

Qorti tal-Appell

(Kompetenza Inferjuri)

Imhalled Anthony Ellul

Appell numru: 10/2016

Fazia Algwairi (appellata)

Vs

Direttur tad-Dipartiment tac-Cittadinanza u Expatriate Affairs (appellant)

21 ta' Frar, 2017.

1. B'decizjoni tal-1 ta' Marzu, 2016 il-Bord tal-Immigrazzjoni qal:-

"The Board noted that in the appeal, the appellant's advocate drew the Board's attention to the fact that the respondent department failed to give any reason whatsoever for its decision. Furthermore, it was also confirmed by means of supporting documentation that the appellant is a bona fide student who has no outstanding fees to pay and is fully funded and insured. As regards the reason for refusal, the Board observes that the respondent department acted in a contradictory manner in that it withdrew the appellant's application and at the same time, failed to put forward any reason for withdrawing the same. Furthermore, such failure to give reasons constitutes a violation of Regulation 20(1) of Subsidiary Legislation 217.17 (Single Application Procedure for a Single Permit as regards Residence and Work and a Common Set of Rights for Those Third Country Nationals Legally Residing in Malta Regulations), which states as follows:-

"The Director shall give reasons, in the notifications referred to in Regulation 15 when rejecting an application to issue, amend or renew a Single Permit or when a decision is taken withdrawing a Single Permit".

In these circumstances, particularly the absence of any substantive objection on the part of the respondent department, the Board accepts the appeal and directs the respondent department to accede to the request made in the original application dated 9th December, 2015".

2. L-appellant appella mid-decizjoni. L-aggravji huma:

- i. Il-legislazzjoni sussidjarja 217.17 ma tapplika għall-kaz in ezami. Ir-regolament li japplika għal dan il-kaz hu regolament 12 tar-Regolamenti dwar l-Immigrazzjoni (Legislazzjoni Sussidjarja numru 217.04).
- ii. Il-Bord m'għandux il-poter li jordna lill-appellant sabiex jilqa' t-talba tal-appellata.

3. L-appellata ma wegbitx.

Konsiderazzjoni.

4. L-appellata pprezentat applikazzjoni ghar-residenza f'Malta. Fl-*acknowledgement* mahruqa mid-Dipartiment datata 24 ta' Novembru, 2015 jinghad:

"You are authorised to reside in Malta until a decision is taken on your application. This interim authorisation shall lapse on the 24/2/2016".

L-applikazzjoni saret biex l-appellata tkun tista' tirrisjedi Malta ghal skop ta' studju. Permezz ta' dikjarazzjoni datata 21 ta' Jannar 2016 mahrgua minn EIE (Malta) Ltd, gie ddikjarat li l-appellata, "(...) *is registered as a General English Language student with EIE studying a course for a period of 12 months expiring on the 30th November 2016*".

Permezz ta' ittra datata 13 ta' Jannar, 2016 l-appellata giet infurmata mid-Dipartiment ta-Cittadinanza u tal-Expatriates:

"I refer to your application dated 24th November 2015 for a residence permit authorising you to remain in Malta.

I regret to inform you that the said application has been withdrawn with immediate effect.

Your attention is, therefore, being drawn to the fact that you cannot remain any further in Malta beyond the 22st January, 2016 or you would be in violation of the provisions of the Immigration Act (Cap. 217)".

Imbagħad permezz ta' ittra datata 21 ta' Jannar 2016 li l-appellata bagħtet lid-Dipartiment, infurmatu li qegħda tattendi, "(...) *an English language course at EIE Institute of Education for the past year. I have now entered the second scholastic year which shall be completed by the 30th November, 2016*".

5. Mid-decizjoni tal-Bord hu evidenti li bbaza d-decizjoni tiegħu fuq il-fatt li:-

- L-appellata hi studenta *bona fide* kif jirrizulta mid-dokumenti li pprezentat;
- L-appellant irtira l-applikazzjoni tal-appellata mingħajr ma ta raguni għalfejn iddecieda b'dak il-mod. Inoltre, skond regolament 20(1) tal-Legislazzjoni Sussidjarja 217.17, id-Dipartiment kellu obbligu jagħti r-raguni għalfejn irrifjuta l-applikazzjoni.

6. Fid-decizjoni l-Bord ma spjegax kif ikkonkluda li għal dan il-kaz tapplika l-Legislazzjoni Sussidjarja 217.17, *Single Application Procedure for a Single Permit as regards Residence and Work and a Common Set of Rights for those Third Country Workers Legally Residing in Malta Regulations*. Mir-regolamenti 1(3) u 3 hu evidenti li dawn ir-regolamenti jirregolaw is-sitwazzjoni ta' *third-country nationals* li jridu jgħixu f'Malta għal skop ta' xogħol u dawk li ddahhlu Malta għal skop differenti u jingħataw permess biex jahdmu Malta u jkollhom permess ta' residenza skond ir-

Regolament 1030/2002. Dan m'huwiex il-kaz tal-appellata li applikat ghall-permess ta' residenza sabiex tistudja f'Malta. Ghalhekk il-Bord kien skorrett meta ghamel riferenza ghal-Legislazzjoni Sussidjarja 217.17.

7. Ma jidhirx li ghall-kaz tal-appellata tapplika l-Legislazzjoni Sussidjarja 217.09, *Conditions of Admission of Third-Country Nationals For the Purpose of Studies Regulations*, ghaladarba skont regolament 5, *"Id-dhul ta' cittadin ta' pajjiz terz taht dawn ir-regolamenti ghandu jkun soggett ghall-verifika ta' provi dokumentarji li jkunu juru li dak ic-cittadin jikkonforma ruhu ma' daww il-kondizzjonijiet stipulati fir-regolamenti 6 u 7"*. Wahda mill-kondizzjonijiet hi li l-persuna trid tipprezenta prova li tkun giet accettata minn istituzzjoni biex, *"isegwi kors ta' studju full-time rikonoxxut mic-Centru Malti ghal Rikonoxximent ta' Kwalifiki u ta' Informazzjoni"*. Prova li ma jirrizultax li saret f'dan il-kaz.

8. Skont regolament 12 tal-Legislazzjoni Sussidjarja 217.04 (Regolamenti dwar l-Immigrazzjoni):

"Cittadin ta' pajjiz terz ghandu jkun intitolat biss li jirrisjedi f'Malta jekk jinhariglu permess uniformi ghal residenza ghal skop specifiku".

9. Ma jirrizultax li l-appellant ikkontesta l-jedd li l-appellata tappella quddiem il-Bord tal-Appell dwar l-Immigrazzjoni.

10. Mill-ittra tat-13 ta' Jannar, 2016 jirrizulta li l-appellant ma ta l-ebda raguni ghad-decizjoni ghalfejn irtira l-applikazzjoni tal-appellata b'effett immedjat. Wiehed minghajr ma jrid jistaqsi kif setghet l-appellata tezercita l-jedd ta' appell b'mod effettiv, meta ma kinitx infurmata bir-ragunijiet li wasslu lill-appellant biex jiddikjara li, *"(...) said application has been withdrawn with immediate effect"*. Dan irrispettivament japplikax ir-regolament 20 tal-Legislazzjoni Sussidjarja 217.17.

11. Min-naha l-oħra pero' f'dak ix-xenarju l-Bord ma kellux jieh u l-inizjattiva li jiddeciedi l-applikazzjoni tal-appellata fil-meritu u saħansitra jordna lill-appellant biex jilqa' l-applikazzjoni. Wara li sab li l-appellant ta decizjoni mhux motivata, il-Bord kellu jhassar id-decizjoni tal-appellant u jieqaf hemm. B'hekk il-partijiet kienu jergghu jitpoggew fil-posizzjoni li kienu qabel l-appellant ha d-decizjoni.

Ghal dawn il-motivi:-

1. Tilqa' parzjalment l-appell tal-appellant ghal dak li jirrigwarda l-ewwel aggravju fis-sens li ghall-kaz in ezami ma tapplikax il-Legislazzjoni Sussidjarja 271.17 u t-tieni aggravju.

- 2. Thassar id-decizjoni tal-Bord tal-Appell dwar l-Immigrazzjoni tal-1 ta' Marzu, 2016 u tibghat l-atti lura quddiem il-Bord.**

Spejjez jibqghu bla taxxa bejn il-partijiet.

Anthony Ellul.