECHR rights. In terms of Article 8 he argues that he has been living with his partner in the Republic of Ireland since 2008. Prior to incarceration he worked in the Republic of Ireland which he regards as his home. Article 8(1) provides that:

> "Everyone has the right to respect for his private and family life, his home and his correspondence."

[18] On behalf of the applicant Mr Coyle argues that the notion of "family life" under Article 8 of the Convention is not confined to marriage based relationships

and may encompass other de facto "family" ties where the parties are living together out of wedlock. The existence or non-existence of family life for the purposes of Article 8 is essentially a question of fact depending upon the real existence in practice of close personal ties. On the face of the applicant's affidavit I would accept that the relationship between him and his partner would be sufficient to meet the definition of "family life" under the Convention. If Article 8 is engaged then the applicant says that the failure to deport him has interfered with that entitlement. Of course I bear in mind that Article 8 is a qualified right and under Article 8(2) public authorities can interfere with this right provided such interference is in accordance with the law and necessary in a democratic society in pursuance of a legitimate aim. The applicant seeks further support from the protection provided under Article 14 of the ECHR which provides that "the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground …".

[19] Put simply the applicant says that if he were a national of any other EU member state in a similar situation it is likely that his removal/deportation would have been ordered. The reason his removal/deportation was not ordered was because of the policy of the Home Office based on the special agreements reached between the governments of the United Kingdom and the Republic of Ireland. This policy he says clearly discriminates against foreign national offenders who hold Irish nationality. As is the case with Article 8 of course, this is subject to qualification which was described by the European Court of Human Rights in the case of DH v Czech Republic [2008] 47 EHRR 3 at paragraph 196 as follows:

> "The court reiterates that a difference in treatment is discriminatory if "it has no objective and reasonable justification", that is, it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality" between the means employed and the aims sought to be realised. Where the difference in treatment is based on race, colour or ethnic origin, the notion of objective and reasonable justification must be interpreted as strictly as possible."

[20] The applicant also argues that his European Union rights are engaged in the circumstances of this case. Article 20 of the consolidated version of the treaty of the functioning of the European Union provides that citizens of the union shall have "*the right to move and reside freely within the territory of the member states*". Article 21 provides:

> "(i) Every citizen of the Union shall have the right to move and reside freely within the territory of the member states, subject to the limitations and conditions laid down in the treaties and by the measures adopted to give them affect."

[21] Article 18 of the Treaty provides:

> "Within the scope of application of the treaties and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited."

[22] Directive 2004/38/EC of the European Parliament and of the council implements the prohibition on discrimination and in particular, paragraph (31) states:

> "This Directive respects the fundamental rights and freedoms and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In accordance with the prohibition of discrimination contained in the Charter, member states should implement this directive without discrimination between the beneficiaries of this directive on grounds such as sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinion, members of an ethnic minority, property, birth, disability, age or sexual orientation."

[23] Article 27 provides that:

> "Subject to the provisions of this chapter, member states may restrict the freedom of movement and residence of union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health."
>
> "Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned."

[24] Article 28 also provides for protection against expulsion and states:

> "Before taking an expulsion decision on grounds of public policy or public security, the host member state shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host member state and the extent of his/her links with the country of origin."

[25] This Directive has been given effect by the Immigration (European Economic Area) Regulations 2006. Regulation 19 deals with exclusion and removal from the United Kingdom and 19(3) provides:

> "Subject to paragraphs (4) and (5) an EEA national who has entered the United Kingdom or the family member of such a national who has entered the United Kingdom may be removed if:
>
> (a) that person does not have or ceases to have a right to reside under these regulations;
>
> (b) the Secretary of State has decided that the person's removal is justified on grounds of public policy, public security or public health in accordance with Regulation 21; or
>
> (c) the Secretary of State has decided that the person's removal is justified on grounds of abuse of rights in accordance with Regulation 21B(2)."

[26] Regulation 21 relates to decisions taken on public policy, public security and public health grounds and provides:

> "21-(1) In this regulation a "relevant decision" means an EEA decision taken on the grounds of public policy, public security or public health.
>
> …
>
> (5) Where a relevant decision is taken on grounds of public policy or public security it shall, in addition to complying with the preceding paragraphs of this regulation, be taken in accordance with the following principles—
>
> (a) the decision must comply with the principle of proportionality."

[27] Regulation 24(3) states:

> "Where the decision is taken to remove a person under regulation 19(3)(b), the person is to be treated as if he were a person to whom section 3(5)(a) of the 1971 Act (c) (liability to deportation) applied, and section 5 of that Act (d) (procedure for deportation) and Schedule 3 to that Act

(e) (supplementary provision as to deportation) are to apply accordingly."

[28] Thus a removal under the 2006 Regulations is deemed to be a deportation under Section 3(5) of the Immigration Act 1971 hence the reference throughout this judgment to removal/deportation. Turning now to the Charter of the Fundamental Rights of the European Union Article 7 provides:

> "Everyone has the right to respect for his or her private and family life, home and communications."

[29] Article 21 provides:

> "1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
>
> 2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited."

[30] Article 51 of the Charter provides:

> "1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties."

[31] Finally, in relation to the Treaty I refer to Article 52 which deals with the scope and interpretation of rights and principles. It states as follows:

> "1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised

> by the Union or the need to protect the rights and freedoms of others.
>
> 2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.
>
> 3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection."

[32] The applicant says that if his European Union law rights are engaged then there has also been a breach of his Charter rights under Articles 7 and 21. For the purposes of this application I take the view that this argument is academic and that the same test will apply to the arguments concerning Articles 8 and 14 of ECHR. Article 7 is drafted in almost identical terms to Article 8 and whilst Article 21 differs from Article 14 in the sense that it is a freestanding right not dependent on the engagement of another right it seems to me that for the purposes of this particular case there is no significant distinction to be drawn.

The Home Office Policy for Deportation of EEA NFOs

[33] In his cogent and well-reasoned argument Mr Henry set out the background to the Home Office Policy in relation to the Deportation/Removal of EEA Foreign National Offenders from the UK. The starting point is that deportation decisions are based on what is in the public interest. Thus the key provision at Section 3(5) of the Immigration Act 1971 sets out that the test is whether deportation is "conducive to the public good".

[34] This core principal remains in place for all nationals including EEA nationals and this is reflected in Regulations 19 and 21 of the Immigration (EEA) Regulations 2006. The test remains whether it is in the public interest to deport/remove. When considering what is in the public interest or conducive to the public good one bears in mind that this is classically a matter for the legislature and the court can only exercise a supervisory jurisdiction interfering only when there has been an act which is unlawful.

[35] Mr Henry accepts that pursuant to the UK Borders Act 2007 as amended those FNOs who have received a custodial sentence are considered for deportation as soon as possible after their period in custody ends. Such deportations/removals are deemed to be in the public interest. Of course anyone who is the subject matter

of such an order has various opportunities to challenge the decision by way of appeals to the various tribunals or if thought appropriate by way of judicial review which of course will frequently involve Article 8 arguments. The respondents accept that current arrangements in place between the United Kingdom and Ireland do cause a difference in treatment between foreign national offenders (FNOs) from Ireland and FNOs from other EA states. This is justified on the basis of the historic and geographical links between the two member states. In 1997 the UK and Ireland worked together to exhibit to the Treaty of Amsterdam a provision that allowed them to make "special arrangements" for movement of people between their respective states. This was based upon the long history between the nations, the geographical proximity, and the resulting integration that had resulted. This resulted in less stringent border control between the two member states compared with that of their neighbours in mainland Europe.

[36] This arrangement was achieved by way of a protocol dealing with certain aspects of Article 26 of the Treaty on the functioning of the European Union to the United Kingdom and to Ireland. Article 2 of the protocol provided that:

> "The United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories ("the common travel area")."

[37] Ten years later on 19 February 2007 an additional special agreement was reached between Ireland and the UK regarding the deportation of Irish nationals who had offended in the UK. On that date the Secretary of State decided the public interest would not generally be served by the deportation of Irish citizens, except in special circumstances. A written Ministerial statement on that date states:

> "Following recent discussions with the Irish Government I am able to confirm that the approach to be taken with Irish Nationals will now be as follows:
>
> Irish citizens will be considered for deportation only where a court has recommended deportation in sentencing or where the Secretary to State concludes that, due to the exceptional circumstances of the case, the public interest requires deportation.
>
> In reviewing our approach in this area we have taken into account the close historical, community and political ties between the United Kingdom and Ireland, along with the existence of the common travel area."

[38] Irish nationality does not, however, provide automatic exemption from deportation regardless of individual circumstances.

[39] As set out in the letter of 4 November 2014 which outlined the Home Office policy, as a guide deportation is still considered if an offence involves national security matters, or crimes that pose a serious risk to the safety of the public or a section of the public. Examples include a person convicted and serving a custodial sentence of 10 years or more for:

- A terrorism offence
- Murder
- A serious sexual or violent offence

[40] If it is decided that there are exceptional circumstances that warrant the deportation of an Irish national, the deportation will be made under the Immigration (EEA) Regulations 2006 in the same way as any other EEA national.

Conclusion

[41] Despite the eloquent and skilful arguments of Mr Coyle on behalf of the applicant it seems to me that there are two fundamental misconceptions which are inherent in the applicant's case. These are reflected repeatedly throughout the application. Thus, the Order 53 Statement itself refers to the applicant as "an Irish citizen who sought removal to the Republic of Ireland" and who as a result of a decision of the Secretary of State is "thereby compelling him to reside in Northern Ireland". The applicant seeks a declaration that the policy complained of is "unlawful for failing to make provision for Irish citizens who wish to leave the United Kingdom".

[42] The "central issue" in the case has been in my view mis-described in the applicant's skeleton argument when it is submitted that "the central issue raised in this matter is essentially the question of whether it is lawful for the Home Office to compel the applicant, a citizen of the Republic of Ireland and the EU, to remain within the UK until the expiry of his licence on 28 May 2018.

[43] This approach is further reflected in paragraphs 1 and also paragraph 23 of the applicant's affidavit when he refers to "the Home Office's failure to allow me to return to the Republic of Ireland by way of voluntary removal or otherwise" and "I feel the refusal of the Home Office to allow me to leave the UK discriminates against me because of my Irish nationality".

[44] In my view, the two fundamental problems with this approach and the entire application are that firstly it assumes the applicant has a legally enforceable right to removal/deportation and secondly that the legal basis of the restriction of his right to return to the Republic of Ireland is a decision of the Home Office.

[45] In relation to the first point deportation/removal is in fact a restriction on a person's right of movement. It is something imposed by the state in the public interest. It is for this reason of course that the process and procedure provides for

safeguards by way of appeals. Decisions to deport/remove are also subject to challenge by way of judicial review. It may well be the case that a person can consent to an order if imposed but I do not believe that an applicant can simply insist upon removal/deportation on a voluntary basis. Of course this is why there is no mechanism for an appeal when the Home Office as in this case has decided that it is not in the public interest to deport or remove the applicant. In my view this should also extend to any judicial review of such a "decision".

[46] In relation to the second, and perhaps more important point, the applicant fails to focus or identity the true legal basis for any restriction on his movement. The reason why the applicant is not free to return to the Republic of Ireland and why there may be an interference with his Article 8/Article 7 rights is that he is subject to a lawful sentence imposed by the courts in this jurisdiction. Of course that decision could not reasonably be challenged by way of judicial review as any interference arising from this sentence would clearly meet the test of being in accordance with law and necessary in a democratic society in pursuance of a legitimate aim. Any restriction arising from the sentence would clearly be proportionate. Indeed, I note that within the supervision being exercised by the Probation Service, the applicant has been able to visit his partner on a number of occasions and it may well be the case that this will increase as he comes near the end of his licence. Thus it appears that his Article 8 rights are clearly being taken into account by the Probation Service. Analysed properly it seems to me that this is the basis for the restriction on the applicant's movement and not the failure to deport/remove him under the immigration regime.

[47] I have therefore come to the conclusion that these two arguments alone are sufficient to defeat the applicant's application for judicial review.

[48] If I am wrong about this I have come to the view in any event that the special agreement and policy entered into between the UK and Irish governments in dealing with Irish FNOs is both lawful and proportionate.

[49] The judgment of the Court of Appeal in Regina (MM (Lebanon)) v Secretary of State for the Home Department and others [2015] 1 WLR is a useful summary of how the court should approach a challenge to an immigration rule. In paragraph 133 of the judgment of Aikens LJ says:

> "What is the upshot of all these decisions? First, the Secretary of State plainly is under a common law duty not to promulgate an immigration rule that is discriminatory, manifestly unjust, made in bad faith or it involves 'such oppressive or gratuitous interference with the rights of those subject to them as could find no justification on the lines of reasonable amendment'. If he does promulgate such an immigration rule, it can be struck down or the offending part can be severed.

> Secondly, I think that … all support the proposition that it is the duty of the Secretary of State to formulate an immigration rule in the way that means even if it does interfere with the relevant convention right, it has to be capable of doing so in a manner which is not inherently disproportionate or inherently unfair. Otherwise it will not be 'rational' or it could be stigmatised as being 'arbitrary' or 'objectionable' … or be characterised as being 'arbitrary and unjust'. Thirdly, the analysis of the Supreme Court and of this court … make it clear that if the relevant immigration rule as challenged has been contrary to a convention right then the Huang tests have to applied. The only difference when it is an immigration rule that is being challenged in principle, as opposed to an individual Article 8 decision is that the 'proportionality' question has to be considered in principle. In that case, it seems to me the test must be whether, assuming the relevant immigration rule constitutes an interference with the convention right, the immigration rule and its application to particular cases, would be inherently disproportionate or unfair. Another way of proving the test is whether the immigration rule is incapable of being proportionate and so is inherently unjustified."

[50] Applying the test set out in this passage I have no difficulty in coming to the view that if a Convention Right has been interfered with in this case as a result of the policy in relation to the deportation/removal of Irish FNOs then it is neither inherently disproportionate or unfair. In my view it has an objective and reasonable justification for treating Irish FNOs differently from other FNOs from other EEA member states.

[51] In coming to this conclusion I bear in mind firstly that at the heart of all such policies and decision is the public interest something which is best judged by the Secretary of State. The agreement is based on the existence of special travel arrangements which have existed between the United Kingdom and Ireland for many years and which is recognised in the protocol to the Amsterdam Treaty. The basis for the specific agreement in relation to deportation has been set out in a Ministerial statement referred to above.

[52] The reasoning behind the policy is that it recognises the ease of travel between the United Kingdom and Ireland and also the fact that many Irish citizens will have established very strong links and bases with the United Kingdom at the time when they have committed the relevant criminal offence.

[53] In determining what is in the public interest the Secretary of State is entitled to take these matters into account. Because of the ease of travel between the two jurisdictions an Irish FNO who has been deported will find it relatively easy to return to the UK. In that event it is entirely reasonable for the Secretary of State to take the view that it is in the UK's public interest to ensure that offenders are rehabilitated insofar as is possible. Whilst of course non-Irish EEA nationals could seek to undermine a deportation order by travelling to the Republic of Ireland and then on to the United Kingdom the fact remains that it is reasonable to come to the view that this is less likely to occur because of a lack of links with the United Kingdom and because they do not enjoy the same ease of access back into the United Kingdom.

[54] It must be acknowledged that the UK cannot guarantee perfect immigration control but the balance struck on this issue is in my view reasonable. As a result of the decision or non-decision in this case, in effect it has been decided that it is in the public interest for the applicant to complete his rehabilitation within this jurisdiction and this in itself cannot be unreasonable. Any difference that arises from other nationals is justified because of the special relationship that exists in terms of travel between the UK and Ireland, something which the European Union has recognised.

[55] Of course, the agreement does not provide automatic exemption from deportation and in the circumstances set out in the guide an Irish national will face deportation. Mr Coyle argues that this is an irrational view to take because in effect someone who has committed a far more serious offence than the applicant will not have the benefit of rehabilitation. Such a person will be removed/deported to the Republic of Ireland in circumstances where he or she can more easily return to the United Kingdom than a non-Irish national. Whilst of course this is a risk that has to be acknowledged, it is again a question of balance and judgment to be exercised by the Secretary of State in the public interest. The Secretary of State, in my view, is entitled to come to the conclusion that some offenders have committed offences which are so serious that they should be deported notwithstanding any special arrangement and notwithstanding the fact that this will mean they will not complete any potential rehabilitation.

[56] For all these reasons I would refuse the application for judicial review based on any argument that the policy complained of in this case is unlawful or discriminatory. If it has the effect of interfering with the Article 8 and Article 14 ECHR rights and Article 7 and Article 21 of the Charter rights of the applicant or of discriminating against him in my view this is a lawful, proportionate and justified interference.

[57] The applicant also contends that the refusal to deport him is unreasonable in the Wednesbury sense but it is clear from the conclusion I have set out above that I reject this argument. The applicant also claimed that he had a legitimate expectation that he would be deported based on the fact that other non-nationals are deported

but I do not think that this argument even gets off the ground. I do not see that there has been any promise made to the applicant which would found such an argument.

[58] The applicant additionally relies on the assertion that in coming to the decision the Home Office has unlawfully fettered its discretion. In relying on this standard judicial review ground it is argued that the respondent took an inflexible approach by simply referring to the examples which would constitute an exception to the normal policy and that no individual consideration was given to the applicant's request. It is a basic rule of administrative law that a public authority entrusted with discretion must retain for itself the option of exercising that discretion on a case by case basis. Having considered the exposition of the policy set out in the respondent's letter of 3 November 2014 and as explained in the Ministerial decision, both of which I have set out earlier in the judgment, it is clear that the policy itself does not in any way unlawfully fetter the respondent's discretion. The policy envisages that "the public interest was not generally served by the deportation of Irish nationals" (my underlining) except in "special circumstances". Thus under the policy the authorities remain free to depart from the guidance or make exception to it as the circumstances of individual cases require. On the face of it I would have a concern that individual consideration may not have been given to this particular applicant but this concern is not sufficient to justify referring the matter back to the Home Office for reconsideration. I come to this view because of the conclusion I have reached in relation to the fundamental issues in the case. In any event it seems to me the discretion of the Secretary of State has been exercised on well-established, defensible and reasonable public interest grounds. There is nothing set out in the factual background of the applicant's application which would indicate that there was anything exceptional in his personal circumstances which would justify that there were "special circumstances" relevant to the applicant.

[59] Accordingly, the application for judicial review is dismissed.