is-subartiklu 20(2) tal-L.S. 217.17 jipprovdi li "the third country national shall have the right to appeal to the Board"*, u l-ebda dritt ta' appell ma jingħata lill-prinċipal*

MALTA

QORTI TAL-APPELL

(Kompetenza Inferjuri)

ONOR. IMĦALLEF LAWRENCE MINTOFF

Seduta tal-21 ta' April, 2021

Appell Inferjuri Numru 90/2020 LM

Dragana Stoiljkovic (K.I. numru 0182449A)
("l-appellanta")

***vs*.**

The Director of the Department for Citizenship & Expatriate Affairs
("l-appellat")

Il-Qorti,

Preliminari

1. Dan huwa appell magħmul mill-appellanta **Dragana Stoiljkovic (K.I. Nru 0182449A)** [minn issa 'l quddiem "l-appellanta"] mid-deċiżjoni tat-13 ta'

Novembru, 2020, [minn issa 'l quddiem "id-deċiżjoni appellata"] mogħtija mill-Bord tal-Appelli dwar l-Immigrazzjoni [minn issa 'l quddiem "il-Bord"], li permezz tagħha ddeċieda li jiċħad l-appell ippreżentat minn Jeanne Borg fil-kwalità tagħha ta' direttur tas-soċjetà Intertax Services Limited magħmul fil-konfront tad-**Director of the Department for Citizenship and Expatriate Affairs** [minn issa 'l quddiem "id-Direttur appellat"], u dan għar-raġunijiet hemm imfissra.

Fatti

2. Il-fatti tal-appell odjern jirrigwardaw *Single Permit Application* li kienet ressqet is-soċjetà Intertax Services Limited quddiem id-Direttur appellat *ai termini* tal-L.S. 217.17, liema applikazzjoni kienet ġiet miċħuda minnu.

Mertu

3. Kif diġà mfisser, kienet is-soċjetà Intertax Services Limited li istitwiet proċeduri ta' appell quddiem il-Bord fl-14 ta' Frar, 2020, fejn talbet sabiex terġa' tiġi kkonsidrata s-*Single Permit Application* ta' Dragana Stoiljkovic.

Id-deċiżjoni appellata

4. Il-Bord ċaħad l-appell għar-raġunijiet li huwa fisser kif ġej:

> *"Submissions filed, evidence produced and considerations*
>
> *The Board observed that when the appeal was filed, the receipt issued instructed the parties to submit any further documentation within fifteen days. At the outset, the*

Board declares that although it is not legally bound to hold sittings, Art. 3(2) of the Administrative Justice Act (Chapter 490 of the Laws of Malta) stipulates that amongst the principle which this Board, amongst other bodies, is bound to uphold, is the principle of equality of arms. The Board refers to the judgment of the Court of Appeal ***Edwin Zarb et vs Gilbert Spiteri et*** *(decided on 6th February 2015) in which it was held that the principle* audi alteram partem *does not necessarily mean that the parties must be physically heard but that they must be given sufficient time to present the evidene they wish to present. It is up to the court (or in this case, the Board) to decide what should be done in the interest of justice.*

An appeal was submitted by Jeanne Borg (on behalf of Intertax Services Limited). Ms Borg stated that the company needed the appellanta primarily to work as a cleaner for them. However, Borg added that the company planned to offer her services to other clients of the company.

Although Borg conceded that the company's memorandum and articles of association did not refer to provision of such services, she argued that the company already provided services to clients, albeit in the field of taxation and field related thereto. She suggested that the company could perhaps amend its memorandum and articles of association.

The Board rejects such argumentation and holds that the company cannot suddenly branch out into other fields and offer to amend its memorandum and articles of assocation in a bid to silence the objections raised by Identity Malta and its stakeholders. Se mai, *the memorandum and articles of association should have been amended before this venture was launched.*

Had the case been that the appellanta would be employed by Intertax Services Limited as a cleaner, without being assigned elsewhere via subcontracting, it would have been a different matter altogether".

L-Appell

5. L-appellanta ppreżentat ir-rikors tal-appell tagħha fl-24 ta' Diċembru, 2020 fejn talbet lil din il-Qorti sabiex tħassar id-deċiżjoni appellata, u anki d-deċiżjoni tad-Direttur appellat tat-12 ta' Frar, 2020, filwaqt li tordna d-Direttur appellat sabiex jerġa' jikkonsidra l-applikazzjoni tagħha u tagħti dawk il-

provvedimenti opportuni li jidhrulha xierqa. L-appellanta tressaq is-segwenti aggravji: (i) kemm id-Direttur appellat u anki l-Bord skartaw l-għan prinċipali tal-applikazzjoni; (ii) l-applikazzjoni ġiet miċħuda mid-Direttur appellat u mill-Bord fuq konsiderazzjonijiet irrilevanti; u (iii) kwalunkwe nuqqas ta' konformità tal-prinċipal m'għandux ibatih l-impjegat.

Ir-Risposta tal-Appell

6. Id-Direttur appellat laqa' billi preliminarjament issottometta li l-appell kien wieħed irritwali stante li l-appell quddiem il-Bord ma kienx sar mill-appellanta iżda minn Jeanne Borg f'isem is-soċjetà Intertax Services Limited, liema soċjetà kienet ser tħaddem l-appellanta. Fit-tieni lok issottometta li skont is-subartikolu 25A(8) tal-Kap. 217 ma kienx hemm appell minn deċiżjoni tal-Bord jekk mhux dwar punt ta' dritt u t-tliet aggravji mressqin fl-appell kienu jindirizzaw biss il-mertu. Fil-mertu, jissottometti li l-aggravji għandhom jiġu miċħuda.

Konsiderazzjonijiet ta' din il-Qorti

7. Qabel ma tikkonsidra t-tliet aggravji mressqa mill-appellanta, din il-Qorti ser tgħaddi sabiex tqis jekk jiswewx l-ewwel żewġ sottomissjonijiet preliminari li tressqu mid-Direttur appellat. Id-Direttur appellat jilqa' għall-appell interpost mill-appellanta, billi qabelxejn jirrileva li l-appell quddiem il-Bord kien sar minn Jeanne Borg għan-nom tas-soċjetà Intertax Services Limited bħala prinċipal. Dan filwaqt li skont is-subartiklu 20(2) tal-L.S. 217.17 kien jipprovdi li *"the third*

country national shall have the right to appeal to the Board", u l-ebda dritt ta' appell ma jingħata lill-prinċipal. Id-Direttur appellat osserva li l-appell saħansitra lanqas ma kien redatt in rappreżentanza tal-appellanta, u għalhekk tali appell kien wieħed pależament irritwali. Din il-Qorti taqbel u tgħid li għalhekk l-appell li sar mis-soċjetà Intertax Services Limited quddiem il-Bord kien wieħed null. Huwa null ukoll l-appell li qiegħda tressaq l-appellanta quddiem din il-Qorti, għaliex ġaladarba hija ddeċidiet li ma tressaq l-ebda appell mid-deċiżjoni tad-Direttur appellat li kienet tolqot l-applikazzjoni tagħha, b'hekk hija ma kellha l-ebda dritt li tintavola rikors tal-appell quddiem din il-Qorti. Il-proċedura li kellha tiġi addottata minnha tirriżulta b'mod ċar u inekwivoku mis-subartikolu 20(2) tal-L.S. 217.17 u tas-subartikolu 25A(8) tal-Kap. 217.

Decide

Għar-raġunijiet premessi, il-Qorti tiddikjara l-appell irritu u null u tastjeni milli tieħu konjizzjoni tiegħu, bl-ispejjeż ta' din l-istanza kontra l-appellanta.

Moqrija.

Onor. Dr Lawrence Mintoff LL.D.
Imħallef

Rosemarie Calleja
Deputat Reġistratur