**THE HIGH COURT**

**JUDICIAL REVIEW**

**[2018 No. 564 J.R.]**

**BETWEEN**

**M.Z.A. (PAKISTAN)**

**APPLICANT**

**AND**

**THE MINISTER FOR JUSTICE AND EQUALITY**

**RESPONDENT**

**[2018 No. 596 J.R.]**

**BETWEEN**

**K.N.O.**

**APPLICANT**

**AND**

**THE MINISTER FOR JUSTICE AND EQUALITY**

**RESPONDENT**

**[2018 No. 595 J.R.]**

**BETWEEN**

**V.I.O. AND T.O. (AN INFANT SUING BY AND THROUGH HER MOTHER AND NEXT FRIEND V.I.O.) AND T.O. (AN INFANT SUING BY AND THROUGH HER MOTHER AND NEXT FRIEND V.I.O.)**

**APPLICANTS**

**AND**

**THE MINISTER FOR JUSTICE AND EQUALITY**

**RESPONDENT**

**[2018 No. 653 J.R.]**

**BETWEEN**

**F.S.O.**

**APPLICANT**

**AND**

**THE MINISTER FOR JUSTICE AND EQUALITY**

**RESPONDENT**

**[2018 No. 761 J.R.]**

**BETWEEN**

**M.V.**

**APPLICANT**

**AND**

**THE MINISTER FOR JUSTICE AND EQUALITY**

**RESPONDENT**

**[2018 No. 763 J.R.]**

**BETWEEN**

**M.M.**

**APPLICANT**

**AND**

**THE MINISTER FOR JUSTICE AND EQUALITY**

**RESPONDENT**

**[2018 No. 742 J.R.]**

**BETWEEN**

**A.M.A.**

**APPLICANT**

**AND**

**THE MINISTER FOR JUSTICE AND EQUALITY**

**RESPONDENT**

**[2018 No. 764 J.R.]**

**BETWEEN**

**M.M. AND N.K. (AN INFANT SUING BY AND THROUGH HIS GRANDMOTHER AND NEXT FRIEND M.M.)**

**APPLICANTS**

**AND**

**THE MINISTER FOR JUSTICE AND EQUALITY**

**RESPONDENT**

**[2018 No. 745 J.R.]**

**BETWEEN**

**R.O.H.**

**APPLICANTS**

**AND**

**THE MINISTER FOR JUSTICE AND EQUALITY**

**RESPONDENT**

**[2018 No. 866 J.R.]**

**BETWEEN**

**K.K.**

**APPLICANT**

**AND**

**THE MINISTER FOR JUSTICE AND EQUALITY**

**RESPONDENT**

**[2018 No. 867 J.R.]**

**BETWEEN**

**Z.U.I.**

**APPLICANT**

**AND**

**THE MINISTER FOR JUSTICE AND EQUALITY**

**RESPONDENT**

**[2018 No. 971 J.R.]**

**BETWEEN**

**S.S.N. AND S.M.M. (AN INFANT SUING BY AND THROUGH HIS MOTHER AND NEXT FRIEND S.S.N.) AND L.H.M. (AN INFANT SUING BY AND THROUGH HIS MOTHER AND NEXT FRIEND S.S.N.) AND B.D.M. (AN INFANT SUING BY AND THROUGH HIS MOTHER AND NEXT FRIEND S.S.N.)**

**APPLICANTS**

**AND**

**THE MINISTER FOR JUSTICE AND EQUALITY**

**RESPONDENT**

**[2018 No. 930 J.R.]**

**BETWEEN**

**B.T.P.**

**APPLICANT**

**AND**

**THE MINISTER FOR JUSTICE AND EQUALITY**

**RESPONDENT**

**BETWEEN**

**J.S.M.**

**APPLICANT**

**AND**

**THE MINISTER FOR JUSTICE AND EQUALITY**

**RESPONDENT**

**JUDGMENT of Mr. Justice Richard Humphreys delivered on the 19th day of December, 2018**

1. These fourteen cases deal with the same point of statutory interpretation regarding the extent of the reasons required to be articulated when making a deportation order. I have received helpful submissions from Mr. Conor Power S.C. (with Mr. Ian Whelan B.L.) for the applicants in each case, and, on behalf of the respondents:

(i) from Mr. Robert Barron S.C. (with Ms. Sarah Cooney B.L.) in Nos. 564, 867 and 971,

(ii) from Mr. Barron (with Mr. John P. Gallagher B.L.) in No. 596,

(iii) from Ms. Cooney in Nos. 742, 745, 763, 764, 866 and 761; and

(iv) from Mr. Gallagher in Nos. 653, 933, 930 and 595.

**The obligation to give reasons must be limited where the decision is mandatory**

2. Section 51(3) of the International Protection Act 2015 states: "*Where the Minister makes a deportation order, he or she shall notify the person specified in the order of the making of the order and of the reasons for it and, where necessary and possible, the person shall be given a copy of the notification in a language that the person understands*." The requirement for reasons has to be read in the light of the fact that the making of the deportation order is mandatory once certain matters are satisfied. Section 51(1) of the 2015 Act provides that "*Subject to section 50, the Minister shall make an order under this section ("deportation order") in relation to a person where the Minister—(a) has refused under section 47 both to give a refugee declaration and to give a subsidiary protection to the person, and (b) is satisfied that section 48 (5) does not apply in respect of the person, and (c) has refused under section 49 (4) to give the person a permission under that section.*" Where there is a requirement to make a particular decision once certain conditions, are satisfied it is a sufficient reason for the decision to simply state that those conditions are satisfied in the case in question. As I said in *I.I. (Nigeria) v. Minister for Justice and Equality* [2018] IEHC 392 [2018] 5 JIC 3004 (Unreported, High Court, 30th May, 2018) at para. 6, given the obligation to make the deportation order on compliance with the statutory conditions, little more can be said as to the reasons for it. A similar approach to the requirement for the reasons for a proposal to make a deportation order was taken by the Supreme Court in *F.P. v. Minister for Justice, Equality and Law Reform* [2002] I I.R. 164.

**The decisions do articulate reasons**

3. To take the decision in *M.Z.A.* as representative, this states: "*Following the refusal to give you a refugee declaration, a subsidiary protection declaration and permission to remain in the State under s.47 and 49(4) of the International Protection Act, 2015 the Minister for Justice and Equality has now made a deportation order in respect of you. The deportation order is made under s. 51 of the International Protection Act, 2015. A copy of the order is enclosed with this letter. In making the deportation order the Minister has satisfied himself that the provisions of s. 50 (prohibition of refoulement) of the International Protection Act, 2015 are complied with in your case. The Minister is also satisfied that s. 48(5) (option to voluntarily return to country of origin) of the International Protection Act 2015 does not apply in your case"*. The reasons for the deportation order are therefore as follows:

(i) The applicant has been refused a refugee declaration.

(ii) The applicant has been refused a subsidiary protection declaration.

(iii) The applicant has been refused permission to remain in the State.

(iv) The provisions of s. 50 of the Act are complied with.

(v) The provisions of s. 48(5) of the Act are complied with.

4. Thus the decisions in question do articulate reasons in manner that relates specifically to the terms of the statutory scheme.

**The pleadings do not include the claim now made**

5. At paras. 2 and 4 of the statement of opposition the respondent makes the point that the applicant's pleadings do not take issue with the adequacy of reasons but rather allege that the Minister "*has failed to notify the person specified in the order (the applicant) of the reasons for the deportation order*". That is an allegation of lack of reasons, not taking issue with the adequacy of the reasons. As reasons were provided, the applicant's case as pleaded fails *in limine*.

**The reasons given are adequate**

6. If I am wrong about that and I need to consider the question of adequacy, those reasons are sufficient given the statutory scheme referred to above. A deportation order can and indeed must be made once such conditions are established. If I am wrong that the reasons in the accompanying letter are themselves sufficient, viewing that document as a self-contained statement, there is no problem in principle with reasons for a decision being contained in other related documents: see *F.P. v. Minister for Justice, Equality and Law Reform* [2002] 1 I.R. 164, *M.A.K. v. Minister for Justice and Equality* [2018] IESC 18, *Connelly v. An Bord Pleanála* [2018] IESC 31. There is considerable English caselaw to the same effect referred to at para. 63.3.6 of Fordham, *Judicial Review Handbook*, 6th ed. (Oxford, 2012). Where a decision is given after a report, the inference is that the reasons are those contained in the report unless there are grounds to think the contrary: see in particular *R. (Richardson) v. North Yorkshire County Council* [2003] EWCA Civ. 1860 [2004] 1 W.L.R. 1920.

7. While the applicants submitted that the Minister had to give "*separate reasons under s.51(3) at a separate stage"* (para. 19 of written submissions) that is not so. If the more detailed reasons for decision Y are those in a previous X, it is sufficient to refer back to decision X. There is no reason in logic or principle to consider that the general rule that one can refer back to previous decisions to find detailed reasons is excluded simply because there is a reference in the statute to the obligation to give reasons, which exists anyway as a matter of fair procedures. The comments of Murray C.J. in *Meadows v. Minister for Justice Equality and Law Reform* [2010] IESC 3 [2010] 2 I.R. 702 at para. 93 are apposite. The rationale for a decision "*should be patent from the terms of the decision or capable of being inferred from its terms and its context".* Further detailed reasons for the decisions in relation to points (i) to (iv) of the rationale for the deportation orders (referred to at para. 3 above) are contained in the specific decisions concerned. Again taking the *M.Z.A.* case as representative:

> (i) The report under s. 13 of the Refugee Act 1996 of 5th October, 2016 and the IPAT decision of 14th December, 2017.
>
> (ii) The report under s. 39 of the 2015 Act of 23rd August, 2017 and the IPAT decision of 14th December, 2017.
>
> (iii) The report under s. 49(3) of the 2015 Act of 23rd August, 2017 and the review decision under s. 49(9) of 14th May, 2018.
>
> (iv) Also addressed to the s. 49(3) and (9) reports.
>
> (v) Point (v) is simply a statement of fact.

8. Thus this is not a case where the applicants have been left in doubt, or hunting to find a document where the reasons might be found. The notification refers to specific findings, which are themselves embodied in specific, readily identifiable decisions. In addition, each applicant already received a statement of the reasons for the proposed deportation order under s. 3(3) of the 1999 Act. Mr. Power's argument therefore came down to a contention that because it is acknowledged at para. 17 of the respondent's written submissions that in the case of "*some exceptional event occurring in the short time between the refusal of the permission to remain and the making of a deportation order",* the Minister can, at the deportation order stage, differ from the s. 49(4)(b) decision, therefore there had been a failure to give reasons for there having been no change in circumstances during that period; essentially that there is an obligation to give reasons for not exercising this exception.

**The Minister gave reasons as to the lack of a change in the position between the s. 49(4) and (9) reports**

9. A first fundamental problem for the applicants is that insofar as the period between the s. 49(4) and (9) reports is concerned, the Minister did this. In the s. 49(9) decision the Minister gives reasons as to why there is to be no change in the previous decision as of the date of the s. 49(9) decision, which was nine days before the deportation order itself. Mr. Power's argument then, necessarily, focused on that nine-day period. This illustrates the nature of the applicant's complaint as a moving target which the Minister almost by definition will find it impossible to meet.

**The applicants did not make submissions during the period between the review decisions and the deportation orders**

10. For good measure, there is a further problem in three of the cases in that the applicants made no submissions seeking a review, still less a submission after the review decision and before the deportation order (nos. 761,763 and 867). None of the other eleven applicants made submissions arguing for a change in circumstances after the review submissions that would have affected the period between the date of the review decision and the date of the deportation order. That is fatal to the point now being made. Again, the comments of Murray C.J. in *Meadows* are apposite at para. 79: "*in cases where there is no claim or factual material put forward to suggest that a deportation order would expose the deportee to any of the risks referred to in s. 5 then no issue as regards refoulement arises and the decision of the first respondent with regard to s. 5 considerations is a mere formality and the rationale of the decision will be self-evident."*

11. The applicant's case is in essence a *jus tertii*. If a person makes submissions after the review decision raising a material change in circumstances which fell between the review decision and the deportation order, such a person would have standing to make the point now being made. That is not these applicants.

**There is no general obligation to give reasons for not exercising an exception to or waiver of the normal procedure**

12. A further overall problem with the applicant's submission is that there is no general obligation to give reasons for not exercising an exceptional power to waive the normal procedure. If a decision can be made on certain conditions being satisfied, that it is a sufficient reason. The decision-maker does not have to go to explain why he or she did not waive the normal conditions: see the judgment of Cooke J. in *A.B. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 449 (Unreported, High Court, 18th June, 2009) at para. 15 to the effect that having decided to reject an application on particular grounds, a decision-maker is not then required to go on to consider separately and expressly whether to waive those grounds.

**Lack of proof of substantive prejudice**

13. If I am wrong about all of the foregoing and even if the obligation to give reasons includes the, in my view non-existent, obligation to give reasons as to why the Minister had not changed his mind about leave to remain during the brief period between the s. 49(9) decision and the date of the deportation order itself or the, in my view non-existent, obligation to incorporate the reasons into some separate document accompanying the deportation order, the applicants are not prejudiced by any such omission. None of them have put forward any basis to establish that this omission constituted an injustice in their case. Even if it had been determined that reasons were lacking in this minor respect, I would not have quashed the deportation order merely on that technical basis and would thus, if necessary, have upheld the plea at para. 5 of the statement of opposition that "*in the event that the court should find any formal defect in the notification of the deportation order which is denied the same would not be such as to impair the enforcement of the deportation order*".

**Order**

14. The order will be that:

> (i). each of the application is dismissed; and
>
> (ii). in any cases where stays on deportation have been granted, such stays are discharged; and in any cases where undertakings have been provided not to enforce deportation orders, the respondent is released from any such undertakings.