THE HIGH COURT

JUDICIAL REVIEW

[2006 No. 147 JR]

BETWEEN

OLIVIA AGBONLAHOR, GREAT AGBONLAHOR (A MINOR SUING BY

HIS MOTHER AND NEXT FRIEND OLIVIA AGBONLAHOR) AND

MELISSA AGBONLAHOR (A MINOR SUING BY HER MOTHER AND NEXT

FRIEND OLIVIA AGBONLAHOR)

APPLICANTS

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, IRELAND

AND THE ATTORNEY GENERAL

RESPONDENTS

Judgment of Mr. Justice Feeney delivered on the 18th day of April, 2007.

Mr. Justice Feeney

1.1 The first named Applicant is the mother of the second and third named Applicants who are her two children. They are all Nigerian nationals. The application herein is made on behalf of the first named Applicant Olivia and her twin minor children were born in Italy on the 2nd March, 2001. The first named Applicant and her husband arrived in Italy from Nigeria in 1996. Her husband is a journalist and a writer and the first named Applicant claims that as a result of an expose of a Nigerian "drug baron" living in Italy, written by her husband, that they started to receive threatening phone calls. In January of 2003, the first named Applicant was attacked by Nigerians in Turin, Italy resulting in her right hand being injured with a machete. The first named Applicant claims that she reported the attack to the police but that she was again threatened, during February, 2003, by two Nigerian men and that while attempting to escape from them ran in front of a bus. The first named Applicant determined that the safety of herself and her twins required that they leave Italy. Her husband refused to leave. On the 5th March, 2005, while her husband was on a work assignment the first named Applicant took her two children and left Italy and came to Ireland where she applied for refugee status.

1.2 The basis of the application for asylum related to the alleged threats from the Nigerian ex–patriot community in Italy together with the alleged threat of female genital mutilation to the third named Applicant if the family were to return to Nigeria. The Refugee Applications Commissioner considered the application of the first named Applicant on her own behalf and on behalf of her two minor children and by letter of the 30th September, 2003 the first named Applicant was notified that the Refugee Applications Commissioner had recommended that the three Applicants would not be declared to be

refugees. An appeal was pursued before the Refugee Appeals Tribunal and on the 20th April, 2004 the first named Applicant was notified by letter that her appeal from the decision of the Refugee Applications Commissioner had failed and the decision of the Commissioner was affirmed.

1.3 By letter dated the 31st August, 2004, the Applicants were notified that the first named Respondent ("the Minister") was proposing to make deportation orders in respect of the first named Applicant and her two children. On the 15th September, 2005, the Minister made deportation orders in respect of the three Applicants. Written representations were made on behalf of the Applicants by letter dated the 27th September, 2005. The submissions were made through the Refugee Legal Service to the Minister and were to the effect that the Applicants be permitted to remain in the State on humanitarian grounds. Such representations proved unsuccessful and the first named Applicant was notified that she should present herself to the Garda National Immigration Bureau on the 4th October, 2005, for deportation from the State. The Refugee Legal Service succeeded in obtaining a deferral of the intended deportation on the grounds that the second named Applicant had been given an appointment for an assessment at a Regional Autistic Spectrum Disorder Clinic on the 4th October, 2005. On the 18th October, 2005 the Minister put a stay on the deportation order pending a review of the case. The second named Applicant was assessed by Dr. Gillian Bannon, on the 26th October, 2005. Dr. Bannon is a psychiatrist with the Regional Autistic Spectrum Disorder Service and she diagnosed that the second named Respondent was suffering from Attention Deficit Hyperactivity Disorder (ADHD) in addition to an intellectual disability and Dr. Bannon also considered that the second named Applicant may be presenting with some sensory integration issues. Dr. Bannon concluded that the most significant aspect of the child's difficulties was his behaviour difficulties. Dr. Bannon made a number of recommendations.

1.4 On the 4th November, 2005, the solicitors who were then acting for the Applicants, Brophys, wrote to the Minister requesting that he exercise his power under s. 3(11) of the Immigration Act, 1999 and amend or revoke the deportation orders. The principal ground relied upon related to the disability and needs of the second named Applicant, Great Agbonlahor. In a letter of the 4th November, 2005 it was contended that the condition ADHD requires intervention without which the person suffering from this disorder will "frequently end up in prison, presenting as a classically antisocial individual with serious personality difficulties". It was submitted to the Minister that the removal of the Applicants and in particular the second named Applicant would interfere with the right to respect for his private life guaranteed by Article 8 of the European Convention on Human Rights. Further representations were made by letter of the 16th November, 2005 wherein it was indicated that the Applicant's solicitors had contacted Professor Kanu, lecturer in the Department of Special Education, University of Ibadan, Nigeria and that Professor Kanu had indicated that there was only one private school catering for children with special needs known to her and that that catered for children with Down's Syndrome. It was further submitted that as a result of Great's condition that he would be ostracised from society within Nigeria and the same would apply to his mother and sister.

1.5 A memorandum was prepared within the Department in the light of the representations received and on 20th January, 2006, the Minister personally considered the entire documentation, including all the representations made on behalf of the applicants. The Minister concluded that the deportation order would not be revoked. On 31st January, 2006 the applicants were informed of the Minister's decision. In making the decision, the Minister specifically noted that the second named Applicant was not autistic. It was initially feared that the child was autistic and this had led the Minister to undertake the review. He further noted that the asylum application, which was based on an alleged fear of persecution in Italy where the Applicant's husband/father continued to live, was without foundation and that it was on that basis that the permission to remain in the State was refused and the decision in relation to the deportation order was confirmed.

1.6 Following the notification of the Minister's decision High Court proceedings were commenced. Ex–parte relief was granted by the High Court on 7th day of February, 2006 and the application seeking leave came on for hearing thereafter resulting in a judgment of the High Court on 3rd day of March, 2006. Leave was sought on a number of grounds and the court ultimately granted leave on one ground. Herbert J. concluded his judgment of 3rd February, 2006 on p. 34 by stating:

"The court will therefore grant leave to these applicants to seek an order of *certiorari* by way of judicial review on the sole ground that on the evidence before him on 20th January, 2006, the decision of the first named Respondent not to revoke the deportation orders made by him on 15th September, 2005, in respect of the Applicants was a violation of their rights under Article 8(1) of the First Schedule of the

European Convention on Human Rights Act, 2003."

That is the sole issue to be considered and determined by this court.

2.1 The Leave granted makes express reference to the provisions of the European Convention on Human Rights Act of 2003. The Convention has not been incorporated into Irish law but s. 3(1) of the European Convention on Human Rights Act, 2003 expressly states that "subject to any statutory provision (other than this Act) or rule of law, every organ of the State shall perform its functions in a manner compatible with the State's obligations under the Convention provisions." In carrying out the functions which are the subject of review by this court, the Minister is performing a function as an organ of the State within the terms of s. 3(1) of the Act of 2003 and it therefore follows that if the Minister's decision not to revoke was incompatible with the State's obligations under the Convention provisions that such decision would be unlawful pursuant to s. 3 of the 2003 Act.

2.2 The European Convention on Human Rights Act, 2003 identifies the Convention as meaning the Convention for the Protection of Human Rights and Fundamental Freedoms done at Rome on 4th day of November, 1950. The English language text of that Convention was set out in Schedule 1 in the Act of 2003.

2.3 Article 8 of the European Convention on Human Rights states as follows:

"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 interest of national security, public safety or the economic well–being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

2.4 The amended statement of grounds refers to Article 8(1) generally. However, it is the case that there is no issue relating either to home or correspondence. It is also the case that there is no risk to "family life" as the proposed deportation order relates to all three applicants. The factual position is that the only remaining family member in the family unit of the applicants is their father who is not living in Ireland but in Italy. It follows that the removal of the applicants from Ireland will not impact on family life. In the light of the above it follows that what is in issue in this case is the "private life" of the applicants.

2.5 In the submissions of the Respondents it was stated as follows: "It is therefore not contested that Great's disorder, and a desirability that he would be treated for it forms an aspect of Great's "private life" pursuant to Article 8 of the European Convention on Human Rights." It was however contested on behalf of the Respondents that to remove Great and the other applicants from this jurisdiction in pursuance of lawful immigration control did not constitute a breach of the right of "respect" for the applicants' private life.

3.1 The European Court of Human Rights has considered the meaning of private life as referred to within in Article 8. Such consideration makes it clear that private life extends beyond the concept of privacy. The court considered that "moral and physical integrity" formed part of private life within the terms of Article 8. In considering this issue the European Court in *Raninen v. Finland* [1997] 26 E.H.R.R. 563 stressed that the right to physical and moral integrity guaranteed by Article 8 comes into play even though it is not so severe as to amount to inhuman treatment under Article 3. That approach was reiterated by the court in *Bensaid v. United Kingdom* [2001] 33 E.H.R.R. 10/205 at p. 219, para. 46

"Not every act or measure which adversely affects moral or physical integrity will interfere with a right to respect to private life guaranteed by Article 8. However, the courts case law does not exclude that treatment which does not reach the severity of Article 3 treatment may nonetheless breach Article 8 in its private life aspect where there are sufficiently adverse effects on physical and moral integrity.

Private life is a broad term not susceptible to exhaustive definition. …Mental health must also be

regarded as a crucial part of private life associated with the aspect of moral integrity. …The preservation of mental stability is in that context an indispensable precondition to effective enjoyment of the right to respect for private life."

It was in the light of the approach of the European Court confirmed in *Bensaid v. United Kingdom* that it was acknowledged on behalf of the Respondents that Article 8 recognised mental health as forming a crucial part of private life. It was therefore not contested that Great's disorder and a desirability that it would be treated formed part of Great's private life pursuant to Article 8.

3.2 Article 8 does not protect private or family life as such. In fact it guarantees a "respect for these rights". In view of the diversity of circumstances and practices in the contracting States, the notion of "respect" (and its requirements) are not clear–cut; they vary considerably from case to case. (See *Abdulaziz and Others v. United Kingdom* [1985] 7 E.H.R.R 471 at para. 67. The main issue which has concerned the European Court in relation to the concept and scope of "respect" is whether such obligation is purely a negative one or whether it also has a positive component. The court has stressed on many occasions that the object of Article 8 is essentially that of protecting the individual against arbitrary interference by public authorities and that such is a primarily negative undertaking but that nevertheless it has on occasions indicated that there may in addition be positive obligations upon States that are inherent in effective respect for Article 8 rights. There have been occasional challenges to deportations on the ground of interference with Article 8 rights. Those challenges have almost always been based on interference with "family life" rather than "private life". In the *Abdulaziz* case the court held that whilst there might be positive obligations to respect the family that "a State had a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention with due regard to the needs and resource of the community and of individuals". (p.497)

3.3 In considering immigration law under Article 8 the European Court has focused on an analysis of the individual facts in each particular case to ascertain whether the individuals asserting breach of rights are in truth asserting a choice of the State in which they would like to reside, as opposed to an interference by the State with their rights under Article 8. The Court of Appeal in England considered the relationship between Article 8 and Immigration Law in *Regina (Mahmood) v. Secretary of State for the Home Department* [2001] 1 W.L.R. 840 and after considering European *jurisprudence* Lord Phillips drew the following conclusions (at para. 55, p. 861) in relation to the potential conflict between the respect for family life and the enforcement of immigration controls, namely:

"(1) A State has a right under international law to control the entry of non–nationals into its territory, subject always to its treaty obligations.

(2) Article 8 does not impose on a state any general obligation to respect the choice of residence of a married couple.

(3) Removal or exclusion of one family member from a State where other members of the family are lawfully resident will not necessarily infringe on Article 8 provided that there are no insurmountable obstacles to the family living together in the country of origin of the family member excluded, even where this involves a degree of hardship for some or all members of the family.

(4) Article 8 is likely to be violated by the expulsion of a member of a family that has been long established in a State if the circumstances are such that it is not reasonable to expect the other members of the family to follow that member expelled.

(5) Knowledge in the part of one spouse at the time of marriage that rights of residence of the other were precarious militates against a finding that an order excluding the latter spouse violates Article 8.

(6) Whether interference with family rights is justified in the interest of controlling immigration will depend on (i) the facts of the particular case, and (ii) the circumstance prevailing in the State whose action is impugned."

3.4 The above principles identified by Lord Phillips focus on the issue of the separation of family members. However the first two principles outlined by Lord Phillips appear equally applicable in the context of private life. The first principle that a State has a right under international law to control the

entry of non–nationals into its territory, subject always to its treaty obligations is entirely consistent with the statement of Hardiman J. (Geoghegan J. concurring, in *A.O. and D.L. v. the Minister for Justice* [2003] 1 I.R. 1 where he held that the Minister was entitled to have regard to the State's general policy in relation to immigration and specifically to asylum seekers; to the requirement of a coherent and efficient immigration and asylum system; to the State's international obligations; to the implications for the integrity of the asylum and immigration system and the State's international obligations with regard thereto. It also appears clear that the second principle identified by Lord Phillips would be applicable not only in relation to the separation of family members but also in the context of "private life". This court accepts that Article 8 does not impose on the State a general obligation to respect the choice of residence of any immigrant.

3.5 Both parties in this case have sought to rely on the House of Lords decision in *R (Razgar) v. Home Secretary* [2004] 2 A.C. 368. In that case Lord Bingham identified five questions which an adjudicator would be likely to have to address where removal was being resisted in reliance on Article 8. Those questions are set out at p. 389 and are as follows:

"(1) Will the proposed removal be of an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?

(2) If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?

(3) If so, is such interference in accordance with the law?

(4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?

(5) If so, is such interference proportionate to the legitimate public end sought to be achieved?"

The approach adopted by Lord Bingham is of assistance to this court in considering the issue herein. It is particularly so in circumstances where the sole issue in the case is whether the removal of the Applicants from the State would constitute a breach of their rights or any of their rights under Article 8 of the European Convention on Human Rights. There is no dispute but that the concept of private life embraces an individuals mental condition and stability and on the facts in this case the proposed removal of the second named Applicant has the clear potential to be an interference with that Applicant's private life. As is apparent from the approach identified by Lord Bingham once the first question posed by him is answered yes then one must address the second question. That question is whether the interference with the second named Applicant's right would have consequences of such gravity as to potentially engage the operation of Article 8. Lord Bingham stated (at p. 389), as follows,

"Question (2) reflects the consistent case law of the Strasbourg Court, holding that conduct must attain a minimum level of severity to engage the operation of the Convention".

Lord Bingham went on to illustrate the Strasbourg Court case law by referring to a case of *Costello–Roberts v. United Kingdom* (1993) 19 EHRR 112 which was a case concerned with corporal punishment.

3.6 The Respondents in this case contend that the onus is on the Applicants to show that the removal of any of them from the State will have consequences of such gravity so as to engage the operation of the Convention and that on the evidence the alleged consequences would not meet the required level of gravity. The Respondents relied on the House of Lords decision in *N. v. Home Secretary* (2005) 2 AC 296. That case dealt with Article 3 of the Convention but the Respondents in this case urged that the approach therein outlined was applicable to an Article 8 claim and in particular argued as Article 3 prevents inhuman and degrading treatment that it was apparent that Article 3 called for a higher level of severity or gravity than that arsing in relation to an allegation of a threat to Article 8 rights.

The facts of the *N* case were that the *N.* was a Ugandan citizen and asylum seeker who was seriously ill and had been diagnosed as HIV positive. *N.* was in receipt of treatment from the National Health

Service during the period that her asylum claim was being processed. The immigration adjudicator dismissed *N.'s* asylum appeal but held that the UK would be in breach of its obligations under Article 3 of the Convention if it returned *N.* to Uganda since the treatment that she needed would not be available to her in that country and that she would die within a matter of months. The Immigration Appeal Tribunal allowed the Home Secretary's appeal against that decision and that decision was appealed to the Court of Appeal which dismissed *N.'s* appeal resulting in a further appeal to the House of Lords. The House of Lords concluded that it was bound by the principles to be derived from the jurisprudence of the European Court of Human Rights in Strasbourg to the effect that Article 3 of the Convention did not impose an obligation on a contracting state to provide aliens indefinitely with medical treatment which was unavailable in their home countries, even if the absence of such treatment would significantly shorten their lives and that Article 3 could be extended to apply only in exceptional circumstances where the present state of health of the person who was subject to expulsion was such that, on compelling humanitarian grounds he ought not to be expelled unless it could be shown that the medical and social facilities that he would need to prevent acute suffering while he was dying were available to him in the receiving state. Lord Nicholls stated (at p. 304)

"In *D. v United Kingdom* (1997) 24 EHRR 423 and in later cases the Strasbourg court has constantly reiterated that in principle aliens subject to expulsion cannot claim any entitlement to remain in the territory of a contracting state in order to benefit from medical, social and other forms of assistance provided by the expelling state. Article 3 imposes no such "medical care" obligation on contracting states. This is so even where, in the absence of medical treatment, the life of a would be immigrant will be significantly shortened."

Later on the same page Lord Nicholls stated

"But, as the Strasbourg jurisprudence confirms, Article 3 cannot be interpreted as requiring contracting states to admit and treat AIDS sufferers from all over the world for the rest of their lives. Nor, by the like token, is Article 3 to be interpreted as requiring contracting states to give an extended right to remain to would–be immigrants who have received medical treatment while their applications are being considered. If their applications are refused, the improvement in their medical condition brought by this interim medical treatment, and the prospect of serious or fatal relapse on expulsion, cannot make expulsion inhuman treatment for the purposes of Article 3. It would be strange if the humane treatment of a would be immigrant while his immigration application is being considered were to place him in a better position for the purposes of Article 3 than a person who had never reached this country at all."

3.7 In the case of *R (Razgar) v. Home Secretary* (2004) 2 AC 368 Barroness Hale stated in a dissenting judgment, dealing with an applicant's right under Article 8 of the European Convention, in relation to the contrasting obligations under Article 3 and under Article 8 as follows (at p. 400)

"The court did not in so many words repeat the "high threshold" point made in relation to Article 3 but if it applies to Article 3 it ought logically to apply to Article 8, unless this is thought unnecessary because the interference will always be justified under Article 8(2) unless the high threshold is reached. Although the possibility cannot be excluded, it is not easy to think of a foreign health care case which would fail under Article 3 but succeed under Article 8."

3.8 This case is solely concerned with the issue of Article 8 rights. Article 3 prevents inhuman and degrading treatment. This court is satisfied that Article 3 rights require no higher level of severity than the alleged threat to Article 8 rights. Article 3 provides for a prohibition of torture whilst Article 8 refers to the right to respect for private and family life.

3.9 In the *N. v. Home Secretary* case the House of Lords determined that the deportation of *N.* from the United Kingdom which would result in a withdrawal of treatment which would shorten *N.'s* life expectancy did not make her expulsion amount to inhuman treatment purposes of Article 3. This court is satisfied that that case and decision provides guidance to the correct approach to be taken by this court in relation to Article 8 rights. The approach and analysis adopted by the House of Lords in the *N.* case, albeit in relation to Article 3 rights, represents in this court's view a correct and proper approach to the Article 8 rights sought to be protected in this case.

3.10 The House of Lords in the N. case had to reconcile the decision in that case with the decision in *D. v. The United Kingdom* 24 EHRR 423. The House of Lords approved the dicta of the Court of Appeal

which had decided that the D. case was an extension of an extension. The *D.*case was an illustration of the fact that the generally negative obligation of the State to refrain from actually subjecting an individual to inhuman and degrading treatment could be extended in certain asylum or extradition cases to cover a situation where removal would place the person being removed at risk of being subjected to inhuman or degrading treatment as a result of intentionally inflicted acts of public authorities in the receiving country or of acts of non State bodies of that country where the authorities in that country were unable to afford the appropriate protection. This court is satisfied that the House of Lords in the *N.* case correctly concluded, that notwithstanding the precedent in the *D.* case that it was a general principle of the Strasbourg jurisprudence that as Lord Hope stated (at p. 309):

"This is because a comparison between the health benefits and other forms of assistance which are available in the expelling State and those in the receiving country does not of itself give rise to an entitlement to remain in the territory of the expelling State. It was only because of the exceptional circumstances that were identified in *D.'s* case that he was found to be entitled to the absolute protection of Article 3."

He went on later in the same page to state

"That aliens cannot in principal claim any entitlement to remain on the territory of a contracting State in order to continue to benefit from medical, social or other forms of assistance provided by the expelling State."

This court is satisfied that the approach identified by the House of Lords in the *N.* case is a correct and proper approach and is entirely consistent with the approach adopted by the Supreme Court in the *A.O. and O.J.O. v. Minister for Justice* case [2003] 1 I.R. at 1 and in particular with the judgment of Hardiman J. therein.

3.11 This court is satisfied that on the facts of this case and following the approach identified by the House of Lords in the *N. case* that the Applicant herein has not established exceptional circumstances. This is all the more so, because what is at issue herein is not a lack of treatment which will result in the likely death of the Applicant, but rather the absence in the receiving State of educational and medical facilities to ensure the full development of the Applicant.

3.12 It is appropriate to recognise that the above statement of the law represents an austere one. However in dealing with this matter in the *N.*case, Lord Hope stated (at p. 305):

"The function of a judge in a case of this kind, however, is not to issue decisions based on sympathy. Just as juries in criminal trials are directed that they must not allow their decisions to be influenced by feelings of revulsion or sympathy, judges must examine the law in a way that suppresses emotion of all kinds. The position that they must adopt is an austere one. Some may say that it is hard hearted. The fact is that there are at least two sides to any argument. The consequences if the decision goes against the Appellant cannot sensibly be detached from the consequence if the decision is in her favour. The argument, after all, is about the extent of the obligations under Article 3 of the European Convention on Human Rights. It is about the treaty obligations of the contracting States. The Convention, in keeping with so many other Human Rights Instruments, is based on humanitarian principles. There is ample room, where the Convention allows, for the application of those principles. They may also be used to enlarge the scope of the Convention beyond its expressed terms. It is of course, to be seen as a living Instrument. But an enlargement of its scope in its application to one contracting State is an enlargement for them all. The question must always be whether the enlargement is one which the contracting parities would have accepted and agreed to be bound by."

This court is satisfied that the reliefs sought by the Applicant herein would in effect enlarge the scope of the Convention not only beyond its expressed terms but in a manner which, it could not be said that the contracting parties to the Treaty would have accepted and agreed to be bound by. This court in addressing the second of the five questions identified by Lord Bingham in *R (Razgar) v. The Home Secretary*, is satisfied that this is not a case where the proposed removal would be an interference having consequences of such gravity as to potentially engage the operation of Article 8.

3.13 In the *N* case Lord Hope having reviewed the authorities identified two basic principles to which the

Strasbourg Court had adhered. He stated (at p. 315):

“On the one hand, the fundamental nature of the Article 3 guarantees applies irrespective of the reprehensible conduct of the applicant. It makes no difference however criminal his acts may have been or however great a risk he may present to the public if he were to remain in the expelling State's territory. On the other hand, aliens who are subject to expulsion cannot claim any entitlement to remain in the territory of a contracting State in order to continue to benefit from medical, social or other forms of assistance provided by the expelling State. For an exception to be made where expulsion is resisted on medical grounds the circumstances must be exceptional.”

This Court is satisfied that those statements equally apply to Article 8 guarantees. At the conclusion of his judgment (at p. 317) Lord Hope identified the logical basis why aliens who are subject to expulsion cannot claim any entitlement to remain in the territory of a contracting State in order to continue to benefit from medical, social or other forms of assistance provided by the expelling State except in exceptional circumstances in the following statement:

“It would have the effect of affording all those in the appellant's condition a right of asylum in this country until such time as the standard of medical facility is available in their home countries where the treatment of HIV/AIDS had reached that which is available in Europe. It would risk drawing into the United Kingdom large numbers of people already suffering from HIV in the hope that they too could remain here indefinitely so that they could take the benefit of the medical resources that are available in this country. This would result in a very great and no doubt unquantifiable commitment of resources which it is to say the least, highly questionable the States party to the Convention would ever have agreed to.”

That statement identifies the real and substantial basis for there being public policy considerations to be considered as part of the overall picture.

3.14 On the basis of the above authorities this Court is satisfied that a correct interpretation of the Strasbourg authorities imposes an obligation on States not to interfere with the private life of individuals by their own actions. The authorities identify that there is an extension of that principle in relation to extradition type cases but that that extension is extremely limited and exceptional and only arises where there is a genuine and true risk that the authorities in the receiving State would commit acts upon an individual which would breach that person's rights under the Convention in the event that he is removed to that country.

3.15 It is also of significance that in considering the issue of family life that it is appropriate to have regard to the lawfulness and length of stay as being significant factors in seeking to identify the exceptional cases where a State might be prevented from exercising the State's unquestioned entitlement to impose immigration control. The decision of the Minister was made on the basis of the information available to him and no regard can be had to information arising thereafter. One of the factors which was apparent at the time of the Minister's consideration was the fact that the husband and father of the applicants continued to reside lawfully in Italy. The state of the evidence before this Court was that the first named applicant could not seek family reunification in Italy other than from an Italian embassy or consulate in a country of regular residence. It would therefore appear that, if the applicant was to seek family reunification in Italy, she would have to do it from a place of permanent residence in Nigeria and that such an application would then be entertained. There is no evidence as to the likelihood of such an application succeeding. It is also the case that the applicants failed in their application for asylum which was at least in part based upon a fear of persecution in Italy and that notwithstanding the fear claimed by the first named applicant that the first named applicant's husband continues to reside in that jurisdiction.

3.16 On the basis of the facts established herein the consequences arising from the applicants' removal from the State will at most be an indirect consequence of that removal and where such removal is in pursuance of the lawful immigration policy there cannot be said to be a lack of respect by the State authorities. The facts demonstrate that the alleged risk or danger to the applicants, and in particular the second named applicant, are not as a result of State action nor is this a case in which such alleged risks arise out of the actions of the public authorities in a receiving State. On the basis of the foregoing this Court is satisfied that none of the applicants has established a breach of Article 8.

4.1 For the sake of completion it is appropriate to identify that if this Court had answered the second of Lord Bingham's five questions in the affirmative and had ultimately to address the fifth question to the effect “is such interference proportionate to the legitimate public end sought to be achieved” that this Court would have determined that having considered the severity and consequences of the interference that having due regard to the fact that the decision taken was taken pursuant to the lawful operation of immigration control, that such decision as made in this case was proportionate. This Court is of the view that the appropriate basis for considering this matter is set out by Lord Bingham in *Razgar*where he states:

“Decisions taken pursuant to the lawful operation of immigration control will be proportionate in all save a small minority of exceptional cases, identifiable only on a case by case basis.” (at p. 390)

Having considered this case on its own individual facts this Court is satisfied that the decision made by the Minister, taking all the factors into account, was proportionate and that the facts of this case could not be identified as being exceptional.

4.2 This Court was referred to a number of authorities in support of the applicants' claim and in particular to a translation of a 1998 decision in the Hertogenbosch Court in Holland. An analysis of that decision demonstrates that there is no detailed analysis or rationale for the decision unlike the decision of the House of Lords in the *N* case which is a true source for guidance and assistance. It is recognised that the *N* case was dealing with obligations under Article 3 and that the case herein relates to Article 8. However, as hereinbefore pointed out, this Court is satisfied that the principles and approach identified by the House of Lords in the *N* case in relation to Article 3 are equally applicable to Article 8. Given both the wording and content of Article 3 it is difficult to envisage that the threshold in relation to Article 3 could in any way be lower than the threshold applying to Article 8.

4.3 In the light of the above this Court determines that none of the applicants are entitled to an order of *certiorari*. This Court is satisfied that on the evidence before the Minister on 20th January, 2006 that his decision not to revoke the deportation orders made by him on 15th September, 2005 in respect of the applicants was not a violation of their rights under Article 8.