

l-appell intavolat mill-appellanta ma sarx skont is-subartikolu 25A(8) tal-Kap. 217



MALTA

QORTI TAL-APPELL
(Kompetenza Inferjuri)

ONOR. IMĦALLEF
LAWRENCE MINTOFF

Seduta tat-23 ta' April, 2021

Appell Inferjuri Numru 84/2019 LM

Sara Begui (K.I. numru 0191923A)
("l-appellanta")

vs.

Direttur tad-Dipartiment tač-Ċittadinanza u Expatriate Affairs
("l-appellat")

Il-Qorti,

Preliminari

1. Dan huwa appell magħmul mir-rikorrenti **Sara Begui (K.I. nru 0191923A)** [minn issa 'l quddiem "l-appellanta"] mid-deċiżjoni tat-8 ta' Novembru, 2019, [minn issa 'l quddiem "id-deċiżjoni appellata"] mogħtija mill-Bord tal-Appelli dwar l-Immigrazzjoni [minn issa 'l quddiem "il-Bord"], li

permezz tagħha ddecieda li jiċhad l-appell tagħha fil-konfront tal-appellat **Direttur tad-Dipartiment taċ-Ċittadinanza u *Expatriate Affairs*** [minn issa 'l quddiem "id-Direttur appellat"], u dan għar-raġunijiet hemm imfissra.

Fatti

2. Il-fatti tal-appell odjern jirrigwardaw l-applikazzjoni li l-appellanta pprezentat lill-appellat fil-31 ta' Jannar, 2019 sabiex tingħata permess ta' residenza¹ hawn Malta bħala mart Salim Mesioughi², liema applikazzjoni giet miċhuda mid-Direttur appellat fit-3 ta' April, 2019 stante li żewġha ma kienx jissodisfa l-kriterji tad-dħul applikabbli.

Mertu

3. L-appellanti istitwiet proċeduri quddiem il-Bord fis-26 ta' April, 2019, fejn filwaqt li ppremettiet li hija kienet tirisjedi flimkien ma' żewġha hawn Malta fl-indirizz *Maisonette 52*, Triq is-Sebħ, Mgarr, iddikjarat li hija kienet qiegħda tappella mid-deċiżjoni tad-Direttur appellat. Spjegat li fis-sena 2019 il-prinċipal tar-raġel tagħha kien żied il-paga tiegħu u pprezentat diversi dokumenti sabiex issostni dak li kienet qiegħda tgħid.

Id-deċiżjoni appellata

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

¹ Ara Dok. B *a fol.* 8 kopja riċevuta tal-applikazzjoni tagħha.

² Ara Dok. A *a fol.* 7 kopja ċertifikat taż-żwieġ.

“Submissions filed and evidence produced

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 (Cap. 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. By affording both sides equal time to file all submissions and by not refusing to receive any submissions even after such timeframe has elapsed, the Board is doing justice to the cardinal principle of equality of arms.

At the outset, the Board observed that although Identity Malta had several months to file submissions, it filed no submissions to precisely explain the discrepancies it observed.

*The Board refers to the decision of the Administrative Review Tribunal in the case **Gary Mifsud vs. Il-Kummissarju tal-Pulizija**, handed down on 8th October 2018. In that decision, the Tribunal stated:*

“Illi l-motivazzjoni wara deċiżjoni amministrattiva hija essenzjali, anke jekk il-liġi tkun siekta, sabiex iċ-ċittadin jitpoġġa f’posizzjoni li jifhem ir-raġuni tar-rifjut, u jekk iħossu aggravat bl-istess deċiżjoni ikun jista’ jintavola appell abbażi tal-istess motivazzjoni.”

The above-quoted judgment states that proper motivation is essential even when the law is silent. It stands to reason that motivation must be intelligible, relevant and well-argued. On the contrary, the Director’s decision in this case is not as informative as it should be.

In the absence of such information, the Board does not know the income criteria which were used to examine the relative application for renewal. Neither does the Board know the precise amounts mentioned in the payslips, the tax form and the FS3 form which had originally been presented before Identity Malta. As a result, the Board is deprived of the essential facts.

The Board read the appellant’s appeal. She stated that she is married to Salim Mesioughi (118402A), whose salary was revised by his employer and alleged that her husband held sufficient funds as required by Identity Malta’s policies.

In support of the appeal, the appellant presented the following documentation:

- *A copy of a document issued by FNG Supplies Co. Ltd which indicated that the appellant's husband received the following salary:*
 - o *January 2019 - €1,550 (gross salary),*
 - o *February 2019 - €1,550 (gross salary);*
 - o *March 2019 - €1,671.16 (gross salary);*
- *Three payslips for the months of January, February and March 2019 which indicated that the appellant's husband's net salary for January and February 2019 was €1,392.92 (for each month) and that his net salary for March 2019 was €1,497.08;*
- *A document indicating that on a certain date, the amount of €1,850.43 was paid to the Inland Revenue Department by an unknown individual; and*
- *An FS5 form relative to January 2019.*

The Board observes that the documentation before it provides an incomplete picture of the appellant's husband's financial situation. In order to get a better idea of the facts, it would have been ideal, for example, to present a copy of the husband's contract of employment as well as to declare when the husband took up his present employment. It would have also been useful to present a bank statement.

The present case shows that Identity Malta should have provided the Board with more detailed information and that the appellant, on her part, should have also presented a fuller picture. These failures prevented the Board from knowing all the facts. Nonetheless, as the appellant was challenging Identity Malta's decision, it was incumbent upon her, first and foremost, to present more detailed information."

L-Appell

5. L-appellanta pprezentat ir-rikors tal-appell tagħha minn din id-deċiżjoni fil-25 ta' Novembru, 2019 fejn talbet lil din il-Qorti sabiex tħassar id-deċiżjoni appellata, u anki id-deċiżjoni tad-Direttur appellat tal-31 ta' Jannar, 2019, filwaqt li tordna lid-Direttur appellat sabiex jerga' jikkonsidra l-applikazzjoni tagħha u anki jagħti dawk il-provvedimenti opportuni li jidhrulu xierqa. Hija tressaq is-segweni aggravji: (i) kien hemm nuqqas ta'

motivazzjoni fid-deċiżjoni tad-Direttur appellat stante li ma ngħatatx spjegazzjoni dwar id-diskrepanza li osserva; u (ii) il-Bord għamel konsiderazzjonijiet irrilevanti.

Ir-Risposta tal-Appell

6. Id-Direttur appellat laqa' għar-rikors tagħha billi sottometta li d-deċiżjoni appellata hija waħda ġusta, u għalhekk timmerita konferma minn din il-Qorti. Preliminarjament jgħid li skont is-subartikolu 25A(8) tal-Kap. 217, m'hemmx appell minn deċiżjoni tal-Bord jekk mhux dwar punt ta' dritt u minn hemm jgħaddi sabiex jagħmel is-sottomissjonijiet tiegħu fil-mertu.

Konsiderazzjonijiet ta' din il-Qorti

7. Qabel ma tikkonsidra l-aggravji mressqa mill-appellanta, din il-Qorti ser tgħaddi sabiex tqis jekk tiswiex l-ewwel sottomissjoni preliminari li tressqet mid-Direttur appellat.

8. Il-Qorti tirrileva li l-ewwel aggravju tal-appellanta huwa fir-rigward tad-deċiżjoni tad-Dipartiment rappreżentat mid-Direttur appellat, fejn issostni li l-motivazzjoni kienet imsejsa fuq l-allegat diskrepanza bejn dokument u ieħor, iżda dan mingħajr ma ngħatat spjegazzjoni ulterjuri dwar tali diskrepanza u anki kif kien ġie stabbilit id-dħul tal-garanti r-raġel tagħha. Il-Qorti tgħid li fl-ewwel aggravju tagħha l-appellanta mhijiex qiegħda tirrileva l-ebda punt ta' dritt li ġie deċiż mill-Bord, iżda minflok qiegħda

tilmenta min-nuqqas li hija qiegħda tikkonstata fil-mod li bih id-Direttur appellat wasal għad-deċiżjoni tiegħu. Anki it-tieni aggravju tal-appellanta jonqos milli jindirizza xi punt ta' liġi li seta' gie deċiż mill-Bord, u dan għaliex l-appellanta hawn qiegħda tikkontendi li bil-fatt li d-Direttur appellat naqas milli jiġġustifika d-deċiżjoni tiegħu, il-Bord ma kellux jiċhad l-appell tagħha.

9. Għaldaqstant din il-Qorti ssib li l-appell intavolat mill-appellanta ma sarx skont is-subartikolu 25A(8) tal-Kap. 217.

Decide

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

Moqrija.

**Onor. Dr Lawrence Mintoff LL.D.
Imħallef**

**Rosemarie Calleja
Deputat Registratur**