



MALTA

QORTI TAL-APPELL
(Sede Inferjuri)

ONOR. IMĦALLEF
LAWRENCE MINTOFF

Seduta tad-9 ta' Novembru, 2022

Appell Inferjuri Numru 12/2022 LM

Andrii Voloshin (K.I. nru. 109992A)
(‘l-appellant’)

vs.

Il-Kummissarju tal-Pulizija bħala l-Uffiċjal Prinċipali tal-Immigrazzjoni
(‘l-appellat’)

Il-Qorti,

Preliminari

1. Dan huwa appell magħmul mill-appellant **Andrii Voloshin (K.I. nru. 109992A)** [minn issa ‘l quddiem ‘l-appellant’] mid-deċiżjoni tal-10 ta’ Jannar, 2022, [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'] għar-raġunijiet hemm imfissra.

Fatti

2. Il-fatti tal-appell odjern jirrigwardaw dak li l-Bord qies bħala d-deċiżjoni tal-appellat, kif ikkomunikata lill-appellant fl-4 ta' Mejju, 2021, fejn gie mgħarraf li ma kellu bżonn l-ebda awtorizzazzjoni sabiex isiefer lejn l-Ukrajina, iżda mat-tluq tiegħu kienet ser tinħareġ projbizzjoni kontra d-dħul lura f'Malta. Fis-6 ta' Mejju, 2021 imbagħad gie mgħarraf li l-każ tiegħu kien qiegħed jiġi kkunsidrat bħala wieħed magħluq.

Mertu

3. L-appellant appella quddiem il-Bord fis-6 ta' Mejju, 2021, sabiex id-deċiżjoni tal-appellat tiġi mħassra, fejn filwaqt li fisser il-każ tiegħu, talab sabiex:

“...apart from any other decision that the Board may deem appropriate to decide, humbly requests to:

i. Order the Principal Immigration Officer to send the acts of the application for the said application to be decided by this Honourable Board, or

ii. Alternatively, order the Immigration Police Officer to decide the application without further delay, and this without prejudice to the right of the Appellant to appeal such decision should he feel aggrieved with the final decision”.

Id-deċiżjoni appellata

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

“1. Preliminary

The Board:

Saw the appeal registered on 6th May 2021;

Saw the reply filed by Identity Malta Agency on 16th July 2021;

Saw that the Principal Immigration Officer filed no reply; and

Read the entire case file.

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.*

In his appeal, the appellant stated:

- *That on 23rd October 2018, the appellant asked the Principal Immigration Officer (PIO) to regularise his own position and that of his wife and minor son;*
- *That the request for regularisation was supported by a letter of commitment from Mr Carmelo Vassallo and Mr Maximino Vassallo, who committed themselves to employ the appellant according to law;*
- *That on 31st October 2018, the PIO acknowledged receipt of the application;*

- *That on 29th March 2021, the appellant wrote to the PIO again to remind him that no decision on his application had been taken in twenty-nine months and that by that time, the appellant's Ukrainian passport had expired;*
- *That in the meantime, the appellant wrote again to the PIO, stating that both his parents in Ukraine were seriously unwell and that he needed to visit them and whilst there, renew his passport;*
- *That on 29th April 2021, Superintendent Louise Vella wrote to the appellant's advocate and asked him to "...specify what Mr Voloshyn intends to do if his situation is regularised";*
- *That later on 29th April 2021, the appellant's advocate replied to Superintendent Vella;*
- *That the appellant felt aggrieved by the decision of the PIO and reiterated that his case had been pending for over twenty-nine months.*

It is clear to the Board that the principal thrust of the appeal is the appellant's claim that he was left waiting for twenty-nine months without a definite reply.

The Board disagrees. Whilst an answer ought to have been forthcoming within a far shorter timeframe, the Board saw, in particular, Superintendent Vella's e-mail of 4th May 2021. In that email, Vella stated:

"Please be informed that if Mr Voloshyn wants to proceed to Ukraine as being stated in your email, there is no need for him to wait for any authorisation. He will be issued with an entry ban upon departure, since he is illegal.

While abroad, he can submit an application for a working permit and if this is issued, we will delete his entry ban. We would also need to be informed once he submits this application as still-abroad."

It is clear that Superintendent Vella's e-mail constitutes a clear decision. She was correct to state that the appellant needed no authorisation to leave Malta and was free to leave at any time. By stating that the appellant would be issued with an entry ban at the airport as he left, she essentially stated that the request for regularisation was being rejected. However, she also made it clear that should the appellant wish to work in Malta, the entry ban would be lifted once the Single Permit application was approved by Identity Malta Agency.

In her e-mail, Vella communicated the course of action with the PIO would take and the steps to be taken by the appellant.

Therefore, the appellant's second request (to order the PIO to decide upon the application without delay) is baseless, as the application was decided through Superintendent Vella's e-mail of 6th May 2021. In view of this, the appellant's first request (in which he asked the Board to itself decide upon the request for regularisation).

*This is being stated particularly as the appellant has not contested that he is here illegally. He has not even claimed that he is **not** illegally present. Had it been the case that the appellant was legally present but was somehow mistakenly deemed illegally present, it would have been another matter altogether.*

3. Decision

Therefore, after having read the relative submissions as well as after having seen the provisions of Chapter 217 of the Laws of Malta, of S.L. 217.17, the Board rejects the appellant's appeal and suggests that the appellant should proceed according to Superintendent Vella's instructions as contained in the e-mail of 6th May 2021 should he still wish to be present in Malta."

L-Appell

5. L-appellant ipprezenta r-rikors tal-appell tiegħu quddiem din il-Qorti fit-3 ta' Marzu, 2022 fejn qed jitlob is-segweni:

- "I. Jiddikkjara illi l-ittra tal-4 ta' Mejju 2021 mibgħut mis-Supretendent Vella f'isem il-Kummissarju tal-Pulizija fil-kapaċità tiegħu tal-Uffiċjal Prinċipali tal-Immigrazzjoni u l-kontenut tagħha ma hiex determinazzjoni jew deċiżjoni tal-applikazzjoni tal-Appellant tat-23 ta' Ottubru 2020 għar-regolarizzazzjoni tal-istatus tal-immigrazzjoni tiegħu skont il-Liġi;*
- II. Iħassar għalhekk id-deċiżjoni appellata tal-Bord tal-Appelli dwar l-Immigrazzjoni mogħtija fl-ismijiet premessi nhar l-10 ta' Jannar 2022; u*
- III. Jibgħat l-atti ta' dawn il-proċeduri lura quddiem l-Bord tal-Appelli dwar l-Immigrazzjoni sabiex jiddeċiedi l-appell tal-Appellant fil-prim'istanza fid-dawl tad-deċiżjoni ta' dina l-Onorabbli Qorti;*

Bl-ispejjeż."

Jgħid li l-aggravji tiegħu huma dawn: (i) ma ngħatawx raġunijiet għad-deċiżjoni tal-appellant; (ii) il-Bord għamel apprezzament ħażin tal-fatti u tal-provi; (iii) deċiżjoni għandha tiġi notifikata lill-appellant.

6. L-appellant għazel li ma jipprezenta l-ebda twegiba.

Konsiderazzjonijiet ta' din il-Qorti

7. Il-Qorti ser tgħaddi sabiex tikkonsidra l-aggravji tal-appellant, u dan fid-dawl ta' dak li tenna l-Bord fid-deċiżjoni appellata. L-ewwel aggravju tiegħu huwa li deċiżjoni ta' korp tal-Istat għandha tkun ċara u inekwivoka, u jgħid li għalhekk huwa jhossu aggravat ferm illi l-Bord ikkunsidra l-ittra tal-4 ta' Mejju, 2021 tas-Supretendent Vella bħala deċiżjoni ċara li l-applikazzjoni tiegħu kienet qegħda tiġi miċhuda, u dan minkejja li l-ebda awtorizzazzjoni ma ntalbet għat-tluq minn Malta lejn l-Ukrajina. Jikkontendi li l-istqarrija tas-Supretendent Vella f'isem l-appellant ma kellhiex u m'għandhiex titqies bħala komunikazzjoni ta' determinazzjoni konklussiva tal-applikazzjoni tiegħu. L-appellant jirriveva li b'hekk il-Bord mar kontra d-disposizzjonijiet tal-artikolu 2 tal-Att dwar il-Ġustizzja Amministrattiva [il-Kap. 490], għaliex jekk dik l-istqarrija titqies bħala deċiżjoni, jgħid li l-ebda raġuni ma ngħatat għaliha.

8. Il-Qorti tagħraf li jirrizulta mill-ittra tal-appellant tat-23 ta' Ottubru, 2018, li huwa kien ressaq appell quddiem il-Bord tal-Appelli għar-Refuġjati wara li t-talba tiegħu u tal-familja tiegħu sabiex jiġi estiż it-*Temporary Humanitarian Protection Status*, kienet giet miċhuda. Dak il-Bord kien ċaħad l-appell tiegħu u dan huma jgħidu li saru jafuh fid-19 ta' Ottubru, 2018 meta marru sabiex jiġu

estiżi l-permessi tagħhom għal residenza temporanja. Għalhekk, tramite l-avukat tagħhom kienu kitbu lill-Kummissarju tal-Pulizija permezz tal-ittra suriferita, fejn filwaqt li fessru ċ-ċirkostanzi diffiċli u partikolari tagħhom, talbu l-*Immigration Unit* sabiex tiġi regolarizzata l-pożizzjoni tagħhom hawn Malta sabiex imbagħad huma setgħu jipproċedu billi japplikaw għal Permess għal Residenza ma' *Identity Malta*. Fl-istess ittra ġie rilevat li l-appellant, għalkemm kien tilef il-permess tax-xogħol tiegħu meta dan ġie revokat flimkien mat-*Temporary Humanitarian Protection Order*, kien sab impjeg bil-kundizzjoni li huwa jirregolarizza l-pożizzjoni tiegħu mal-awtoritajiet kompetenti. Madankollu permezz ta' *email* tad-29 ta' April, 2021, intalab mis-Supretendent Vella sabiex l-appellant jispeċifika x'kellu f'moħħu li ser jagħmel jekk il-pożizzjoni tiegħu tiġi regolarizzata. Dan kollu ġie spjegat mill-avukat tiegħu permezz ta' *email* tal-istess jum, iżda f'*email* oħra tal-4 ta' Mejju, 2021 intalab mingħandu min kien il-prinċipal futur tiegħu, u l-appellant wieġeb dakinhar stess billi bagħat *letter of intent* mingħand il-prinċipal tiegħu. B'hekk imbagħad huwa rċieva l-komunikazzjoni tal-4 ta' Mejju, 2021.

9. Il-Bord qies li l-*email* tal-4 ta' Mejju, 2021 “...constitutes a clear decision”, u osserva li s-Supretendent Vella “by stating that the appellant would be issued with an entry ban at the airport as he left, she essentially stated that the request for regularisation was being rejected”. Il-Qorti ma taqbilx mad-deċiżjoni tal-Bord, u tgħid li l-appellant kellu mhux biss jagħti deċiżjoni f'waqtha kif ikkonstata l-Bord, iżda din kellha tkun waħda ċara, preċiża u motivata. Il-Qorti tgħid li l-appellant kellu kull dritt fiċ-ċirkostanzi partikolari li huwa kien jinsab fihom, li jkun jaf mingħajr l-ebda dewmien jekk il-pożizzjoni tiegħu kinitx ser tiġi regolarizzata jew le, u fin-nuqqas kellu wkoll ikun jaf ir-raġunijiet għaliex it-talba

tiegħu kienet qegħda tiġi miċħuda, sabiex b'hekk seta' jirregola ruħhu aħjar. Il-Qorti għalhekk ser tilqa' dan l-ewwel aggravju tal-appellant, u filwaqt li tgħid li l-konsegwenza hija li għandhom jintlaqgħu t-talbiet kollha tiegħu, tikkunsidra li hija għandha tastjeni milli tiegħu konjizzjoni tal-kumpliment tal-appell tiegħu.

Decide

Għar-raġunijiet premissi, il-Qorti taqta' u tiddeċiedi l-appell odjern billi tilqa' it-talbiet kollha tal-appellant, u filwaqt li tħassar id-deċiżjoni appellata, tordna li l-atti tal-proċeduri odjerni għandhom jintbagħtu lura quddiem il-Bord sabiex dan jiddeċiedi l-appell tal-appellant quddiemu skont dak deċiż minn din il-Qorti.

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

Moqrija.

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

**Rosemarie Calleja
Deputat Registratur**