THE HIGH COURT

2008 322 JR

BETWEEN

A. B. O., M. O. AND M. J. O.

APPLICANTS

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, and

THE GARDA NATIONAL IMMIGRATION BUREAU

RESPONDENTS

EX TEMPORE JUDGMENT OF MR. JUSTICE BIRMINGHAM delivered on the 27th day of June 2008.

1. The first named applicant is a national of Nigeria, a member of the Yoruba tribe and a Pentecostal Christian. She is seeking leave to apply for judicial review of the decision of the Minister for Justice, Equality and Law Reform ("the Minister") to refuse her application for subsidiary protection. The second and third named applicants are the first named applicant's daughter and son respectively.

2. The Minister's decision to refuse the first named applicant's request for subsidiary protection gave rise to two challenges, the first to the Minister's decision to refuse subsidiary protection, and the second to the Minister's ensuing decision to make a deportation order in respect of the applicants, which followed from the earlier decision to refuse subsidiary protection. The applicants are seeking leave to apply for judicial review of these decisions, with a view to claiming the following reliefs:

(i) An Order of Certiorari quashing the decision of the Minister not to grant the first named applicant subsidiary protection, dated 11th December, 2007;

(ii) An Order of Certiorari quashing the decision of the Minister to make deportation orders in respect of the applicants, dated 5th March, 2008;

(iii) An Order of Mandamus directing the Minister to consider the first named applicant's request for subsidiary protection dated 30th August, 2007.

3. As a preliminary matter, counsel for the applicants argues that if the Minister's consideration of the first named applicant's claim for subsidiary protection was not valid, then it follows that the ensuing decision to make a deportation order will necessarily fall. Counsel for the respondents takes no issue with this argument, and I see much force in it. I will, therefore, first consider whether the Minister's subsidiary protection decision was, in fact, valid on the basis that if that decision is invalid, then the deportation order cannot stand.

The Applicants' claim

4. The application for subsidiary protection arose from the following circumstances. The first named applicant is, as I have mentioned, a Pentecostal Christian. She says that in 1995, when she first met the man who is now her husband, he was a practising Muslim, coming from a Muslim family that expected him to marry a Muslim. She states that he converted to Christianity in 1998, and they began living together, unknown to his family. She says that her difficulties began in 1999 when, upon finding out that she was pregnant, her husband's family found out about and objected to their relationship, and told her to abort the pregnancy. She refused and in November of that year gave birth to a son whose purported birth certificate she has

produced. She says that she and her husband married in 2002 in a Registry Office, but her husband's family continued to tell her that she should leave him and take their son with her.

5. The first named applicant says that when she became pregnant again in the autumn of 2003, her father-in-law – who was a leader in the Muslim community and ran the local Mosque – brought three people to her house and ordered them to beat her. She says that she was hospitalised and suffered a miscarriage and leg injuries as a result. She has produced what purports to be a medical report, which she says supports her claim. The report produced, which appears to have been signed by the Medical Director of Abolayo Hospital in Lagos on 14th January, 2006, notes for record purposes that the first named applicant suffered a "previous spontaneous abortion at 8 weeks gestation with evacuation 27th September 2003". Thus, it supports her claim to have miscarried but says nothing about this having been caused by an assault.

6. The first named applicant did not report the alleged assault to the police. She states that she didn't have the will or strength at the time, and thought that making a complaint would further worsen the family dispute. She also states that she believed that the police would not investigate family matters. Insofar as the question arises as to why she would not report such a serious incident to the police, she points to Country of Origin information in the form of the UK Home Office's *Country of Origin Information Report: Nigeria* (May 2007) and Amnesty International's *Report 2007 on the State of the World's Human Rights*, as providing an explanation for her position.

7. The first named applicant states that following another pregnancy, she gave birth to the second named applicant, in July 2004. She claims that on several

occasions, her father-in-law and his associates came to her home, threatened her and ordered her to leave her husband. She says that she and her husband moved house on several occasions but even so, her father-in-law was always able to locate them. She says that they also harassed her husband at work.

8. She claims that in February 2005, after moving with her children to northern Nigeria to stay with a friend's sister, she received threatening phone-calls on her mobile phone, which she claims emanated from her father-in-law and his associates. Of note is that she accepts that these people did not know where she was residing at this point. She says that she became afraid and after a month returned to her husband. She says her father-in-law continued to visit her home and threaten her.

9. The first named applicant further claims that in December 2005, her father-in-law again came to her home, accompanied by thugs, and kidnapped her son, who was then six years old. She says that she reported this matter to the police a day later, and has produced documentation that is said to support that claim, in the form of an extract from a police station diary, dated 26th December, 2005. She says that the police initially told her they would investigate the kidnapping but, after questioning her father-in-law, told her that this was a family issue, and should be sorted out by the family. She says that soon after this incident, she arranged to leave Nigeria.

Procedural Background

10. The first named applicant applied for asylum in this State in the ordinary way on 9th January, 2006. The second named applicant was included in this application and after the third named applicant was born, he was added to the application. The application was based on the first named applicant's account of her fear of persecution at the hands of her father-in-law and his associates, and the absence of State

protection in those circumstances. The Office of the Refugee Applications Commissioner ("ORAC") doubted the first named applicant's credibility and rejected the claim in April 2006. The applicants exercised their right of appeal to the Refugee Appeals Tribunal ("RAT") and an oral hearing was held on 28th June, 2006. In a decision dated 7th July, 2006, the Tribunal Member doubted the credibility of the first named applicant and affirmed the ORAC determination. The applicants made a request to the Minister for humanitarian leave to remain on 7th September, 2006 which, in turn, was refused. The factual background, or alleged factual background, that I have described was for consideration at ORAC, RAT and at the humanitarian leave to remain stages.

11. An application for subsidiary protection was made on behalf of the first named applicant by letters dated 30th August and 15th October, 2007. Supporting documentation was submitted on her behalf. It was, and remains, the first named applicant's position that she would be at risk of serious harm at the hands of her father-in-law and his associates if returned to Nigeria. In broad terms, the claim for subsidiary protection was presented on the same basis that the claims for asylum and humanitarian leave to remain had been advanced.

The Minister's Decision

12. On 13th November, 2007, a Higher Executive Officer of the Minister's Department issued an assessment of the application for subsidiary protection, addressing each of the matters that the Minister is obliged to take into account under the Regulations of 2006. The bulk of the determination is dedicated to the matters required under Regulations 5(1)(a) and (b), with reference being made to three Country of Origin reports submitted by the first named applicant, as well as to

documentation submitted at various stages of the process in the form of a Police Station Diary extract and sworn affidavit, and a medical report. The Officer noted that "[w]hile there are problems with the police in Nigeria it is generally accepted that state protection is available there." Having noted that the kidnapping was referred for 'discreet investigation', the Officer concluded:-

> "So, it would not seem as if the police would not get involved in family matters, as they investigated her son's disappearance. I would be of the opinion that Ms. Opeogun did not give the police an opportunity to act on the assault and investigate the matter, as she did not report the assault to the police."

13. The Officer also acknowledged that women in Nigeria do encounter difficulties in terms of domestic violence and discrimination, but noted that there are NGOs from which assistance can be sought, and that the Nigerian government is making efforts to introduce legislation to address these issues. Ultimately, she concluded that state protection was available to the applicants in Nigeria.

14. In accordance with Regulations 5(1)(c), (d) and (e) respectively, the determination also takes into consideration the applicant's personal circumstances (i.e. her purported problems with her father-in-law); the absence of activities since leaving Nigeria relevant to her claim; and her Nigerian citizenship. Thereafter, following Regulations 5(2) and (3), it concludes that there are good reasons for believing that the serious harm to which the applicant alleges she has been subjected would not be repeated if returned; and states that owing to doubts surrounding the applicant's credibility at ORAC and RAT stages, the benefit of the doubt should not be given.

15. The determination concludes that the applicant has not shown substantial grounds for believing that she is at risk of suffering serious harm if returned to

Nigeria. A second Higher Executive Officer approved this assessment on 11th December, 2007, and determined that the first named applicant is not eligible for subsidiary protection and that consideration should be given as to whether a deportation order should issue.

The Issues in the Case

16. The applicants identify two elements of the Minister's decision as being central to the conclusion reached and each is the subject of criticism. They are:-

a. The view formed that State protection was available, and

b. The way in which the issue of Credibility was approached.

The Standard of Consideration Required of the Minister

17. These challenges raise for consideration the standard of analysis required of the Minister when considering the first named applicant's request for subsidiary protection.

18. Mr. Anthony Lowry, Barrister-at-Law on behalf of the applicants, submits that the standard of analysis required of the Minister in respect of an application for subsidiary protection must equate to the standard required at the RAT stage of the asylum process. In his submission, the standard of analysis required of the Minister when considering an application for leave to remain ("a section 3 application") does not apply. Counsel bases this contention on his submission that although it is a matter for this State, in accordance with the principle of national procedural autonomy, to designate the procedure according to which subsidiary protection applications are to be considered and analysed, the procedures designated must comply with certain requirements, namely the provision of an effective judicial remedy and compliance with the principles of effectiveness and equivalence. He says this is so because

consideration of an entitlement to subsidiary protection is a right under EU law. Counsel contends that in order to fulfil these requirements, the RAT standard of consideration must apply, rather than the standard applicable to leave to remain applications.

19. Mr. Patrick O'Reilly, Barrister-at-law on behalf of the respondents, submits that the standard that is required of the Minister when considering an application for subsidiary protection equates to the standard required of him in respect of a section 3 application. It is the respondents' submission that due regard must be had to the circumstances in which the decision is taken, and that the test applicable as to the standard of consideration required of the Minister was set out in *N, E and O v The Minister for Justice, Equality and Law Reform* [2008] IEHC 107, a case to which I will return.

20. Of particular note in this context is the stage at which the application for subsidiary protection was made. Such applications can only be made to the Minister; they cannot be made before ORAC or appealed to the RAT. The application will therefore be made following the conclusion of a failed application for refugee status. It is now a matter of practice that applications for subsidiary protection are usually made and considered at the same stage as section 3 applications, although in the present case a section 3 application had already been refused at the time at which the subsidiary protection application was made. It was not disputed in the context of the present case that the matters examined by ORAC and the RAT in the asylum process and by the Minister at the humanitarian leave to remain stage are broadly similar to those requiring examination by the Minister in the subsidiary protection procedure. It is clear, therefore, that by the stage at which the subsidiary protection application came before the Minister, detailed and reasoned consideration had already been given

to the circumstances giving rise to the applicant's fears. Notably, consideration had also been given, as part of the section 3 process, to humanitarian considerations and to the prohibition against refoulement.

21. In these circumstances, and notwithstanding the submissions made that the claim for subsidiary protection is a separate and distinct process with issues being considered by the Minister for the first time, it seems to me that the observations of Clarke J. in *Kouaype v The Minister for Justice Equality and Law Reform & Anor* [2005] IEHC 380, O'Neill J. in *Dada v The Minister for Justice, Equality and Law Reform* [2006] IEHC 140, as well as those of Charleton J. in *N, E and O,* are of some considerable interest. *Kouaype* involved a challenge to the Minister's decision to make a deportation order. Clarke J. noted the various stages of the statutory asylum regime through which an applicant has been processed at the relevant stage, and concluded as follows:-

> "Given that statutory regime it would be surprising if the Minister were not entitled to place a heavy emphasis indeed on the fact that the person concerned had, as a result of going through the asylum process, every opportunity to make out a case for that status and thus had every opportunity to make out a case which in substance would mean that s. 5 prohibited their deportation. Having failed to establish that status in the refugee process it is difficult to see how, in the absence of special or changed circumstances, the Minister could be under any heavy obligation to review that aspect of the matter further."

22. O' Neill J. in *Dada,* in the context of an application to revoke a deportation order, commented:-

> "In this regard it must be borne in mind that the decision sought to be challenged comes at the end or at the last potential stage of an elaborate and

> lengthy process of inquiry into the status in this State of the applicants. […] It is clear that the nature and extent of the inquiry which is appropriate in this later phase of the process, thus described, is significantly more restricted than for example in the asylum phase. Likewise the extent of review of the later phase is undoubtedly more restrictive than in the earlier phase."

23. It is my view that in the light of these authorities, this Court is not obliged to ignore the stage at which an application for subsidiary protection is made. In the present case, as we have seen, the issue of the threat posed by the first named applicant's father-in-law and his associates had been under consideration at every step of what O'Neill J. had aptly described as "a lengthy and elaborate process of inquiry", including the initial application to ORAC, the appeal to the RAT, and indeed the unsuccessful section 3 application to the Minister. The factual basis for the first named applicant's application was the same as that which grounded her unsuccessful applications to ORAC, the RAT, and the Minister under section 3. Although more recent Country of Origin information was submitted to the Minister in the context of the subsidiary protection application, no new evidence relating specifically to the first named applicant's circumstances was put before him, nor was it suggested that the situation in Nigeria had changed significantly.

Standard of Review

24. Parallel to the issue of the standard of consideration required of the Minister is the standard of review to be exercised by this Court when judicially reviewing decisions of the Minister in the asylum and immigration context. The ordinary test for overturning decisions of fact in judicial review of administrative or quasi-judicial tribunals is whether the impugned decision or determination flew in the face of fundamental reason and common sense. As noted by Charleton J. in *N, E and O* (at

paragraph 57), the jurisprudence of this Court lends support to the view that a "heightened level of scrutiny" is required when examining the actions of statutory bodies under the Refugee Act 1996, when compared to other forms of judicial review that concerns administrative decision makers.

25. In that case, it fell for consideration whether this "heightened" standard of review or the ordinary standard should apply when this Court is examining an application for subsidiary protection. The challenge in *N, E and O* concerned in particular a determination by the Minister as to the situation in the country of origin of the applicant, or the availability of protection within that territory. Charleton J. considered that in light of the principle of the primary importance of human rights, it was insufficient to apply the ordinary test of whether the Minister's decision flew in the face of fundamental reason and common sense. Instead, Charleton J. considered as follows:-

> "[A] decision on the country of origin of an applicant and the availability of protection within its territory should be scrutinized if a judicial review is taken and *the decision should only stand if it be a rational one that is fairly supported by the country of origin information*. That, it seems to me, is what Council Directive 2005/85/EC, the procedures Directive, is seeking to achieve when placing on the examining bodies and Member States the responsibility in making objective and impartial decisions based on precise and up to date information from reliable sources." (emphasis added)

26. Our legal tradition has long been to approach all cases involving fundamental human rights with particular care and caution. This approach will, of course, be applied to the judicial review of asylum and immigration decisions. This does not alter my view, however, that this Court is not obliged to ignore the stage at which an

impugned decision was made and the background against which it was made, when assessing the adequacy of that decision. The nature of the task which the Minister undertakes will be informed by what has gone before. If the case for subsidiary protection is put on an entirely new basis which has never been considered at any stage of the asylum process and is not one that can be regarded as inherently implausible, a particularly careful and thorough analysis will be required. Conversely, if the Minister is being asked to consider once more, albeit in a different context, what has already been considered by him as well as by ORAC and the RAT, he is not expected to shut his eyes to what has gone before.

27. The premise that underlies the debate that the standard of review differs between RAT and section 3 may not be entirely correct. In both cases the decision falls for consideration in accordance with the normal principles of judicial review and the focus of attention will be on the adequacy and appropriateness of the procedures followed. However the Courts recognise the reality that different levels of sophistication and elaboration are required at different stages of the process. The RAT decision will normally issue after a formal hearing on oral evidence and the parties are entitled to expect a careful and reasoned decision. On the other hand, the humanitarian leave to remain application has been described as being in the nature of an *ad misericordiam* plea. That plea must be properly and fairly considered but the Minister is not required to produce the sort of reasoned analysis required after a formal quasi-judicial hearing.

Context

28. Before proceeding to consider the Minister's conclusion in any detail, it is useful to consider the context in which the Minister came to make this decision. Even before the coming into effect of Council Directive 2004/83/EC and the *European*

Communities (Eligibility for Protection) Regulations (S.I. No. 518 of 2006), a foreign national in this State had a right to apply for asylum and a right to have that considered in accordance with the statutory scheme. Secondly, the person had a right not to be expelled when 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. The reference to freedom being threatened included, *inter alia*, a serious assault (including a serious assault of a sexual nature) being threatened. This right was recognised by section 5 of the *Refugee Act 1996* (as amended). In addition, all individuals had a right not to be sent to a state where there were substantial grounds for believing they would be exposed to torture, this by virtue of the *Criminal Justice (United Nations Convention against Torture) Act 2000*. It is, therefore, certainly not the case that prior to the emergence of subsidiary protection a Minister was dealing only with the exercise of a discretion outside a context where individuals had statutory rights.

(a) State Protection

29. I turn now to the first ground on which the applicants challenge the Minister's decision on subsidiary protection, namely the Minister's conclusion that the applicants can avail of State protection in Nigeria. At the outset, I would note that the onus lies on the applicants to provide clear and convincing proof of a state's inability to protect its citizens. This was established by the Supreme Court of Canada in the seminal case of *Canada (A.G.) v Ward* [1993] 2 SCR 689. LaForest J., giving the judgment of the Court, observed as follows:-

> "Absent some evidence, the claim should fail, as nations should be presumed capable of protecting their citizens. Security of nationals is, after all, the essence of sovereignty. Absent a situation of complete breakdown of state apparatus […] it should be assumed that the state is capable of protecting a claimant."

30. This approach was found by Herbert J. to be "both persuasive and compatible with the jurisprudence of this State" in *D.K. (Kvaratskhelia) v Refugee Appeals Tribunal & Anor* [2006] 3 I.R. 368, at p.373. The *Ward* approach was also adopted by Feeney J. in *Llanaj v The Refugee Appeals Tribunal & Ors* [2007] IEHC 53 and *O.A.A. v The Minister for Justice & Anor* [2007] IEHC 169. In *Llanaj*, Feeney J. remarked as follows:-

> "That does not mean that there is not an obligation on the respondents to assist in relation to inquiring into the case, but that does not and cannot remove the onus on the Applicant or remove the obligation of establishing by 'clear and convincing proof' the absence of State protection."

31. The approach set out in *Ward* and interpreted in the above judgments is an approach which I propose to follow.

32. The applicants contend that they are unable to avail of State protection in Nigeria because the police do not investigate claims of domestic violence adequately and consider such claims to be family matters. In support of the contention that this is the case and that in consequence they are in need of international protection, the applicants submitted the following documentation, which they say supports their claim:

a. Country of Origin information reports;

b. Sworn Affidavit from the Nigerian Police and Extract from Nigerian Police Station Diary (26th December, 2005).

33. Though submitted at various stages of the process, each of these documents was before the Minister when making his decision on subsidiary protection.

34. The first named applicant contends that she sought State protection when in Nigeria and that it was not forthcoming. She lays particular emphasis on the statement in the extract from the Police Station diary, which purports to detail the complaint that she made in respect of the alleged kidnapping of her son, that the matter was referred for 'discreet investigation'. Counsel for the applicants submitted that this indicates that the police were not proposing to press their investigations, in line with the alleged policy of the Nigerian police not to investigate incidents of domestic violence.

35. Country of Origin information, in the form of a UK Home Office report and an Amnesty International report, was also submitted by the applicant. These reports have been cited to support the contention that the response of the Nigerian State, and more particularly of the Nigerian police, to domestic violence or violence in a family context was to a large extent ineffective. The Minister's analysis was that while there were problems in Nigeria with the police, it is generally accepted that State protection

is available there. While acknowledging that women in Nigeria do encounter problems in respect of domestic violence, the Minister noted that there are NGOs from which assistance can be sought, and observed that according to a more recent Amnesty International report, the Nigerian Government is making efforts to introduce legislation to address these issues. The Minister considered that the first named applicant had not given the police an opportunity to act on and investigate the assault which she allegedly sustained in 2003, as she did not report it to the police. He concluded:-

> "It seems incredible that the police would not investigate such a violent act given that they referred the report of [the first named applicant]'s missing son for "discreet investigation"."

36. In being asked to consider the question of the availability of State protection, the Minister was of course being invited to examine a subject which had already been at issue at each of the earlier stages.

37. The task facing the applicants in seeking to establish that the conclusion reached was not open to the Minister is a formidable one. I have already referred to the *Canada (A.G.) v Ward* line of authorities. It must also be borne in mind that where a decision-maker has reached a decision reasonably on facts before it, this Court may not overturn that decision even when the Court might not have reached the same conclusion on the same facts. As noted by Peart J. in *Ali v The Minister for Justice, Equality and Law Reform & Anor* [2004] IEHC 108:-

> "I do not have to agree with the decision arrived at by the Tribunal, or decide that I might have arrived at a different conclusion. If there is material or information available to the Tribunal on which it could base its decision […], then the decision is a valid one on that ground."

38. My role, therefore, is to consider whether it was reasonably open to the Minister to reach the conclusion that he reached, based on the information before him. Having regard to the observations of Charleton J. in *N, E and O* [2008] IEHC 107, to which I have referred, the decision can stand only if it is a rational one fairly supported by Country of Origin information.

Analysis

39. That the first named applicant did not report the initial alleged serious assault might be seen as surprising. However, she is not alone in the course of action that she decided on, and there are many instances in many jurisdictions including Ireland where victims of serious violence in a domestic setting choose not to involve the authorities. However, what is more surprising is that when her son was abducted, that she did not at that stage refer to the earlier incident, which would have added weight to her suspicion that the kidnapping was carried out by or at the behest of her father-in-law.

40. Counsel for the applicants contends that the Minister misinterpreted the word "discreet" in the police extract. He suggests that the Minister took the word to mean that the complaint was being given prioritised treatment. In the submission of the applicants, the word means precisely the opposite, and was in fact a euphemism for non-activity. It would seem to be a matter of interpretation as to what the term "discreet" meant. Neither interpretation can be completely dismissed, though any suggestion of priority treatment seems improbable. It seems to me, however, that the most likely interpretation was that the diary was recording that there would be an investigation, but that having regard to the family and domestic background, it should proceed in a discreet fashion. That would not necessarily be an unacceptable way to proceed, particularly given that the full factual background had been withheld from

the police who had not received a report about the alleged earlier assault on the first named applicant.

Internal Relocation

41. In a sense linked with the issue of State protection through the police service was the question of internal relocation elsewhere in Nigeria. This was not an issue that was specifically considered at the subsidiary protection stage, as it was felt not to arise given that the applicant was not seen as having established that she was at risk of serious harm. However, in considering whether the applicant was in need of international protection because of the allegedly inadequate performance of the police, it cannot be ignored that the applicant was presenting that need on the basis that she had incurred the enmity of her father-in-law, in a large State, a federal State with an enormous population. She was not suggesting that she was under any threat from the Nigerian State or its agents or even a terrorist or similar organisation with adherents across the State. There had been no "complete breakdown of the state apparatus", to use the language of *Canada (AG) v Ward* [1993] 2 SCR 689.

42. In all the circumstances, while it would certainly have been possible to have taken a less charitable view of the police performance, I cannot believe that the approach was not one that was open, and that the conclusion reached could be said to be irrational.

43. Insofar as the applicants claim to fear persecution at the hands of non-State actors, in this case family members, I bear in mind the following observation of Charleton J. in *N, E and O* [2008] IEHC 107 (at paragraph 31):-

> "The Directive clearly emphasizes the duty of a person seeking international protection to first look to the authorities in their own country, and to seek to relocate within that country, rather than seeking protection from another

nation. The first obligation on a party who seeks international protection is to consider relocating within their own country."

44. Charleton J. also observed as follows (at paragraph 27):

"Threats of the most serious kind to life or person can occur through individual criminal activity or gang warfare. That can happen in Ireland, or in Nigeria, or in any other country and in consequence people are murdered, raped and assaulted. But protection is only afforded under the legislation where this arises from either "situations of international or internal armed conflict" or where there has been such a breakdown of structure within the country of origin that there is no adequate response to violence by reasonable attempts at law enforcement. The legislation is based on a "need for international protection"."

45. One must have regard to the fact that the whole concept of subsidiary protection is to offer protection to those who are seen as being at risk of serious harm for reasons and in circumstances that fall outside of the scope of the 1951 Convention grounds (i.e. race, nationality, religion, membership of a particular social group, or political opinion). The objective of subsidiary protection is not to provide a further or parallel appeal against a conclusion reached after due deliberation that the applicant was not in fact at risk of serious harm.

(b) Credibility

46. The manner in which credibility was addressed in the analysis document is also criticised. In the report setting out his determination that the first named applicant was not eligible for subsidiary protection, the author dealt with the matter as follows:-

> "The applicant's credibility was not accepted by ORAC or the RAT. The Authorised Officer at ORAC questioned whether or not she had explored her options for internal relocation fully. The Tribunal Member stated that he was not satisfied with her general credibility and did not believe her story. Because of the doubts surrounding her credibility the applicant does not warrant the benefit of the doubt."

47. I do not think that there was any real dispute that the Minister was entitled to have regard to the views reached in relation to credibility by the RAC and RAT. Certainly, it would be a very strange situation indeed if a Minister was to be prevented from having regard to the views of RAC and RAT which will usually have, and in this case actually did have, the opportunity to interact with the applicant face to face, and observe the applicant give her evidence, and respond to questions. However it is argued that there were specific factors present that rendered it impossible for the Minister to rely on the earlier findings. In particular, it was argued that the earlier decisions are in conflict, more particularly it is said that the RAC and RAT treatment of the first named applicant's temporary move to northern Nigeria cannot be reconciled.

48. The first named applicant had recounted that at one stage, she had moved to Nasarawa State in northern Nigeria, where she had stayed for some four weeks. However, she kept receiving threatening calls on her mobile phone and decided to

move back to Lagos. This caused the ORAC officer to remark as follows in her s.13 report:-

> "One would wonder why she did not simply change her mobile phone number, especially as she admitted "I think they didn't know where I was" (cf. Interview notes, p.22). Indeed, it is difficult to see how her father-in-law or anyone else would have been able to locate her."

49. The RAT member dealt with this issue by commenting as follows:-

> "I also find it extremely difficult to believe that when she moved from her husband who was living in Lagos to Nasarawa approximately 1,000 miles from Lagos that on the three or four occasions on which she received mobile telephone calls from her father-in-law that she did not inform him that she had in fact physically separated from her husband. This fact would have removed, even temporarily, the basis on which the threat against her welfare was made. After four weeks she moved back to Lagos to live with her husband and in doing so re-established the basis on which the threat to her welfare was based. This to me seems to be quite irrational."

50. While these approaches are not identical, I do not see a fundamental conflict. If the applicant had moved and was receiving calls, it would have been open to her to change her number or, as an alternative and prior to doing this, inform the caller that she had moved, was no longer living with her husband and had, in effect, done what was asked of her.

51. In the circumstances, the approach taken is unobjectionable.

Conclusion

52. The parallels between this case and the several cases considered by Charleton J. in *N, E and O* are striking. In each case, the applicants were claiming that they required subsidiary protection because of the threat posed by non-state actors. In the cases dealt with by Charleton J. and in this case little that was new and different was put forward at the subsidiary protection stage. The approach of the Minister and his officials to the task of reaching a decision has followed along parallel lines in each case.

53. Having regard to the similarities I can see no basis for departing from the conclusions reached by Charleton J. and accordingly I will refuse the application for leave.

Approved: Birmingham J.