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*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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2012 No. 122105

MO's Application [2015] NIQB 47

IN THE MATTER OF AN APPLICATION BY MO FOR JUDICIAL REVIEW

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HORNER J

A. INTRODUCTION

[1] The applicant is a Sudanese national. He seeks a judicial review of the decisions of the Secretary of State of the Home Office ("the Respondent") who by letter of 25 July 2012 denied him the opportunity to seek work. This was reaffirmed after a further review by letter of 8 December 2014. Leave for judicial review was granted by Treacy J on 28 November 2013. The applicant had also challenged the decision of the respondent to return him and his family to the Republic of Ireland where he had first sought asylum in other judicial reviews heard before a different judge.

[2] After full argument from both sides over an extended period of time, the court was informed after both counsel had closed their case, that the applicant's judicial review against the decision of the Department to refuse to consider his asylum claim in the United Kingdom on the basis that he should return with his family to the Republic of Ireland, had been resolved. The applicant withdrew this other application for judicial review and the respondent in return agreed to determine his claim for asylum in the United Kingdom. This had the practical consequence for the applicant that he now has permission to work in Northern Ireland, even though strictly speaking there has not been more than one year's delay since the determination of his (now accepted) claim to have his right to asylum determined in the United Kingdom. However, both parties asserted that the matter was not of academic interest only. Both argued that this case raises important issues

of infringement of his Article 8 rights and the obligations which the Department owed to him under Section 55 of the Borders, Citizenship and Immigration Act 2009 ("the Act"). The applicant's final submissions were received on 22 April 2015.

B. BACKGROUND FACTS

[3] The applicant is a married man with three children currently residing in Belfast. He was born on 3 July 1973 in Khartoum. His father is from Darfur. The family are non-Arab Darfuris. The applicant worked first of all as a market trader, then as a wholesale food distributor and finally he obtained employment in the field of telecommunications.

[4] On 4 December 2013 he married. He and his wife have three children, Gheed aged 11, born in the Sudan, Mayes aged 7, born in the Sudan and Mary aged 4 born in Belfast. His two elder children currently attend a primary school in Belfast.

[5] The applicant fled Sudan, he claims, as a result of persecution due to his involvement in the Equal and Justice Party. He came to the United Kingdom under a valid student visa on 8 September 2008. He admits that he came to the United Kingdom, not to study at Westminster University as the authorities were led to believe, but instead to claim asylum. On the advice of a friend he travelled over to Dublin in February 2009 where he and his family claimed asylum. His claim was rejected. He was unable to work because of the Direct Provision Scheme. The Dublin II Regulations operate on the principle that the first country in which an asylum seeker claims asylum becomes the country responsible for processing that application. It is predicated on the idea that there should be no material difference in the treatment of asylum seekers across EU States. In this case it is the Home Office's policy not to return non-Arab Darfuris to the Sudan. However the Republic of Ireland does not operate such a policy. The applicant left the Republic of Ireland on 23 February 2011 to come to Northern Ireland. He put in a claim for asylum. This was refused. Attempts were made by the UK Border Agency ("UKBA") to remove the applicant and his family to the Republic of Ireland pursuant to a decision of 31 August 2012. This decision was subject to a judicial review.

[6] The applicant is both annoyed and frustrated at his inability to work. He claims his mental health has suffered. He claims that his inability to work has had a detrimental effect on himself and his family. He feels that he is becoming depressed. He has asked to be allowed to work while his legal position is the subject of further deliberation. He has been refused permission to work on a number of occasions. The first refusal occurred by letter dated 25 July 2012. This was affirmed by letter of 2 August 2012. The applicant obtained legal aid to challenge that decision.

[7] While resident in Northern Ireland he has been involved in an organisation which campaigns against racism and sectarianism, "Beyond Skin". He also puts his musical skills to good use when he plays a keyboard and sings as part of his volunteering activities. However, he claims that he has had difficulty establishing "a

daily routine, often staying up late at night and sleeping during the day". He feels his mind is "wasting away". He complains the income he receives is insufficient to support his family, while acknowledging that he has his accommodation provided free of charge and receives help with his home expenses. He feels his children are missing out on the ability to enjoy "the fashions and technology available to their peers".

[8] The respondent claimed that the applicant's status in the UK has been determined since April 2011 when his asylum claim was refused. It is common case that he was not an asylum seeker as his application had been refused and certified on third party grounds pursuant to Schedule 3, Part 2, paragraph 3(2) of the Asylum and Immigration (Treatment of Claimants etc) Act 2004. It is common case that the applicant is outwith Article 11 of the Reception Directive and Rule 360 of the Immigration Rules which implement the Directive.

[9] His claim for asylum was rejected in August 2012 on the basis that the Republic of Ireland was responsible for the applicant and his family under the terms of the Dublin II Regulations. This decision has been the subject of various judicial reviews. The history of these can be summarised briefly from the information adduced in this application. It is as follows:

(i) Proceedings for judicial review were issued in September 2011.

(ii) These were "settled" when the applicant withdrew his challenge on 4 October 2013 on the basis that the respondent would agree to reconsider its decision.

(iii) Following further submissions the applicant's claim that he should be allowed to claim asylum in the United Kingdom was rejected again on 14 January 2014.

(iv) A further challenge was issued and this decision was quashed by Stephens J in April 2014.

(v) The respondent reached a further decision on 15 August 2014 in the same terms as before.

(vi) This again was the subject of further judicial review, leave was granted by Stephens J on 9 March 2015.

(vii) On 10 April 2015 the respondent conceded that in the specific circumstances the applicant's asylum claim would be accepted by UK for determination and decision. Accordingly, there was no need for the applicant and his family to return to the Republic of Ireland and that the applicant was now eligible to seek employment.

C. ORDER 53 CHALLENGE

[10] There were two challenges which were ultimately pursued under the Order 53 statement. These were:

The Article8 argument

(i) The impugned decision is unlawful as it is in breach of Section 6 of the Human Rights Act 1988 in breach of Article 8 ECHR in respect of the applicant's private life in the United Kingdom. The respondent's refusal to even consider the applicant for permission to work in the United Kingdom amounts to a clear interference with, inter alia, the applicant's ability to develop social relations with others in the context of employment and with the applicant's dignity, autonomy and general well-being is protected by Article 8. That interference is not in accordance with the law and is not proportionate: see Tekle v SSHD [2008] EWHC 3064 at paragraph [36].

Section 55 argument

(ii) The impugned decision is unlawful as it is in breach of Section 55 of the Borders, Citizen and Immigration Act 2009 insofar as the impugned decision failed to have adequate regard to the need to safeguard and promote the welfare of the applicant's children and, specifically, to take into account as a primary consideration their best interests in the context of the impugned decision. The review decision of 8 December 2014 still fails to discharge the basic obligations arising under the statutory duty: see JO and Ors (Section 55 Duty) Nigeria [2014] UKUT 00517 (IAC).

[11] Both counsel are to be commended for their industry in a case which has proceeded over an extended period of time through no fault of theirs and which has been shaped by the developments in the related judicial review. Although the applicant has now won permission to work, it is contended that the respondent's decision to refuse him permission to work earlier was and remains unlawful. While any judgment of this court will not affect his new position as an asylum seeker with permission to seek work, the applicant still seeks a declaration that his Article 8 rights have been breached by the respondent and that the respondent has acted contrary to the duty it owes to him and his family under Section 55 of the Act.

Finally, it is important to remember that this is a judicial review. It is not possible to test the evidence which has been filed on each side through cross-examination or otherwise. A judicial review is not intended to be an appeal on the merits.

D. ASPECTS OF THE EVIDENCE

[12] In judicial review, context is very important. Gordon Anthony on Judicial Review in Northern Ireland (2nd Edition at 4.03) said:

> "The variable and context–sensitive nature of the grounds for review is the consequence of a judicial awareness, on the one hand, of the constitutional importance of judicial review and, on the other, of the fact that there are desirable limits to the judicial role."

McCloskey J in considering whether the duties imposed by Section 55 had been performed said in JO v Secretary of State for the Home Department [2014] UKUT 517 that any case "will be an intensely fact sensitive and contextual one".

It is important to examine some aspects of the evidence which frames this particular application. The court has been generous in respect of applications made by both sides to permit the filing of further affidavit evidence, the amendment of the prayer of relief and the use of further skeleton arguments because of the evolving factual circumstances. The industry and assiduity of both counsel permits the court to assume that all relevant information has been placed by both parties before this court.

(i) The applicant in his two affidavits makes a complaint that he feels his mental health and well-being have been adversely affected by his inability to work. He describes attending his GP and the difficulty he has in giving structure to his day. There are GP's notes exhibited. On 31 October 2012 he complained, inter alia, of low mood for one year. No cause of this was recorded. On 14 March 2014 it is recorded that he suffered from insomnia and that he had ongoing issues as a result of not being able to work. A depressed mood is diagnosed by Dr McKenna, his GP. There is no report or note from the GP or from a consultant psychiatrist ascribing his mental problems to his inability to work. There is no explanation for this omission. Leaving aside that it would only appear that the applicant attributed his problems on one occasion to his lack of work, and that this complaint was potentially self-serving in any event, the applicant is not medically qualified. It is just as reasonable to attribute his low mood to the prospect of him and his family being deported to the Republic of Ireland, a country from which he had fled years before. He also suffers from a significant medical condition which is bound to have also caused him considerable anxiety.

(ii) The information provided on behalf of the applicant makes it clear that he is involved with Beyond Skin doing voluntary work and seeking to

combat racism and sectarianism in Northern Ireland. He is also playing his keyboard and singing, using his musical talents as part of his "volunteering activities". In carrying out these activities, he is bound to meet people, mix socially and interact with members of the local community. In those circumstances it cannot be said that his inability to work is resulting in him becoming socially isolated or that there has been interference with "his personal and psychological space within which each individual develops his own sense of self and relationships with other people": see (R Countryside Alliance) v Attorney General [2008] 1 AC 719 paragraph [116] per Lady Hale.

(iii) There is an absence of any information as to how his wife is coping in Northern Ireland and whether she finds that because the applicant is unable to work it adversely affects her and the family or whether it allows him to take some of the burden from her in looking after the children and the home. There is no information as to how the two elder children are getting on at Botanic Primary School. There is no evidence at all that they or the youngest child were "suffering" from having their father at home. The only complaint which is made in respect of the children relates to the two elder ones. It is claimed that they are denied the latest in fashion and technology. As complaints go, these are bordering on the trivial.

(iv) There is limited information about the income which the applicant received by way of benefits. In a second affidavit the applicant acknowledges that he receives £234.40 per week as composite benefits which he complains is insufficient to support his family. But in addition to this, he acknowledges that he receives free accommodation (its nature and type are not described) and allowances for heating and electricity. There is no suggestion he is treated any less favourably than a lawful citizen of Northern Ireland would be in similar circumstances. There is no note of any of the family's outgoings. Even from the information provided it cannot be said that he or his family will necessarily be better off financially if the applicant is permitted to carry a job with the minimum wage or employment which has zero hours contract, examples of the type of employment which the applicant might hope to obtain if he was free to work.

[13] While, of course, as a generality work is good for the soul, it does depend on the particular circumstances of the individual concerned. Free of the responsibility of employment, the applicant as a father has an opportunity to assist his wife in helping babysit, accompany children to and from school, assisting with homework and other such activities. It would be quite wrong to assume automatically that unemployment is necessarily adverse to the best interests of the family or to the children of the family. It depends on the circumstances and it is most unwise to make sweeping generalisations. The evidence in this case is, at best, equivocal.

There are significant omissions on issues which the court might have expected to be addressed. It is assumed that these are deliberate. The court proceeds on the evidence which the parties have chosen to adduce and place before it.

E. DISCUSSION

The Article 8 Argument

[14] Article 8 of the EHCR states:

> "**Article 8 – 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 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 or disorder of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

[15] Clayton and Tomlinson in The Law of Human Rights (2nd Edition) state at 12.16:

> "The English courts have recognised the breadth of the rights protected by Article 8. No attempt has been made to provide a comprehensive definition of private life. It clearly extends to physical and psychological integrity and to those features which are integral to a person's identity or ability to function socially as a person."

Both counsel for the applicant and respondent agree that:

(i) Private life may include "activities of professional or business nature": see Niemetz v Germany [1992] 16 EHRR 97.

(ii) Sidabras v Lithunia [2004] 42 EHRR 104 held that the public disbarment of the claimant (a former KGB agent) from employment in many fields came within the ambit of Article 8. The ECHR noted at paragraph 49:

"(i) In view of the wide-ranging scope of the employment restrictions which the applicants have to endure, the court considers that the possible damage to them leading a normal personal life must be taken to be a relevant factor in determining whether the facts complained of fall within the ambit of Article 8 of the Convention."

(iii) There are a number of domestic decisions where an applicant's inability to follow his chosen career was held to engage Article 8: e.g. see R(A) v B Council [2007] EWHC 1529 Admin where a council refused to allow the appellant to drive vulnerable children once it had become aware of her personal circumstances which involved previous convictions for violence.

[16] It is there that the applicant and the respondent parted company. Mr McQuitty for the applicant placed great weight on the decision of Blake J in Tekle v Secretary of State for the Home Department [2008] EWHC 3064 (Admin). In that case the judge had concluded in respect of an Eritrean national who had arrived in England and claimed asylum in November 2001 that the policy of refusing to allow such an applicant to work in 2008 was "unlawfully overbroad and unjustifiably detrimental to claimants."

[17] Ms Murnaghan QC for the respondent relied heavily on the decisions of Collins J in (R) Negassi v Secretary of State for the Home Department [2011] EWHC 386 (Admin) as approved by the Court of Appeal in the conjoined appeal with Lutalo at [2013] EWCA Civ 151. She also relied on (R) Rostami v Secretary of State for the Home Department [2013] EWHC 1494 (Admin), a first instance decision of Hickinbottom J.

[18] The difficulty is that all these decisions relate to their own particular facts which were very different to the ones presently under consideration. In Tekle the applicant was:

(i) An asylum seeker.

(ii) He had been seeking asylum for seven years.

(iii) He was the victim of a system where the Secretary of State had deliberately adopted a policy whereby decisions or claims such as the one under review were deferred for five years or more.

(iv) He provided entirely for his own needs, claimed no benefits from the State although if he had, he would only have been entitled to food vouchers.

[19] In Negassi, this Eritrean had entered the country in September 2005 and claimed asylum in January 2006. This was rejected. He went to Ireland to claim asylum. He was sent back and his solicitors made a fresh claim. In October 2008 he threatened judicial review. In September 2008 he requested permission to work. Collins J considered that Blake J in Tekle had not been aware of Article 11 of the Reception Directive. He did not consider Article 8 to be in play. The Court of Appeal considered this with an appeal in the case of Lutalo in which Judge Stephen Davies had rejected a claim that there had been an interference with the applicant's Article 8 rights. He had rejected the reasoning of Collins J in Negassi. Giving judgment for the Court of Appeal Kay LJ observed that:

> "It ill behoves a domestic court to adopt an expansionist approach, particularly in an area which is permissibly the subject of domestic statutory control."

He also went on to hold that the applicant had not reached the threshold where it could be said that the Secretary of State had interfered with the respect for private life required by Article 8 by refusing the applicant permission to work. He said at paragraph [38]:

> "In the present cases where it is common ground that Article 8 does not embrace a general right to work, I do not consider that the protected right to respect for private life embraces the right of a foreign national, who has no Treaty statutory or permitted right of access to the domestic labour market, to an entitlement to work. We have not been referred to any Strasbourg authority which supports the engagement of Article 8 in these circumstances. Tekle is readily distinguishable."

This is a highly persuasive statement of the law but it is specific to the facts of those particular appeals. The facts of Negassi and Lutalo are very different to the present ones. Nevertheless the dicta remain a matter to which this court should have regard.

[20] In Rostami the claim was not about permission to work, but rather the restriction on the employment that could be taken up by an asylum seeker. Hickinbottom J considered that he was bound by the Court of Appeal's decision in Negassi and Lutalo which he described as "patently correct".

[21] It is clear that regardless of any other decisions, this court must approach this application on its particular facts. These are:

(i) The applicant is not an asylum seeker.

(ii) He and his family are here unlawfully.

(iii) He is in receipt of benefits which pays for his accommodation, his food, his heating and his electricity and those of his family.

(iv) He has free healthcare as do all his family.

(v) His children have free education.

(vi) He had come to Northern Ireland of his own free feel will from the Republic of Ireland some four years ago and where he has at all times been free to return to and claim asylum.

[22] At first blush the circumstances as outlined might suggest the applicant was an ingrate. The applicant's answer may well be that his attitude is informed by the delay he has experienced in seeking to be permitted to remain lawfully in Northern Ireland and his desire is to contribute to this society.

[23] This is not a case in which on these particular facts "it can be said that the Secretary of State interfered with the respect for private life required by Article 8 by refusing permission to work". This court cannot conclude that the respondent has infringed the rights enjoyed by the applicant under Article 8 by refusing him permission to work.

[24] If the court is wrong and Article 8(1) is engaged then it is necessary to consider whether the refusal of permission to work to the applicant is a lawful one in accordance with the law and necessary in a democratic society for one of the reasons identified in Article 8(2). On the facts of this case, the questions which arise under Article 8(2) are whether the respondent's decision denying this applicant the permission to work was justifiable and, in particular whether it satisfies the principle of proportionality. In Bank Mellat v HM Treasury (No. 2) [2013] UKSC 39, Lord Reed identified the principles as being:

> "(1) Whether the objective of the relevant measure is sufficiently important to justify the limitation of protected right,
>
> (2) Whether the measure is rationally connected to the objective,

(3) Whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective,

(4) Whether, balancing the severity of the measures affects and the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to the achievement, the former outweighs the latter."

He made clear that an assessment of proportionality inevitably involves a valued judgment at the stage at which a balance is to be struck between the importance of the objective pursued and the value of the right intruded upon: see Gaughran v Chief Constable of the Police Service of Northern Ireland [2015] UKSC 29 at paragraph [20].

[25] The justification includes the following:

(i) Dublin II immigrants are in a different category to applicants seeking asylum. Their cases will almost invariably be dealt with promptly when they are returned to the place where they originally claimed asylum. This is an exceptional case given the delay which has occurred.

(ii) There are a substantial number of unemployed persons in Northern Ireland who are here lawfully whether because they are nationals, citizens of the EC or their spouses and/or lawful immigrants in some other capacity. To permit Dublin II immigrants such as the applicant to work would mean that persons here lawfully might be denied the opportunity to work that would otherwise be available.

(iii) The Dublin II Regulations are intended to introduce an orderly system for the determination of asylum claims. If this applicant was entitled to claim asylum in the Republic of Ireland and then move to the United Kingdom and be permitted to work there, the orderly system for processing such asylum seekers would be imperilled.

(iv) The respondent is keen to emphasise that this does not rule out a decision to permit a Dublin II applicant to be given permission to work in Northern Ireland should the particular circumstances of the applicant demonstrate that it is in the children's best interests. However the factual foundation has to be laid for such a conclusion and it is likely only to occur in exceptional circumstances.

In this case the court finds that if the applicant's Article 8(1) rights have been interfered with, then such interference was proportionate, in accordance with the law and necessary to the economic well-being of this country.

The Section 55 argument

[26] Section 55 provides:

> "55. Duty regarding the welfare of children
>
> (1) The Secretary of State must make arrangements for ensuring that—
>
> (a) the functions mentioned in subsection (2) are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom, and
>
> (b) any services provided by another person pursuant to arrangements which are made by the Secretary of State and relate to the discharge of a function mentioned in subsection (2) are provided having regard to that need.
>
> (2) The functions referred to in subsection (1) are—
>
> (a) any function of the Secretary of State in relation to immigration, asylum or nationality;
>
> (b) any function conferred by or by virtue of the Immigration Acts on an immigration officer;
>
> (c) any general customs function of the Secretary of State;
>
> (d) any customs function conferred on a designated customs official.
>
> (3) A person exercising any of those functions must, in exercising the function, have regard to any

> guidance given to the person by the Secretary of State for the purpose of subsection (1)."

Section 1.4 of the most recently published "Asylum Policy Instruction: PERMISSION TO WORK" (1 April 2014) states:

> "Considering an application for permission to work is an immigration function and as such must take into account the need to safeguard and promote the welfare of children in the UK. This is in accordance with the requirements under Section 55 of the Borders, Citizenship and Immigration Act 2009. This means caseworkers need to take account of the impact on children of a refusal to grant permission to work.
>
> Those who do not cooperate with the asylum process and are responsible for the delay in considering their claim should not be granted permission to work. It may be argued that in refusing permission is not in the best interests of a child. Provision is made in the asylum process for the essential safeguarding and well-being needs of children who are dependent on their parents claim through appropriate support and accommodation arrangements where this is needed. It is therefore very unlikely that a decision to refuse permission to work for an adult would adversely impact on a child or override the public interest in refusing permission to those who do not comply with the process."

[27] The issue of what is in the best interests of a child has been considered in the decisions of the Supreme Court in ZH (Tanzania) v Secretary of State for the Home Department [2011] 2 AC 166, H v The Lord Advocate [2012] SC (UKSC) 308 and H (H) v Deputy Prosecutor of the Italian Republic [2013] 1 AC 338. Lord Hodge in Zoumbas v Secretary of State for the Home Department [2013] UKSC 74 at paragraph [10] said that those principles were no longer in doubt and paraphrased them as follows:

> "We paraphrase them as follows: (1) The best interests of a child are an integral part of the proportionality assessment under Art 8 ECHR; (2) In making that assessment, the best interests of a child must be a primary consideration, although not always the only primary consideration; and the child's best interests do not of themselves have the status of the paramount consideration; (3) Although the best

> interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant; (4) While different judges might approach the question of the best interests of a child in different ways, it is important to ask oneself the right questions in an orderly manner in order to avoid the risk that the best interests of a child might be undervalued when other important considerations were in play; (5) It is important to have a clear idea of a child's circumstances and of what is in a child's best interests before one asks oneself whether those interests are outweighed by the force of other considerations; (6) To that end there is no substitute for a careful examination of all relevant factors when the interests of a child are involved in an Art 8 assessment; and (7) A child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent."

He went on to say at paragraph [13]:

> "We would seek to add to the seven principles the following comments. First, the decision-maker is required to assess the proportionality of the interference with private and family life in the particular circumstances in which the decision is made. The evaluative exercise in assessing the proportionality of a measure under Article 8 ECHR excludes any *hard-edged or bright-line rule to be applied in the generality of the cases* … Secondly, as Lord Manse pointed out H(H) (at para 98) the decision-maker must evaluate the child's best interests and in some cases they may point only marginally in one, rather than another, direction. Thirdly, as in the case of H(H) shows in the context of extradition, there may be circumstances in which the weight of another primary consideration can tip the balance and make the interference proportionate even where it has very severe consequences for the children."

[28] This case was adjourned to allow Ms Elliott, a Higher Executive Officer of the respondent to swear an affidavit dealing with, inter alia, how she approached Section 55. She said at paragraph [7]:

> "I accept that a primacy of the importance must be accorded to children's interests. I do not understand

> this means that the children's interests are a factor or of (sic) that will trump or prevail over all other considerations. It is not merely one consideration that weighs in the balance alongside other competing factors. It is a factor, however, that must rank higher than any other. In this respect I bear in mind the comments of the court in ZH (Tanzania) [2011] UKSC 4."

She went on to say at paragraph [9]:

> "I confirm that I considered the various issues, including the proportionality exercised under Article 8 ECHR before I drafted the decision letter. It is important to read the decision letter as a whole. I confirm that I kept the interests of the child at the forefront of my mind when evaluating the various factors."

She further stated at paragraph [10]:

> "There was nothing in the evidence available to suggest that the Applicant's employment status was causing them any substantial detriment. I was not assisted in this exercise by the fact the applicant had made some assertions that his children were **prejudiced** but had not adduced any evidence of how his children's interests were prejudiced by his not being able to work."

Thus the sworn evidence of Ms Elliott is that she did follow Section 55, she did follow the Home Office guidance and she did give primacy of importance to the children's best interests in coming to the decision that the applicant should not be given permission to work.

[29] This court has been asked to conclude that she has fallen into error or had not done what she said she has done. It is very difficult for a court to reach such a conclusion when her sworn evidence remains untested. On the face of it she is adamant that she "carried out a careful examination of all relevant factors when I assess the interests of the Applicant's children."

[30] However when one considers the evidence, or rather the paucity of evidence as to how the children are getting on, and how their interests may or may not be affected by the applicant's inability to access the labour market, it cannot possibly be said that the averments of Ms Elliott should be disregarded as being incapable of belief or as being wholly unreasonable. The court concludes on the evidence

presently available the respondent was entitled to conclude that the best interests of the children did not require the applicant to be given permission to work.

F. CONCLUSION

[31] The applicant's claims for judicial review fail on both the grounds that have been advanced, namely on the basis a breach of Article 8 and a breach of Section 55. The applicant can have no complaint that he has been treated unlawfully on either ground. It is important to emphasise that during the course of this judicial review, the applicant was granted permission to apply for asylum in Northern Ireland. He has also been given the immediate opportunity to seek employment here. The refusal of the respondent to permit him to work up until then was not unlawful on the evidence before this court.