

Qorti tal-Appell
(Kompetenza Inferjuri)
Imhalled Anthony Ellul
Appell numru: 7/2017

Mohammed Masood (appellant)

Vs

Direttur tac-Cittadinanza u tal-Expatriates (appellat)

2 ta' Marzu, 2017.

1. B'decizjoni tat-12 ta' Jannar, 2017 l-Immigration Appeals Board iddecieda dwar appell ta' Masood (appellant):

"This is an appeal from a decision of the respondent department dated 20th April 2016 by means of which the appellant was denied a renewal of his Single Permit on the grounds that the requested feedback was not submitted by 13th April 2016.

From the respondent department's submissions, it can be gleaned that the nature of the requested feedback was the submission of a copy of the applicant's food handling permit, a copy of the menu and a declaration of the establishment seating capacity as well as profit and loss accounts for 2014 and 2015. It was observed that no such documentation whatsoever was filed in the records of the appeal.

In the relative appeal it was pointed out, inter alia, that as per Regulation 20 of Subsidiary Legislation 217.17, the Director of the respondent department is obliged to give reasons for his decision when deciding to reject an application for a permit or for a renewal of the same, and that in the present case, no reason for the refusal decision was given. The Board recognizes the correctness of this observation. However, as observed from the appeal text itself, the appellant learned what documentation was missing and although the appeal was submitted on 25th April 2016, the appellant failed to submit the requested documentation in the records of the appeal despite having had over seven months to do so.

Therefore the Board rejects this appeal and confirms the decision of the respondent department".

2. Fit-8 ta' Frar, 2017 l-appellant ipprezenta rikors tal-appell. L-aggravju jkun li l-appellant kien ta d-dokumenti li kien intalbu mill-appellat. Ilmenta wkoll li l-

appellat ma nformax bir-raguni ghalfejn l-applikazzjoni tieghu kienet giet michuda, u li l-Bord ma zammx seduta biex l-appellant jaghmel l-argument tieghu quddiem il-Bord.

3. Fit-2 ta' Marzu, 2017 l-appellat ipprezenta twegiba fejn ta r-ragunijiet ghalfejn l-appell ghandu jigi michud:
 - i. l-Avukat Generali kien ghadu ma giex notifikat bl-atti (artikolu 181B(3) tal-Kap. 12);
 - ii. l-appell hu null in vista ta' dak li jipprovdli l-artikolu 25A(8) tal-Att dwar l-Immigrazzjoni (Kap. 217) u f'kull kaz ma giex prezentat fit-terminu kontemplat mil-ligi;
 - iii. fil-meritu m'ghandux ragun.
4. Il-qorti qrat l-atti u semghet ukoll it-trattazzjoni.
5. L-ewwel eccezzjoni inghatat bla bzonn ghaliex l-Avukat Generali jaf bil-proceduri tant li ffirmat t-twegiba.
6. Hu evidenti li l-appellant huwa *third country national*. Appell quddiem din il-qorti minn decizjoni tal-Bord, jista' jsir biss minn persuni li jissemmew fl-artikolu 4A tal-Kap. 217 (ara sentenza **Daham Al Hamed vs Ufficjal Principali tal-Immigrazzjoni**, ta' din il-qorti tas-26 ta' Gunju, 2009). Ma jirrizultax li l-appellant hu cittadin ta' Stat Membru jew dipendenti tieghu, u lanqas ma japplika paragrafu (c). Ghalhekk l-appellat ghandu ragun fir-rigward tat-tieni eccezzjoni. Dan apparti li lanqas ma jirrizulta li l-appell hu fuq punt ta' ligi deciz mill-Bord. Id-decizjoni tal-Bord hi bazata fuq in-nuqqas ta' prova.

Ghal dawn il-motivi tilqa' t-tieni eccezzjoni u tiddikjara l-appell null, bl-ispejjez kontra l-appellant.

Anthony Ellul.