



MALTA

QORTI TAL-APPELL
(Sede Inferjuri)

ONOR. IMĦALLEF
LAWRENCE MINTOFF

Seduta tal-1 ta' Ġunju, 2022

Appell Inferjuri Numru 108/2021 LM

Yaman (Police Number 21CA-010)
(‘l-appellant’)

vs.

L-Uffiċjal Prinċipali tal-Immigrazzjoni
(‘l-appellat’)

Il-Qorti,

Preliminari

1. Dan huwa appell magħmul mill-appellant **Yaman (Police Number 21CA-010 - K.I. nru. 0255215A – Passaport Indjan nru. T5157050)** [minn issa ‘l quddiem ‘l-appellant’] mid-deċiżjoni tal-11 ta’ Ottubru, 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 tal-**Uffiċjal Prinċipali tal-Immigrazzjoni** [minn issa 'l quddiem 'l-appellat l-Uffiċjal Prinċipali tal-Immigrazzjoni'], u kkonferma l-Ordni għat-Tneħħija u għar-Ritorn tiegħu għar-raġunijiet hemm imfissra.

Fatti

2. Il-fatti tal-appell odjern jirrigwardaw id-deċiżjoni tal-appellat l-Uffiċjal Prinċipali tal-Immigrazzjoni, kif ikkomunikata lill-appellant fit-30 ta' Mejju, 2021, li tinħareġ Ordni tat-Tneħħija u għar-Ritorn fil-konfront tiegħu, u dan stante li huwa nstab li kien immigrant ipprojbit *ai termini* tal-artikolu 5 tal-Kap. 217.

Mertu

3. L-appellant appella l-Ordni tat-Tneħħija u għar-Ritorn tiegħu quddiem il-Bord fl-1 ta' Ġunju, 2021 sabiex id-deċiżjoni tal-appellat Uffiċjal Prinċipali tal-Immigrazzjoni tiġi mħassra, filwaqt li huwa jiġi reintegrat fil-pożizzjoni tiegħu qabel ma nħarget dik l-Ordni billi wkoll jingħata d-dritt ta' moviment liberu fiż-Żona Schengen.

Id-deċiżjoni appellata

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

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

The Board saw that during the sitting of 2nd June 2021, Insp. Frankie Sammut, who was appearing for his colleague, Insp. Christian Abela, declared that the police had carried out an inspection and the appellant was found to have been an overstayer for twenty-four (24) days. Insp. Sammut testified that when the Police spoke to the appellant, he told them that he did not submit documents to renew his residence permit but was following an online course at Domain Academy. Questioned by the Board, Insp. Sammut stated that the appellant could not possibly live and pay for his expenses in Malta without working illegally, which was probably the case since his course only took up two hours each week.

During another sitting, PS2095 Tonia Azzopardi testified under oath. She stated that on 30th May 2021 she carried out an inspection in Msida and was looking for someone called "Philippe". Instead, she found seven Indian nationals. She said that the appellant had an expired residence permit and had been overstaying for thirty-four (34) days. When cross-examined, PS2095 stated that the appellant told her he had a pending application but then showed her an e-mail, not an application.

Dr Cynthia Tomasuolo, representing Identity Malta Agency, testified that she had no information but bound herself to appear at the sitting of 7th September 2021.

Joanna Attard (447180M), produced by the appellant, under oath declared that she kept the appellant in her own house for around two months. She did not remember when but remembered that it was during winter. She charged him no rent and said that he had told her he was in Malta to study. She did not check his documentation.

Dr Cynthia Tomasuolo testified during the sitting of 7th September 2021. She said that the appellant had been granted a residence permit on the basis of studies but there was no other application or subsequent application. Under cross-examination, she confirmed however, that an application submitted to the Agency via e-mail would not appear in the Agency's system. Such applications would be considered "in progress" and not finalised. They would be in their very initial stages. When shown a document marked "B", she confirmed that the appellant's application was being handled by the Agency and that an extension was going to be granted. She stated that the Agency would have given him an extension but that was not an application. She then confirmed that the appellant's permit expired on 26th April 2021.

Insp. Abela also testified. He stated that the inspection took place following a report. He stated that the inspection could not have targeted the appellant. He was not present during the inspection and the Removal Order was only issued after contact

with Identity Malta Agency. The only e-mail he saw was dated after the expiration of the residence permit.

The Board saw the appellant's affidavit (document "YY1") in which he stated:

"On the 26th of April 2021 I informed Identity Malta that I was in the process of compiling all my documents (Doc B1) and sent them all the documents on the 28th April 2021 (Doc B2) and on the 5th of May 2021, Identity Malta requested the lease agreement and rental declaration form."

The appellant's affidavit continues to explain that he ran into problems related to the lease agreement and his accommodation arrangements. It is evident to the Board that these delayed the processing of the application for renewal. He confirmed that he had been in touch with the Agency.

The Board can only conclude that the appellant was solely responsible for the problems he faced. In his affidavit, he admitted that it was only on the day his permit expired (26th April 2021) that he sent an e-mail to the Agency to start the process for renewal of his permit. Furthermore, in his e-mail to noneu.ima@gov.mt, he very clearly said that he still had to procure some additional documents. This means that when he made contact with the Agency, he had not yet fully compiled his documentation.

The appellant could have avoided these problems had he applied for renewal of his permit at least two months prior to 26th April 2021.

The Board very carefully read the e-mail exchanges between the appellant and Identity Malta Agency. It emerges that on 1st June 2021, a certain "Melanie" (from noneu-ima@gov.mt) informed him that when he presented the new lease agreement and rental form, the Agency could issue an extension letter (this being the receipt of application, colloquially known as the "blue paper").

It is the Board's view that the Return Decision was on solid foundation insofar as it was based on at least three grounds evidently proved. It is perfectly true that after 26th April 2021, the appellant was present in Malta without a permit and had neither a renewed permit nor temporary authorisation to stay in Malta pending an application for renewal of his permit."

L-Appell

5. L-appellant ippreżenta r-rikors tal-appell tiegħu quddiem din il-Qorti fil-21 ta' Ottubru, 2021, fejn talab sabiex titħassar u tiġi revokata d-deċiżjoni appellata u minflok tilqa' it-talbiet tiegħu, bl-ispejjeż taż-żewġ istanzi kontra l-appellat l-Uffiċjal Prinċipali tal-Immigrazzjoni. Jgħid li l-aggravji tiegħu huma (a) dwar il-provi li straħ fuqhom il-Bord; u (b) dwar in-nuqqas tal-Bord li jikkonsidra l-agravi kollha tiegħu.

6. L-appellat Uffiċjal Prinċipali tal-Immigrazzjoni ppreżenta r-risposta tiegħu fil-1 ta' Novembru, 2021 fejn sostna li l-appell odjern għandu jiġi miċhud għal dawk ir-raġunijiet li huwa jfisser fl-imsemmija risposta, u dan bl-ispejjeż kontra l-appellant.

Konsiderazzjonijiet ta' din il-Qorti

7. Il-Qorti ser tgħaddi sabiex qabel xejn tikkonsidra is-sottomissjoni tal-appellat Uffiċjal Prinċipali tal-Immigrazzjoni magħmula *ai termini* tas-subartikolu 25A(8) tal-Kap. 217. Jikkontendi li minn qari tar-rikors tal-appell kien jirrizulta b'mod ċar li permezz tal-aggravji li qed iressaq l-appellant, qed jintalab li ssir reviżjoni tal-provi li tressqu quddiem il-Bord, u mhux li jiġi diskuss xi punt ta' dritt. In sostenn tal-argument tiegħu, huwa jagħmel riferiment għal diversi deċiżjonijiet ta' din il-Qorti u tal-Qorti tal-Appell (Superjuri).

8. Il-Qorti tagħraf li tassew l-appell odjern ma sarx fil-parametri stabbiliti mis-subartikolu 25A(8) tal-Kap. 217, u għaldaqstant m'għandhiex tiegħu

konjizzjoni tiegħu. Tikkonsidra li l-argumenti migjuba mill-appellant fir-rikors tal-appell tiegħu, huma kollha msejsa fuq il-provi li saru quddiem il-Bord, u għalhekk huma diretti lejn l-apprezzament tagħhom kif magħmul mill-Bord. L-ewwel aggravju kif intestat, mill-ewwel jindika n-natura tal-ilment li qed iressaq l-appellant, li huwa l-apprezzament li l-appellant ma stenniex mingħand il-Bord tal-provi li kellu quddiemu. L-appellant imbagħad jgħaddi għat-tieni aggravju tiegħu fejn jikkontendi li l-Bord naqas milli jikkonsidra l-gravami kollha tiegħu. Iżda hawn ukoll il-Qorti ssib li l-ilment tal-appellant jirrigwarda l-mertu, u proprju l-argument tiegħu li l-applikazzjoni tiegħu għat-tigdid tal-permess kienet għadha qiegħda tiġi kkunsidrata mill-Aġenzija Identity Malta. Għalhekk mingħajr l-ebda tlaqliq il-Qorti tgħid li l-appellant mhux qed iqajjem l-ebda punt ta' liġi fl-appell tiegħu sabiex jiġi deċiż minnha.

Decide

Għar-raġunijiet premessi, il-Qorti tastjeni milli tiegħu konjizzjoni tal-appell odjern, filwaqt li tiddikjarah inammissibbli u b'hekk irritu u null.

L-ispejjeż tal-appell odjern, u dawk tal-proċeduri quddiem il-Bord, għandhom ikunu a karigu tal-appellant.

Moqrija.

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

**Rosemarie Calleja
Deputat Registratur**