



MALTA

QORTI TAL-APPELL
(Sede Inferjuri)

ONOR. IMĦALLEF
LAWRENCE MINTOFF

Seduta tad-29 ta' April, 2022

Appell Inferjuri Numru 93/2021 LM

Linus Augustine Osaze (0224118A)
('l-appellant')

vs.

Direttur taċ-Ċittadinanza u tal-Expatriates
('l-appellat')

Il-Qorti,

Preliminari

1. Dan huwa appell magħmul mill-appellant **Linus Augustine Osaze (K.I. nru. 0224118A)** [minn issa 'l quddiem 'l-appellant'] mid-deċiżjoni tat-28 ta' Ġunju, 2021, [minn issa 'l quddiem 'id-deċiżjoni appellata'] mogħtija mill-Bord tal-Appelli dwar l-Immigrazzjoni [minn issa 'l quddiem 'il-Bord'], li permezz

tagħha ċaħad l-appell tiegħu mid-deċiżjoni tad-**Direttur taċ-Ċittadinanza u tal-Expatriates/Identity Malta Agency** [minn issa 'l quddiem "id-Direttur appellat"] għar-raġunijiet hemm imfissra.

Fatti

2. Il-fatti tal-appell odjern jirrigwardaw id-deċiżjoni tal-Aġenzija Identità Malta kif komunikata lill-appellant permezz tal-ittra tagħha tat-30 ta' Ottubru, 2020, fejn wara li sar il-proċess ta' diligenza dovuta mal-partijiet interessati, giet rifjutata l-Applikazzjoni Waħda tiegħu għal Permess Uniku minħabba raġunijiet ta' *'public policy and public security'*.

Mertu

3. L-appellant flimkien ma' Busy Bee Manufacturing, istitwew proċeduri ta' appell quddiem il-Bord fil-11 ta' Novembru, 2020 għar-revoka ta' din id-deċiżjoni tad-Direttur, fejn ġew ippreżentati s-segwenti aggravji: (i) l-appellant ma kienx ġie notifikat bit-talba għall-preżentata ta' informazzjoni jew dokumentazzjoni ulterjuri; (ii) ma ngħatat l-ebda raġuni għaċ-ċaħda tal-applikazzjoni tiegħu; (iii) il-Bord kien iddeċieda li ma kien hemm l-ebda raġuni ta' *public policy* jew *public security*.

Id-deċiżjoni appellata

4. Il-Bord wasal għad-deċiżjoni appellata wara li għamel is-segwenti konsiderazzjonijiet:

"1. Preliminary

The Board:

Saw that in virtue of a decision dated 30th October 2020, Identity Malta Agency stated that the relative application for a Single Permit had been rejected for the following reason: "...on grounds of public policy and public security";

Saw the appeal registered on 11th November 2020; and

Saw that Identity Malta Agency filed no submissions.

2. Submissions filed, evidence produced and considerations of the Board

*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 evidence 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.*

The appellant based his appeal on three ground of appeal:

- i. Lack of notice for the submission of feedback;*
- ii. Lack of motivation for rejection; and*
- iii. Res judicata.*

The Board shall deal with each ground of appeal in turn.

a. The first ground of appeal

The Board observes that unlike many other cases, the appellant's application for a Single Permit was rejected on grounds of public policy and public security. It was not based on some failure to submit any feedback to the Agency or to any of its stake holders.

Therefore, this first ground of appeal is being rejected.

b. The second ground of appeal

The Board is disposed to agree with the appellant insofar as he claims that the Agency's decision of insufficiently motivated. The Agency, which filed neither a reply to the appeal nor any submissions of any sort, did not describe the specifics relative to why the appellant was deemed to threaten public policy and public security.

*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-ligi tkun siekta, sabiex iċ-ċittadin jipprova f'posizzjoni li jifhem ir-raġuni tar-rifjut u jekk iħossu aggravat bl-istess deċiżjoni ikun jista' jintavola appell abbażi tal-istess motivazzjoni.”

*The Agency has completely failed to explain what public policy or public security concerns motivated its decision. The Board cannot blindly adopt the Agency's conclusions or the conclusions sent to the Agency by stakeholders. In addition the Agency's decision constitutes a sweeping statement. As the Court of Appeal held in **Istok Lazarevic vs. Id-Direttur tad-Dipartiment għaċ-Ċittadinanza** (decided on 11th February 2019), the executive branch must state why the appellant poses a threat to public policy and public security and not simply claim that he is a threat.*

The appellant correctly pointed out that “At a minimum, Identity Malta had to indicate the name of the stakeholder and what time of information such stakeholder has supplied.”

*For the sake of completeness, the Board notes that in line with the judgment of the Court of Appeal **Fabio Vespa vs. Id-Direttur tad-Dipartiment għaċ-Ċittadinanza u l-Espatrijati**, it carried out an online search and found no judgments of a criminal nature against the appellant which were available online.*

Accordingly, the Board upholds the appellant's second grievance.

c. The third ground of appeal

The appellant's third grievance was that in a decision dated 6th January 2020 which related to him, the Board had already declared that there were “no grounds of public policy or public security.”

*However, the appellant is mistaken. A careful reading of the decision bearing number **IAB/SP?3552/2019** demonstrates that in that decision, the Board never declared that there existed no grounds of public policy and public security. Rather, in that decision, the Board had directed the Agency to liaise with Jobsplus in order to ascertain whether*

the appellant was ever illegally employed and rejected the appeal definitely only if the exercise in ascertainment conclusively determined that the appellant had been illegally employed in the past.

*In any case, the plea of res judicata can only succeed when the elements eadem res, eadem personae and eadem causa petendi are all present. Whereas eadem personae is definitely present, eadem res and eadem causa petendi are not present. Whereas the Board's decision bearing reference **IAB/SP/3552/2019** dealt with a Single Permit application decided by the Agency on 17th July 2018, the present decision deals with a Single Permit application decided by the Agency on 30th October 2020 and lodged by the appellant on 21st October 2020. It is therefore quite clear that this appeal deals with a matter that is completely different to the merits of case **IAB/SP/3552/2019**.*

Furthermore, it is stated for the sake of completeness that it could also be the case that considerations of public policy and public security would have entered the scene after that case was decided, in which situation there would be no space for the plea of res judicata.

Therefore, the third ground of appeal is rejected.

3. Further considerations

The Board has requested feedback from the Principal Immigration Officer and was informed that there is a valid Schengen Information System (SIS) alert issued by another Member State asking that the appellant be refused entry into the Schengen Area.

Therefore, if the appellant wishes to apply to work in Malta with Busy Bee, he must first obtain clearance from the Principal Immigration Officer.

4. Decision

Therefore, after having read the relative submissions as well as after having seen the provisions of Chapter 217 of the Laws of Malta and of S.L. 217.17, the Board rejects the appellant's appeal and recommends that if the appellant wants to apply for a Single Permit, he must first obtain clearance from the Principal Immigration Officer as stated hereinabove.

The Board orders that this decision be served on the parties without delay".

L-Appell

5. L-appellant intavola appell quddiem din il-Qorti mid-deċiżjoni appellata fl-14 ta' Settembru, 2021, fejn qed jitlob sabiex titħassar u tiġi annullata l-imsemmija deċiżjoni, u anki sabiex il-Qorti tagħti dawk id-direttivi u provvedimenti li jidhrilha opportuni nkluż li jingħata l-Permess Uniku sabiex ikompli jaħdem u jirrisjedi hawn Malta. Jgħid li l-aggravju tiegħu jikkonsisti fil-fatt li l-Bord ma setax b'mod legali jiċċad l-appell tiegħu, filwaqt li jilqa' it-tieni aggravju tiegħu.

6. Id-Direttur appellat wieġeb fl-1 ta' Ottubru, 2021 fejn issottometta li l-appell intavolat għandu jiġi miċċud, bl-ispejjeż kontra l-appellant, u dan għar-raġunijiet li jfisser fit-twegiba tiegħu.

Konsiderazzjonijiet ta' din il-Qorti

7. Il-Qorti ser tgħaddi sabiex qabel xejn tikkonsidra s-sottomissjoni preliminari magħmula mid-Direttur appellat li r-rikors tal-appell huwa rritwali stante li sar wara t-terminu ta' għaxart ijiem mid-data tan-notifika tad-deċiżjoni appellata, u dan skont kif jirrikjedi s-subartikolu 25A(8) tal-Kap. 217 tal-Liġijiet ta' Malta.

8. Il-Qorti tagħraf li dan hu minnu. Mill-atti tal-proċeduri li saru quddiem il-Bord, jirrizulta li fil-11 ta' Ġunju, 2021 intbagħtet ittra lill-appellant mill-Bord fejn gie mgħarraf bid-data u bil-ħin li kienet ser tingħata d-deċiżjoni appellata, b'dana li ma jidhirx li huwa rċieva din l-istess ittra, fejn fir-riferta hemm

indikazzjoni li din kienet '*unclaimed*'. Tgħid li m'hemm l-ebda notament li jindika li l-appellant ma kienx jirrisjedi f'dak l-indirizz.

9. Il-Qorti tosserva li huwa minnu li l-imsemmija ittra ntbagħtet f'indirizz ġewwa Birkirkara, meta skont il-permess tar-residenza tiegħu li kopja tiegħu tinstab esebita a *fol.* 31 u 32 tal-proċess, huwa għandu indirizz ieħor ġewwa Hāl Qormi. Iżda tosserva wkoll li meta ppreżenta l-appell tiegħu quddiem il-Bord permezz tal-avukat difensur tiegħu ta' dak iż-żmien, kien ġie ndikat li huwa jirrisjedi fl-ewwel indirizz, u dan wara li l-irċevuta tal-applikazzjoni tiegħu għall-ħruġ tal-Permess Uniku li kienet inħarget fit-30 ta' Mejju, 2019 saret fuq l-indirizz ta' Hāl Qormi. Tinnota wkoll li wara li ppreżenta l-appell tiegħu quddiem il-Bord, fl-ittra ta' dan tal-aħħar tal-11 ta' Novembru, 2020 li ntbagħtet lill-imsemmi appellant, kien hemm miktub b'mod ċar li huwa kien tenut li jinforma lill-istess Bord hekk kif ibiddel l-indirizz tiegħu, iżda ma jidherx mill-atti li huwa qatt ġibed l-attenzjoni tal-Bord li l-indirizz ta' Birkirkara kif indikat mill-avukat difensur tiegħu fl-ittra tal-appell, ma kienx għadu validu. Għalhekk il-Qorti tgħid li l-Bord kien korrett meta kkomunika mal-appellant f'dan l-indirizz ġewwa Birkirkara, anki meta baġat javżah bid-data u bil-ħin meta kienet ser tingħata d-deċiżjoni appellata. Għalhekk l-appellant ma jistax illum jittenta jissana d-difett proċedurali tal-appell tardiv tiegħu quddiem din il-Qorti billi jikkontendi li l-indirizz fejn ikkomunika miegħu l-Bord ma kienx dak attwali tiegħu.

Decide

Għar-raġunijiet premessi, il-Qorti tastjeni milli tiegħu konjizzjoni tal-appell odjern stante li jirrizulta li dan hu tardiv, u għalhekk irritu u null, bl-ispejjeż kontra l-appellant.

Moqrija.

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

**Rosemarie Calleja
Deputat Registratur**