Michaelmas Term
[2024] UKPC 31
Privy Council Appeal No 0005 of 2022

JUDGMENT

Yonggao Pan (Appellant) *v* Minister of National Security (Respondent) (Trinidad and Tobago)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lord Hodge
Lord Briggs
Lord Leggatt
Lord Burrows
Lady Simler

JUDGMENT GIVEN ON
15 October 2024

Heard on 5 June 2024

Appellant
Navindra Ramnanan
Riaz Seecharan
(Instructed by Magna Mentes (Trinidad))

Respondent
Rowan Pennington-Benton
(Instructed by Charles Russell Speechlys LLP (London))

LADY SIMLER:

1. Introduction

1. The principal question raised by this appeal is a short question of statutory interpretation of section 16 of the Judicial Review Act, Chapter 7:08, ("the Act") which entitles a person adversely affected by a decision to which the Act applies to request a statement of reasons from the decision-maker for the impugned decision.

2. The appellant, Mr Yonggao Pan, requested a statement of reasons from the respondent Minister of National Security ("the Minister") for the Minister's decision to deport him in the circumstances described below. The Minister did not accede to his request. The appellant sought judicial review, contending that the Minister is under both the statutory duty in section 16(1) of the Act and a common law duty to provide reasons but had failed to do so (or to the extent reasons could be said to have been provided, they were so limited as to amount to no reasons at all). He submitted that he is entitled to enforce his right to reasons by judicial review.

3. The application was dismissed by Lambert Peterson J by an order dated 5 February 2021. She held that the Minister had provided concise reasons for his decision on the face of the deportation order and there was, accordingly, no arguable ground for judicial review.

4. On the appellant's appeal to the Court of Appeal, the Minister raised a new argument. He contended that a failure to comply with a request for a statement of reasons pursuant to section 16(1) of the Act does not give rise to a freestanding ground for judicial review. Rather, the failure is capable of redress at the leave stage of a judicial review challenge on other substantive grounds to a decision affecting the rights of the aggrieved person. By a judgment dated 14 May 2021, the Court of Appeal (Dean-Armorer and Boodoosingh JJA) agreed, dismissing the appeal, and holding that there is no freestanding right to commence judicial review proceedings under section 16 of the Act, and, separately, agreeing with the judge about the adequacy of the reasons provided.

5. The appellant now appeals to the Board with leave granted by the Court of Appeal. There are two grounds of appeal. The first challenges the Court of Appeal's approach to section 16 of the Act. The second challenges the conclusion that the deportation order itself set out adequate reasons for its issue.

6. For the reasons set out below, although the Board does not agree with all of the Court of Appeal's reasoning, it nevertheless agrees that section 16(3) does not confer a

right to bring judicial review proceedings for breach of section 16 itself. Section 16 does not create a statutory right to reasons. Its purpose is to reinforce a pre-existing right to reasons (subject to the timetable set out in subsection (2)) by creating a summary mechanism for obtaining reasons in a case to which the Act applies, in other words, where there is an arguable existing common law (or other) right to be provided with them. As section 16(3) makes clear, the grant of leave to apply for judicial review is a precondition for the grant of an ancillary order for the provision of reasons pursuant to that subsection. The person seeking reasons must make an application for leave to commence judicial review proceedings and must demonstrate an arguable ground for judicial review and sufficient standing before reasons pursuant to section 16(3) can be considered. Subject to satisfying those preconditions, it is nonetheless open to an aggrieved person to bring an application based on failure to provide reasons as forming an inherent part of one of the substantive judicial review grounds identified in the Act and/or to rely on the asserted failure to provide reasons itself as the only substantive ground for judicial review.

7. Further, the Board is also satisfied that the appellant was provided with adequate reasons in this case and, accordingly, that the application for leave to file judicial review proceedings against the Minister was properly refused.

2. A summary of the background

8. The appellant is a citizen of the People's Republic of China. He has lived in the Republic of Trinidad and Tobago since 2006, when he arrived on a permit that entitled him to take up employment as a civil engineer with a company operating there.

9. The appellant's entitlement to enter Trinidad and Tobago and thereafter to remain was governed by section 9 of the Immigration Act, Chapter 18:01, ("the Immigration Act") which provides as follows:

> "9(1) An immigration officer may allow to enter Trinidad and Tobago on such conditions and for such periods as may be fit and proper in any particular case, the following persons or classes of persons, as the case may be: ...
>
> (i) persons entering Trinidad and Tobago for the purposes of engaging in a legitimate profession, trade or occupation.
>
> (2) Subject to this Act, an immigration officer shall issue to a person who has been allowed to enter Trinidad and Tobago under subsection (1) ..., a certificate which shall be expressed

> to be in force for a specified period and subject to such terms and conditions as may be mentioned therein.
>
> (3) Every person who has a certificate under subsection (2) to enter Trinidad and Tobago and who wishes to remain for a longer period than that previously granted or to have the conditions attaching to his entry varied, shall, notwithstanding that he is already in Trinidad and Tobago, submit to an examination under the provisions of this Act, and the immigration officer may extend or limit the period of his stay, vary the conditions attaching to his entry, or otherwise deal with him as if he were a person seeking entry into Trinidad and Tobago for the first time.
>
> (4) Where a permitted entrant is in the opinion of the Minister a person described in section 8 (1)(k), (l), (m) or (n), or a person who ... (f) was admitted or deemed to have been admitted to Trinidad and Tobago under sub-section (1) and remains therein after the expiration of the certificate issued to him under sub-section (2) ... the Minister may at any time declare that such person has ceased to be a permitted entrant and such person shall thereupon cease to be a permitted entrant.
>
> (5) The Minister may make a deportation order against any person referred to in subsection (4) ..., and such person shall have no right of appeal and shall be deported as soon as possible."

10. "The Minister" is defined by the Immigration Act as the minister responsible for immigration, namely the Minister of National Security.

11. On 6 September 2019 the appellant became eligible and applied for permanent residence pursuant to section 6(1)(a) of the Immigration Act. He was interviewed and was anticipating approval of his application, but his circumstances changed materially in December 2019 when he was arrested and charged with fraud.

12. The appellant was remanded in custody and remained in custody until early June 2020 when he was released on bail.

13. By a decision dated 18 February 2020, the appellant's application for permanent resident status was refused by the Minister. Although the appellant complained that he did not understand the reason for that refusal, his position as an alleged defendant remanded in custody facing charges of fraud was obviously highly relevant. In any event, following a request for reasons for that decision, by letter dated 21 October 2020, the Minister provided reasons for this refusal. The Minister relied on the fact that the appellant fell within section 8(1)(h) and (p) of the Immigration Act. The effect of reliance on these subsections was an assertion that he did not comply with the requirements of the Immigration Regulations (regulation 10 in particular) when he worked in Trinidad without requisite work permits ((p)); and that he was a charge on public funds and was likely to continue to be a charge on public funds because at the material time he was an inmate at the Maximum Security Prison ((h)) and had no permit to work.

14. The Board notes that criminal proceedings have not yet been determined and the appellant maintains his innocence in relation to these charges.

15. Meanwhile, on 6 March 2020, the Minister signed a deportation order in respect of the appellant. The Board notes that the concept of deportation in Trinidad and Tobago does not carry with it (as it often does elsewhere) the implication that the deportee has committed a crime. Deportation can be effected for reasons that would in the United Kingdom be addressed by way of administrative removal. The deportation order was served on the appellant on 8 June 2020.

16. The deportation order is on a standard form prescribed by the Immigration Act, referred to as Form 19B. It states, in material part, as follows:

> "I have reached the decision that you may not enter or remain in Trinidad and Tobago for the reason that –
>
> (i) You are neither a citizen nor a resident of Trinidad and Tobago
>
> (ii) You are a person described in Section 8(1)(p) and (q) as well as Section 9(4)(c), (f) and (k) of the Immigration Act, Chapter 18:01 of the Laws of the Republic of Trinidad and Tobago which state:
>
> > Section 8(1)– Except as provided in subsection (2) entry into Trinidad and Tobago of the persons described in this subsection, other than citizens and,

subject to section 7(2) residents, is prohibited, namely –

Paragraph (p) – persons who do not or cannot fulfil or comply with any of the conditions or requirements of this Act or the Regulations or any orders lawfully made or given under this Act or the Regulations;

Paragraph (q) – any person who from information or advice which in the opinion of the Minister is reliable information or advice is likely to be an undesirable inhabitant of, or visitor to Trinidad and Tobago.

Section 9(4) Where a permitted entrant is in the opinion of the Minister a person described in section 8(1)(k), (l), (m) or (n) or a person who –

Paragraph (c) – has become an inmate of any prison or reformatory;

Paragraph (f) – was admitted or deemed to have been admitted to Trinidad and Tobago under subsection (1) and remains therein after the expiration of the certificate issued to him under subsection (2) or under section 50(2);

Paragraph (k) – has since he came into Trinidad and Tobago broken any of the terms and conditions of the certificate issued to him under subsection (2);

I hereby order you to be detained and to be deported to the PEOPLE'S REPUBLIC OF CHINA and I further order you to remain out of Trinidad and Tobago while this Order is in force."

17. The deportation order was signed by the Minister. At the foot of the order, the following declaration appears:

> "WHEREAS I have been served with a Deportation Order, the service of which order is hereby acknowledged by me; now I YOUNGGAO PAN hereby undertake that I will not return to Trinidad and Tobago unless I am specially permitted by the Minister, in writing, to return."

18. The declaration is followed by the signature of the appellant as deportee, and the date and time when the declaration was made, namely 9.05am on 8 June 2020. The order concludes with the signature of an Immigration Officer as witness.

19. By letter dated 22 June 2020 the appellant sought a statement of reasons for the decision to deport him. He contends that without this he is unable to understand the reasons for the decision to deport him. He criticises the deportation order as simply referring to specific sections of the Immigration Act without providing any factual account as to what factors the Minister considered in arriving at his decision.

20. The Minister has maintained throughout that the deportation order itself contains adequate reasons for the decision.

3. The use of the term "freestanding" in this case

21. There has been some confusion in this case as to what is meant by describing section 16 as "freestanding". The appellant's case is that he is entitled to apply for leave to file judicial review proceedings to enforce the legal duty on the Minister under section 16(1) to provide reasons for the deportation decision. In that sense he contends that section 16 is "freestanding" and affords an enforceable right to reasons.

22. The Court of Appeal rejected that contention, holding that section 16 does not confer a right to seek judicial review of a failure or refusal to supply reasons, and in that sense cannot be used as a freestanding ground for a claim for judicial review. Rather, the right to reasons is triggered when a potential applicant seeks to challenge a public law decision under section 5 of the Act on other substantive grounds (see paras 44 and 45). As the Court of Appeal explained at para 45:

> "45. In the instant matter, the Appellant invoked section 16 with no indication that he intended to launch a challenge to the substantive decision to issue a Deportation Order. Had he done so, pursuant to section 5 of the Judicial Review Act, he would have been entitled to insist on the provision of reasons, pursuant to section 16(3). His having failed to launch a section

> 5 challenge meant that under section 16 he had no ground to insist on the supply of reasons."

23. In reaching that conclusion, the Court of Appeal relied on, as persuasive, the reasoning of Boodoosingh J in *Sanjeev Ramgarib v Her Worship Magistrate Rehanna Hosein* CV 2015-00266, Trinidad and Tobago High Court of Justice, 2 November 2015 ("*Ramgarib*") at para 22 as follows:

> "22. Thus section 16 does not give a freestanding right to bring judicial review proceedings for breach of section 16 but allows for reasons to be given to further a challenge under section 5 or any other recognised ground. Leave must be sought on a recognised ground and section 16 can then be used for those reasons to be provided as part of the leave application. That is the purpose of section 16(3). What this means is that the request can be made for reasons as was done here, but a failure to give those reasons will not give an applicant a right to bring an application for judicial review for the exclusive breach of section 16. Rather section 16(3) will allow the court to make an order for reasons to be given as a relief within the leave application on a section 5 ground."

24. For the reasons explained below, the Board does not agree with this part of the Court of Appeal's reasoning (nor that of Boodoosingh J in *Ramgarib*) and considers that "freestanding" may be an unhelpful descriptor so far as section 16 is concerned.

4. The rights conferred by section 16 of the Act and their interrelationship with the procedural requirements for leave to seek judicial review

25. Before addressing the scheme of section 16 and how it is to be applied, it is convenient to set it in the context of other relevant provisions of the Act.

26. Section 5(1) of the Act requires an application for judicial review to be made in accordance with the Act and in a manner prescribed by Rules of Court. Relief may be granted by the court on such an application to a person or group with sufficient standing: section 5(2). Section 5(3) sets out the grounds on which an application can be made, and these are expressed to include (but are not limited to) the following: "(c) failure to satisfy or observe conditions or procedures required by law" and "(d) breach of the principles of natural justice".

27. However, no application for judicial review may be made without first obtaining leave of the court: see section 6(1). Leave will not be granted unless the court considers that there is an arguable ground for judicial review, and the applicant has a sufficient interest in the matter to which the application relates (section 6(2)) or the application is justifiable in the public interest (section 7(1)). The remedies available on a successful application for judicial review are set out in section 8. Section 9 provides that, save in exceptional circumstances, leave to apply for judicial review will not be granted where there is an alternative remedy available.

28. Section 15 provides a remedy in a case where there has been a failure to make a decision to which the Act applies. The section only applies where there is a duty on a person to make the decision, and the applicant is adversely affected by the failure to do so. In such a case, the affected person "may file an application for judicial review in respect of that failure" on the ground of unreasonable delay in making the decision or that the decision-maker has a duty to make that decision within a prescribed period for doing so and has failed to do so (sections 15(1) and (2)). Additional remedies, including an order directing the making of the decision are set out in subsection (3).

29. Section 16 of the Act provides as follows:

> "16(1) Where a person is adversely affected by a decision to which this Act applies, he may request from the decision-maker a statement of the reasons for the decision.
>
> (2) Where a person makes a request under subsection (1), he shall make the request –
>
> (a) on the date of the giving of the decision or of the notification to him thereof; or
>
> (b) within twenty-eight clear days after that date,
>
> whichever is later, and in writing.
>
> (3) Where the decision-maker fails to comply with a request under subsection (1), the Court may, upon granting leave under section 5 or 6, make an order to compel such compliance upon such terms and conditions as it thinks just."

30. The terms of section 16(1) make clear that it does not create any right to reasons, nor does it impose any mandatory duty on a respondent to provide reasons. It makes no reference to any such right or duty. That is understandable. The well-established position, as set out in para 37 below, is that there is no general common law obligation on a public authority to give reasons for its decisions (though such an obligation can arise in particular circumstances on the ground of procedural fairness). For section 16 to be interpreted in a way that reverses that position would have the potential to cause chaos in routine administrative decision-making, with requests for reasons made of administrative decisions that do not generally give rise to any duty to give reasons. Section 16 does not create the mandatory statutory duty to provide reasons for which the appellant contends.

31. Instead, it entitles a person adversely affected by a public law decision to *request* reasons. In other words, it reinforces a pre-existing right to reasons subject to the timetable set out in subsection (2) and creates a mechanism for obtaining reasons in a case to which the Act applies, where there is an existing common law (or other) right to be provided with them.

32. However, unlike section 15, the terms of section 16(3) do not confer a right to bring judicial review proceedings in respect of a failure to comply with section 16 itself. Rather, section 16(3) makes clear that the grant of leave under sections 5 and 6 is a precondition to the grant of an ancillary order for the provision of reasons under that subsection. Thus, the person seeking reasons must make an application for leave to commence judicial review proceedings pursuant to sections 5 and 6, demonstrating an arguable ground for judicial review and sufficient standing to persuade the court to grant leave to bring an application for judicial review. In that respect the Board agrees with the reasoning of the Court of Appeal.

33. Where the Board departs from the view expressed by the Court of Appeal in this case (and Boodoosingh J in *Ramgarib*) is as regards the Court of Appeal's conclusion that the Act imposes a statutory requirement that an application for judicial review be founded on a substantive ground that is independent of the asserted failure to provide reasons. The Board disagrees with that interpretation of section 16(3). In the Board's view, it is open to an applicant to bring an application for failure to provide reasons, identifying this failure as falling within one of the judicial review grounds identified in section 5(3): for example, grounds (c) and (d) are plainly wide enough to include such a failure. But, in any event, the grounds in section 5(3) are not exhaustive and the Board can see no reason why failure to provide reasons cannot itself be identified and relied on as the only substantive ground for judicial review. There is no justification for requiring a substantive ground (whether within section 5(3) or otherwise) that is independent of the allegation of failure to provide reasons to be advanced.

34. On this basis, a court considering an application for leave to apply for judicial review based only on the asserted failure to provide reasons will have to decide whether there is an arguable case for saying that reasons should have been, but have not been, provided and that the applicant has sufficient standing to apply. As Mr Pennington-Benton for the Minister submitted, although expressed in similar terms to the test in England and Wales, the threshold for the grant of leave in Trinidad and Tobago is low (see also the observation made by the Court of Appeal to this effect at para 46). If the preconditions for the grant of leave (in sections 5 and 6) are met, as well as granting leave, the court can make an order compelling reasons to be provided pursuant to section 16(3). Once reasons have been provided, other grounds of challenge might emerge that would support an amendment to the application for judicial review; or, alternatively, the provision of reasons might resolve the claim altogether. Leave may nevertheless be refused if the application is unmeritorious (for example because there is no arguable duty to provide reasons or adequate reasons have unarguably been provided), or the other preconditions for the grant of leave are not met. The court is certainly not bound to grant leave in every case (irrespective of fulfilment of these preconditions) simply to give itself the power to order reasons to be provided.

35. The Board therefore agrees with the Court of Appeal that, in this sense, section 16 is facilitative of an application for judicial review made under section 5 of the Act. As the Minister submitted, it creates a summary process for obtaining reasons (where there is an arguable duty to provide them) at an early stage in judicial review proceedings and may, in many cases, short circuit what would otherwise be a lengthy judicial review process.

36. For these reasons, the first ground of appeal fails. Nonetheless, if the appellant had an arguable ground for judicial review based on the Minister's asserted failure to provide reasons for the deportation decision, leave to apply for judicial review should have been granted. It is necessary therefore to consider whether there was a duty to provide reasons in this case and if there was such a duty, the adequacy of the Minister's reasons for making the deportation order.

5. The duty to provide reasons

37. There is no general duty universally imposed on all decision-makers to give reasons. However, the courts have recognised many circumstances in which procedural fairness requires that reasons should be given to a person adversely affected by a decision, even in a statutory context in which no express duty to give reasons is imposed: see for example the discussion in *R v Secretary of State for the Home Department, Ex p Doody* [1994] 1 AC 531, 564F. The benefits of giving reasons are clear: they concentrate the mind and impose a discipline which may contribute to better, more transparent decision- making. As Tuckey LJ observed in *North Range Shipping Ltd v Seatrans Shipping Corpn* [2002] EWCA Civ 405, [2002] 1 WLR 2397, para 15,

"the trend of the law has been towards an increased recognition of the duty to give reasons". There has been a strong momentum in favour of greater openness and transparency in decision-making. The touchstone for what fairness requires in this context is often judged by the ability to make effective the right to challenge an adverse public law decision by judicial review.

38. In this case, the Minister invites the Board to proceed on the basis that if the appellant has any means of challenging the deportation decision, it is by way of judicial review. The appellant appears not to have any right of appeal against the decision since section 31(1) of the Immigration Act limits rights of appeal against a deportation order to "citizens" and "residents", and it is common ground that the appellant is neither. No argument that judicial review is ousted by the Immigration Act has been advanced by the Minister. In these circumstances, the Minister accepts that fairness in this case requires a statement of reasons for the deportation decision sufficient to enable the appellant (if so advised) to challenge the lawfulness of that order.

39. The Board is content to proceed on that basis, and in the Board's view, even where reasons are given voluntarily, they should be reviewed by reference to the same standards as are applied to reasons given in accordance with an established duty to provide them.

6. The adequacy of the reasons provided in the deportation order

40. There is no uniform standard or threshold which reasons must satisfy in every case. What is required inevitably depends on the context and the circumstances of the individual case. The nature of the decision itself will affect what is required by way of reasons.

41. Many (if not all) of the authorities relied on by the appellant to support his argument about the standard of reasons required for the Minister's decision in this case, concern an appellate court's evaluation of the adequacy of reasons given by a trial judge. The context in these cases is a trial with conflicting evidence and competing arguments, requiring findings of material fact and a careful analysis of the main issues raised by the parties in order to reach a reasoned judgment (see for example, *Hunter v Transport Accident Commission* [2005] VSCA 1 at paras 21 and 28). Such judgments are a far cry from the decision that was taken in this case. There is no sensible read across of the requirements identified by the appellate courts in relation to judgments of this kind. They do not begin to set the standard for what is required here, given the different context and the wholly different nature and quality of the decision-making exercise. Moreover, contrary to the appellant's argument, that reasons in one case are criticised for being brief, bland or even mechanical, does not lead to the conclusion that in an altogether different context similar reasons may not be regarded as adequate.

42. Here, important though it undoubtedly is, the deportation order is an administrative and not a judicial decision. It was made on Form 19B, which is a statutory form authorised by the legislation. The starting point is therefore that the legislature regards this as an appropriate way to express a deportation decision.

43. There are two parts to the order. In the first part, the Minister identified the grounds in the appellant's case on which "permitted entrance" status falls to be refused. Entrance is "prohibited" in the circumstances (amongst others) stated in subsections 8(1)(p) and (q) of the Immigration Act. Accordingly, in this part of the deportation order, the Minister was simply making clear that the appellant is prohibited from re-entering Trinidad and Tobago because it has been determined that he failed to comply with immigration conditions attaching to his previous grant of leave.

44. The second part of the order identifies the grounds for deportation relied on by the Minister in the appellant's case. These are the material provisions for the purposes of this appeal. The Minister relied on subsections 9(4)(c), (f) and (k) of the Immigration Act.

45. Subsections 9(4)(c) and (f) are self-evidently fulfilled in the appellant's case and required no further elaboration by the Minister. Subsection 9(4)(c) applies to a person who "has become an inmate of any prison or reformatory". The appellant was remanded in custody in prison in December 2019, although some months later he was granted bail. Subsection (f) deals with an overstayer "…admitted or deemed to have been admitted to Trinidad and Tobago under subsection (1) and [who] remains therein after the expiration of the certificate issued to him under subsection (2) or under section 50(2)". The appellant himself accepts that his last work permit expired on 18 January 2020 (as set out at paragraph 8 of his affidavit dated 22 September 2020). His application for residence status was rejected on 18 February 2020. Accordingly, since at least the end of January 2020, on the face of it, subsection 9(4)(f) applied to him.

46. Critically in each case, no further information or explanation was required to enable the appellant to challenge either ground for deportation. He knew whether or not it was true, as a matter of fact, that he was in prison in Trinidad as asserted. He would therefore have been able to challenge the decision on the basis, for example, that he was not in prison and the Minister had unreasonably formed the view otherwise. He also knew whether or not he was present in Trinidad and Tobago without a relevant visa and could challenge the Minister on the basis of having unreasonably formed the view otherwise. Each reason involved a straightforward binary question of fact, which was well within the personal knowledge of the appellant. No evaluative judgment or analysis was required. Moreover, each is a separate reason or ground and the factual satisfaction of any one of these grounds is a sufficient reason by itself for deportation: see section 9(4) and (5) of the Immigration Act.

47. Though it was unnecessary in this case, the Minister also relied on subsection 9(4)(k). This addresses the position of an immigrant with permitted entrance status who has breached the terms of their grant of leave (namely, a person who "…has, since he came into Trinidad and Tobago broken any of the terms and conditions of the certificate issued to him under subsection (2)"). The satisfaction of this provision is not obvious on the face of the deportation order and, standing alone, more could have been said to explain why it was said to be fulfilled in the appellant's case.

48. However, the appellant was a knowledgeable recipient of the deportation order in the sense that he knew of the existence (in separate but plainly linked proceedings) of a determination by the Minister on 18 February 2020 that he had breached the conditions of his prior grant of leave (and upon receipt of the letter of 21 October 2020, the reasons for it). Since the Immigration Act states that if an immigrant has broken the terms of their stay in Trinidad and Tobago with the result that their leave to remain lapses or is revoked the Minister may deport them, the Minister's reliance on subsection 9(4)(k) was sufficiently stated in context. The basis of the decision was plain: the appellant, for reasons of which he was already aware, had breached the conditions of his prior grant of leave. The appellant was able to challenge this ground (non-compliance with immigration conditions) by arguing that the Minister's opinion that he had breached the terms of his prior grant of leave was irrational or otherwise unlawful. Fairness required no further explanation in this context.

49. Like the Board, the Court of Appeal also referred in the context of section 9(4)(k) to the statement of reasons provided by the Minister in support of his decision to reject the application for residency (see para 27 of the Court of Appeal judgment). The appellant suggests that the Court of Appeal may mistakenly have thought these reasons were a response to the appellant's request under section 16 of the Act in respect of the deportation decision. The Board agrees with the Minister that there is no basis for this assertion. The Court of Appeal's statement that the 21 October 2020 reasons explained "why his application for permanent residence was unsuccessful" makes this clear. However, the two decisions (made two weeks apart) were plainly linked. By the time of the hearing before the judge on the judicial review leave application (February 2021), the appellant had received the Minister's letter dated 21 October 2020. Accordingly, even if not at the outset, certainly by the time of the hearing of the application for leave, the appellant knew why the Minister was saying that he had breached the terms of his prior grant of leave; and he knew that this fact was also relied on in the deportation order.

50. Finally, the Board recognises that even if one or more of the grounds listed in section 9(4) of the Immigration Act are established, the Minister is not bound to make a deportation order but has a discretion (conveyed by the word "may") to do so. Nonetheless, a deportation order is plainly what the legislation envisages as the proper outcome if one or more of the grounds for deportation is made out, unless there are compelling reasons not to do so. The appellant has not pointed to any such strong

reasons in his case. In these circumstances, fairness does not require any further statement of reasons as to why the residual discretion was exercised in the way it was.

51. For all these reasons, the Board is satisfied that the deportation order itself adequately sets out the reasons for the Minister's decision. They are intelligible and sufficient to enable a judicial review challenge to be made. The contrary is not arguable and accordingly, the application for leave to file judicial review proceedings against the Minister was properly refused.

7. Conclusion

52. In these circumstances, and for the reasons given above, the Board dismisses the appellant's appeal.