

**APPROVED**



**AN ARD-CHÚIRT  
THE HIGH COURT**

**[2026] IEHC 579**

**Record No. 2026/1009JR**

**BETWEEN/**

**M.R.**

**Applicant**

**-AND-**

**THE MINISTER FOR JUSTICE, HOME AFFAIRS AND MIGRATION**

**Respondent**

**Ex tempore JUDGMENT of Mr. Justice Conleth Bradley delivered on the 31<sup>st</sup> day of  
July 2026**

## **INTRODUCTION**

1. This judgment arises from an interlocutory application for a stay or injunction made on Thursday 30<sup>th</sup> July 2026, in relation to the proposed removal of the Applicant, an Italian national, from Ireland to Italy.
2. The Applicant arrived in Ireland in 1997, aged 2 years old, and has lived in the State permanently since that time. He is now approximately 31 years of age.
3. On 5<sup>th</sup> June 2026 the Minister for Justice, Home Affairs and Migration (“the Minister” or “the Department”) proposed to make Removal and Exclusion Orders (the latter for a period of 10 years) in respect of the Applicant and he was invited to make representations.
4. In correspondence dated 9<sup>th</sup> June 2026, the Applicant’s solicitor sought an extension of time within which to make representations.
5. By letter dated 16<sup>th</sup> June 2026, the Minister replied stating that the request in question was under consideration but that no correspondence would be entered into with the Applicant’s solicitor until a letter of authority, signed by the Applicant, had been provided.
6. A letter of authority was provided on 25<sup>th</sup> June 2026.

7. By letter dated 26<sup>th</sup> June 2026, the Applicant's solicitor was informed that the request for an extension of time had been refused and that any representations sought to be made would need to be provided by close of business that same day. The Applicant's solicitor did not become aware of this letter until approximately 9:00am on Monday 29<sup>th</sup> June 2026 and at approximately 11:00am, the Applicant's solicitor furnished representations to the Department.
8. By email on 29<sup>th</sup> June 2026, the Applicant's solicitor was notified that a Removal Order and an Exclusion Order (for a period of 10 years), had been made in respect of the Applicant. On the same date, the Applicant's solicitor requested that these Orders be set aside contending that they had been made in breach of fair procedures, which request was refused.
9. On 6<sup>th</sup> July 2026, the High Court (Dunne J.) acceded to an application made on behalf of the Applicant permitting the judicial review application to be filed without an affidavit sworn by the Applicant, on the Applicant's solicitor's undertaking to file same as soon as feasible due to logistical difficulties arising in having an affidavit sworn because the Applicant was in custody.
10. After having initiated judicial review proceedings, the Applicant sought a review of the impugned first instance Orders on 6<sup>th</sup> July 2026.
11. The Applicant was arrested and detained on 23<sup>rd</sup> July 2026 on foot of the Removal Order; he brought Article 40 proceedings in respect of that detention; he was released and admitted to bail on terms and conditions by the High Court (Barr J.) on Friday 24<sup>th</sup>

July 2026; the Article 40 application was unopposed and I granted the Applicant's unconditional release on Thursday 30<sup>th</sup> July 2026.

12. By letter dated 24<sup>th</sup> July 2026, the Applicant's solicitor was notified that the review sought in respect of the first instance Removal and Exclusion Orders was unsuccessful, and that those Orders had been upheld.

13. On Monday 27<sup>th</sup> July 2026, the High Court (Siobhán Phelan J.) granted the Applicant leave, on the threshold or standard of substantial grounds, to apply by way of judicial review for orders seeking to quash the first instance decisions to make a Removal Order and an Exclusion Order (for a period of 10 years) in respect of the Applicant, and to quash the Reviewed Decision dated 24<sup>th</sup> July 2026 upholding these first instance decisions, in addition to seeking further declaratory relief.

14. The Court further directed that the Applicant be given liberty to issue a notice of motion seeking an interlocutory order or stay in relation to the Removal Order which was returnable to Thursday 30<sup>th</sup> July 2026.

15. This is my judgment arising from that application.

### **THE APPLICABLE TEST**

16. The parties agree that the test to be applied in this application is that set out in *Okunade v Minister for Justice* [2012] IESC 49; [2012] 3 I.R. 152 ("*Okunade*") (which was subsequently applied by the Supreme Court in *CC & Ors v The Minister for Justice &*

*Ors* [2016] IESC 48; [2016] 2 I.R. 680 (“CC”) referring to and in *MD v The Board of Secondary School* [2024] IESC 11 (“MD”).

17. I was referred to the *ex tempore* decision of the High Court (MacEochaidh J.) in *Bagdonas v The Minister for Justice, Equality and Law Reform* [2015] IEHC 657 where *Okunade* was applied.

18. It can also be observed that, in more recent times, the High Court has given a number of judgments and rulings applying the *Okunade* principles in cases dealing with the regulation of participants providing online services and in the general area of immigration and asylum.

19. Once the first limb of the test of arguability is satisfied – as it is here, in that Phelan J. has found that the Applicant has established substantial grounds for seeking the remedies which he seeks, the court is then engaged in a balancing exercise in considering the parties’ respective arguments in order to minimise the risk of injustice. Consequently, the balance of convenience seeks to assess where the least harm would be done by comparing the consequences for the Applicant and for the Minister.

20. In doing so, I have to weigh and assess the potential injustice that might result from, on the one hand, intervening in favour of the Applicant only to find that he loses at the substantive hearing, as opposed to not intervening in favour of the Applicant only to find that he prevails at the substantive hearing and *vice versa* the Respondent.

21. The decision in *Okunade* involved an application for an injunction restraining the enforcement of deportation orders against a mother and young child.

22. At para. 104 of his judgment in *Okunade*, Clarke J. (as he then was) set out the applicable principles as follows:

*“(a) The court should first determine whether the applicant has established an arguable case; if not the application must be refused, but if so then;*

*(b) The court should consider where the greatest risk of injustice would lie. But in doing so the court should:-*

*(i) Give all appropriate weight to the orderly implementation of measures which are prima facie valid;*

*(ii) Give such weight as may be appropriate (if any) to any public interest in the orderly operation of the particular scheme in which the measure under challenge was made; and*

*(iii) Give appropriate weight (if any) to any additional factors arising on the facts of the individual case which would heighten the risk to the public interest of the specific measure under challenge not being implemented pending resolution of the proceedings;*

*(iv) Give all due weight to the consequences for the applicant of being required to comply with the measure under challenge in circumstances where that measure may be found to be unlawful.*

*(c) In addition, the court should, in those limited cases where it may be relevant, have regard to whether damages are available and would be an adequate remedy and also whether damages could be an adequate remedy arising from an undertaking as to damages.*

*(d) In addition, and subject to the issues arising on the judicial review not involving detailed investigation of fact or complex questions of law, the court can place all due weight on the strength or weakness of the applicant's case."*

23. The weight to be attached to the considerations will vary depending on the type of case and the individual facts. It is common case, for example, that the question of the adequacy of damages does not arise in the Applicant's case.

24. In terms of potential complexity, it is submitted on behalf of the Applicant that the issue in the substantive case may involve a possible reference to the CJEU.

25. At paras 110 and 111 of his judgment in *Okunade*, Clarke J. set out the default position, which is accepted by the Applicant as the starting point in this case, *i.e.*, an applicant, without more, will not be entitled to an injunction or stay:

*"[110] The default position is, therefore, that an applicant will not be entitled to a stay or an injunction. However, it may be that, on the facts of any individual case, there are further factors that can properly be taken into account on either side. If, for example, (and it should be made clear that no such consideration arises on the facts of this case) there was a serious risk of criminality or other activity contrary to the public interest then that would be a factor to which significant additional weight would lie on the side of refusing an injunction. Perhaps more likely an applicant must, of course, be entitled to put before the court the practical consequences of being deported pending the conclusion of the judicial review process, such as the relevant conditions in any country to which the applicant is likely to be deported. There may, as already noted and as*

*the trial judge recognised, be some cases where the presence of the applicant for the hearing of the judicial review proceedings is necessary. If that is so, then all due weight needs to be attached to that factor. In a case where an applicant would suffer material prejudice in the presentation of the case at trial very great weight would need to be attached to that fact.*

*[111] Furthermore, if an applicant can demonstrate that deportation, even on a temporary basis, would cause more than what one might describe as the ordinary disruption in being removed from a country in which the relevant applicant wished to live, such as a particular risk to the individual or a specific risk of irremediable damage then such factors, if sufficiently weighty, could readily tilt the balance in favour of the grant of an injunction or a stay.”*

## **ASSESSMENT AND DECISION**

26. The same facts can be relied upon by both the Applicant and the Minister in respectively arguing that they favour one side over the other.
27. As I set out in this judgment, however, after carrying out the balancing exercise in addressing the arguments made by Mr. Power SC for the Applicant and Mr. Conlan Smyth SC for the Minister, in assessing where the greatest risk of injustice lies, for the following reasons, I do not consider that the Applicant is entitled to an injunction or stay in this case.
28. The consequences of the orderly implementation of measures that are *prima facie* valid in this case, are I believe, described in the Affidavit of Brian Gallagher, Assistant



Principal Officer in the Repatriation Division of the Immigration Service Delivery of the Department of Justice, Home Affairs and Migration, sworn on 30<sup>th</sup> July 2026, when Mr. Gallagher confirms that a flight has been booked to process the Applicant's departure on 10<sup>th</sup> August 2026 where he will be accompanied by three gardaí and where the cost is approximately €2,174.56. Mr. Gallagher further confirms that the Italian authorities have been contacted and preparations have been made for the Applicant's arrival in Italy.

29. The Applicant fairly accepts that the default position, where the balance is equal, is that a court should enable the execution of a valid Order and that something more than the ordinary disruption involved in returning a person to Italy needs to be established. I do not consider that the Applicant has established or met that requirement.
30. It is common case that the Applicant has been residing in Ireland for 29 years and on his behalf, it is stated there is no dispute regarding the list of his criminal convictions and that the threshold to be applied in order for the Applicant to be made the subject of a Removal Order is that of *imperative grounds of public security*. It is submitted that the Applicant has established substantial grounds for challenging the Removal Order and that insofar as the first instance decisions are concerned, they were carried out on the basis that the threshold was that of *serious grounds*. It is submitted that the Respondent's reviewed decision is that the Applicant's offending reached the threshold of imperative grounds of public security which is a very different standard. The essence of the Applicant's argument, upon which he has met the threshold of substantial grounds, is that the threshold of *imperative grounds of public security* has not been met. (Reference was also made on behalf of the Minister to the decision of the CJEU in *P.I.*

*v Oberbürgermeisterin der Stadt Remscheid* (Case C-348/09) ECLI:EU:C:2012:300 and the concept of *imperative grounds of public security* and its application in *J.B. v The Minister for Justice and Equality & Ors* [2022] IECA 89).

31. An argument for determination in the substantive hearing relates *inter alia* to whether the Minister unlawfully altered his determination in that respect, having made the first instance decision without, it is contended, full and proper knowledge of the factual circumstances of the Applicant's case. That is not a matter for determination by me at this juncture, nor is the question relating to the relevance, insofar as the first instance decisions are concerned, of the Supreme Court decisions in *Amariei v The Chief Appeals Officer* [2026] IESC 22 or *A.B. v Chief International Protection Officer* [2026] IESC 23. This issue may arise to be addressed at the substantive hearing.
32. What is relevant in the consideration of the stay or injunction is whether, on the facts of the Applicant's case, there are further factors that can properly be considered on either side in displacing the default scenario.
33. Such factors include whether, for example, there was a serious risk of criminality or other activity contrary to the public interest. It is submitted on behalf of the Applicant that the majority (it is said 24 out of 28) of the convictions recorded against the Applicant related to road traffic type offences and that in relation to any current issues, the Applicant is entitled to the presumption of innocence.
34. Against that, at para. 11 of his Affidavit dated 30<sup>th</sup> July 2026, Mr. Gallagher *inter alia* states that both the fact, and also the particular features, of the Applicant's recorded

previous convictions (which involved very serious assaults against both his former partner and a member of An Garda Síochána), lack of meaningful or convincing evidence of any sustained engagement with drugs counselling or rehabilitative services and re-offending while in prison were clearly very significant considerations in determining that the Applicant's removal was required on imperative grounds of public security but were not the only factors considered.

35. The Removal Order dated 24<sup>th</sup> July 2026 treats of these matters in more detail stating, for example, that it is a particular value of the State's legal order that violence against women and intimate partners should not be tolerated, and should be sanctioned.

36. The Removal Order *inter alia* states that *"I have carefully considered the offences of which the Applicant was convicted on 23 March 2026. The circumstances of the first count were that he dragged his then-partner down a flight of stairs before striking her several times and kicking her several times. He used her own phone to strike her and also strangled her before being interrupted by his own mother. This was an egregious and sustained assault upon an intimate partner, involving levels of degradation of the victim and total failure to respect her rights and dignity as a human being. The victim required medical attention afterwards. The subsequent assault against members of An Garda Síochána showed a marked disregard for law enforcement and for the dignity and wellbeing of members of the police who were simply doing their job and attempting to protect members of society. The Applicant was also convicted of drugs possession (cocaine) contrary to s.3 of the Misuse of Drugs Act 1977 and received a sentence of one year for this."*

37. In balancing the respective submissions of the parties in relation to this matter, I consider that this is a factor to which significant additional weight lies on the side of refusing an injunction or a stay.
38. It is further argued on behalf of the Applicant that his removal from Ireland to Italy would result in much more than the *ordinary disruption* which might be expected from such a return.
39. The Applicant, for example, has lived 29 of his 31 years in Ireland notwithstanding that he is an Italian national. Consequently, it is stated that the Applicant, whilst not an Irish citizen, has deep connections with Ireland and it is contended that he is, for all intents and purposes, an Irish person. It is contended that his removal to Italy would result in severe hardship to him, and also to various members of his family, including his Irish citizen child who is aged approximately 6 years. While not the primary custodian of his child, the Applicant states that he has frequent contact with her and is involved with daily matters such as bringing and collecting her from school. Paraphrasing Clarke J. in *Okunade*, it is argued, by analogy, that this disruption to family life is sufficient to tilt the balance of justice in favour of the grant of an interlocutory order.
40. Additionally, the Applicant has expressed the concern that his removal to Italy would pose a risk of rendering him homeless or destitute in Italy in addition to the impact and disruption to his family life including, as stated, to his relationship with his Irish citizen child and with his mother and sister who together with the Applicant live in the family home and with his father who lives elsewhere.

41. In contradistinction to these factors and considering “*the practical consequences of being [removed] pending the conclusion of the judicial review process, such as the relevant conditions in any country to which the applicant is likely to be [removed]*”, Italy is a safe country with no threat to the Applicant’s safety. By analogy, there is no question of refoulement.
42. Further, the Applicant, as an Italian national, has familial connections in Italy.
43. It is further submitted on behalf of the Minister that the Applicant’s complaints of family disruption, including with his daughter, ring hollow when regard is had to the consequences of his convictions on family life, especially having regard to the nature of the offences in more recent times.
44. In addition, Italy is a Member State of the European Union, where it would be possible to maintain contact remotely with his family members who remain in Ireland and who could also travel periodically to Italy.
45. In balancing the respective submissions of the parties in relation to this matter and having regard to the practical consequences of being removed to Italy pending the conclusion of the judicial review process and having regard to the relevant conditions in Italy, I consider that these matters weigh in favour of refusing an injunction or a stay.
46. In relation to further factors, such as whether the presence of the Applicant is necessary for the hearing of the substantive judicial review proceedings, the issues to be addressed

at the substantive hearing are not ones where the physical presence of the Applicant in Ireland is required.

47. Further, the Applicant will suffer no prejudice by furnishing further instructions remotely or through e-mail, electronic communications or by telephone between Italy and Ireland. I consider that these matters also weigh in favour of refusing an injunction or a stay.

### **CONCLUSION AND PROPOSED ORDER**

48. In the circumstances, therefore, I am satisfied that the balance of justice favours the refusal of the injunction and stay which is sought by the Applicant. Having considered the principles set out in *Okunade*, when applied to the particular facts of the Applicant's case, I do not consider that he has established factors sufficient to displace the default position that *prima facie* valid measures should be implemented pending the determination of the substantive judicial review application.

49. Accordingly, I refuse the Applicant's application for an interlocutory injunction or stay restraining his removal from Ireland to Italy.

50. The parties' solicitors may contact the Registrar to arrange a mutually convenient date for the matter to be mentioned for the purpose of addressing costs.

51. The substantive judicial review application shall be listed for directions in the Non-Jury/Judicial Review and Asylum List.

CONLETH BRADLEY

31<sup>st</sup> July 2026