



MALTA

QORTI TAL-APPELL
(Sede Inferjuri)

ONOR. IMĦALLEF
LAWRENCE MINTOFF

Seduta tas-26 ta' Lulju, 2023

Appell Inferjuri Numru 40/2023 LM

Bhuia Paran (Passaport tal-Bangladesh nru. EF 0077674)
(‘l-appellant’)

vs.

Uffiċjal Principali tal-Immigrazzjoni
(‘l-appellat’)

Il-Qorti,

Preliminari

1. Dan huwa appell magħmul mill-appellant **Bhuia Paran (Detentur tal-Passaport tal-Bangladesh Numru EF 0077674)** [minn issa ‘l quddiem ‘l-appellant’] mid-deċiżjoni tat-23 ta’ Marzu, 2023, [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-Uffiċjal Prinċipali appellat'] kif ikkomunikata lill-appellant l-1 ta' Ġunju, 2022, li tinħareġ Ordni tat-Tneħħija u għar-Ritorn fil-konfront tiegħu għar-raġunijiet hemmhekk imfissra.

Fatti

2. Il-fatti tal-appell odjern huma s-segwent. L-appellant kien ġie hawn Malta f'Mejju tal-2022 mill-Bangladesh, wara li (a) huwa kien ottjena D-visa mill-Kummissjoni Għolja Maltija f'New Delhi għall-fini ta' impjieg, u li kienet valida għal żmien wieħed u disgħin jum; u (b) kienet inħarġitlu *'approval in principle letter'* mill-*Identity Malta* għall-applikazzjoni għall-permess uniku. Ftit wara l-wasla tiegħu hawn Malta, l-appellant kien mar l-Italja iżda ma ngħatax permess li jidhol fil-pajjiż, u għalhekk intbagħat lura hawn Malta fejn l-Uffiċjal Prinċipali appllellat ħareġ ordni għar-ritorn u għat-tneħħija tiegħu għaliex *"On the 01/06/2022 you were sent back from Italy after you travelled to Fiumicino – Rome with a Maltese Visa for Employment purpose"*.

Mertu

3. L-appellant appella din id-deċiżjoni quddiem il-Bord fit-3 ta' Ġunju, 2022 sabiex id-deċiżjoni tal-appellat tiġi mħassra, fejn filwaqt li fisser il-każ tiegħu talab sabiex:

"...this Honourable Board to:

"1. appoint a date for the hearing of this Appeal;

2. *grant the appellant the faculty to summon witnesses at the sitting being requested and to make subsequent final submissions;*
3. *Order the suspension of the RETURN DECISION/REMOVAL ORDER pending tribunal proceedings;*
4. *Declare that the RETURN DECISION/REMOVAL ORDER ISSUED AT THE BORDER, marked Doc A, null and counter to the Law;*
5. *Order the cancellation of the RETURN DECISION/REMOVAL ORDER ISSUED AT THE BORDER, marked DOC A, of the appellant;*
6. *Order Identity Malta to renew residence permit or right to stay.*

Saving other provisions which this honourable Board may deem necessary”.

Id-deċiżjoni appellata

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

“The Board makes reference to the above, various board sittings held, witnesses produced, documents presented and written submissions made by both parties. From proof and documents presented to this Board, it clearly results that appellant was granted leave to come to Malta for employment purpose. It transpired that two days later and without having made contact with his prospective employer, appellant proceeded to depart from Malta to Rome by making use of the type D visa which was issued specifically for appellant to travel to Malta to finalise his single permit application. As it has resulted from witnesses produced, at no stage did appellant contact the Agency to schedule an appointment to complete and finalise the single permit application. Appellant argues that there is no time frame set out for him to schedule such an appointment and this was also confirmed by witness summoned who was specifically asked this question. However from all the evidence produced referably the fact that appellant travelled to Malta on the 29th of May, 2022, departed on the 31st May, 2022 destination Rome, bought through a third party a return ticket back to Malta on the 6th of June, 2022 at an hour when appellant had already been stopped by the Italian Authorities. This shows that at the time appellant departed from Malta, he was never in possession of a return flight ticket. The return flight ticket was purchased at a later stage and when appellant realized what had happened.

Appellant was issued with a Type D visa which is a ticket allowing third country nationals to freely travel to any Schengen zone and unfortunately appellant used the Type D visa issued to him to cheat the system. Appellants intention has resulted obvious. His intention was never to complete the single permit application but was to depart from Malta to Italy. This was curtailed when the appellant and his three other companions were stopped by the Italian authorities and sent back to Malta. It was at this stage that a third party purchased a return ticket Rome - Malta to try and make the authorities believe that appellants intention was that of returning to Malta. However the time it was purchased certainly proves otherwise.”

L-Appell

5. L-appellant ipprezenta r-rikors tal-appell tiegħu quddiem din il-Qorti fit-3 ta' April, 2023, fejn qiegħed jitlob sabiex jogħgobha:

“...tħassar u tirrevoka s-sentenza appellata tal-Bord tat-23 ta' Marzu, 2023 fl-ismijiet premissi u (i) tibgħat l-Atti lura lill-istess Bord sabiex wara li jisma' lill-partijiet jgħaddi għad-deċiżjoni jew fin-nuqqas (ii) wara li tisma' lill-partijiet u tiddeċiedi dwar il-mertu billi tilqa' t-talba tal-esponenti appellant u tordna lill-intimat appellat jogħgbu jhassar id-deċiżjoni tal-Ordni tat-Tneħħija u għar-Ritorn fil-konfront tiegħu tal-1 ta' Ġunju, 2022, bl-ispejjeż taż-żewġ istanzi kontra l-intimat appellat.”

Jgħid li l-aggravji tiegħu huma dawn: (a) il-Bord ma ddeċidiex skont l-aggravji li tressqu quddiemu, u għalhekk id-deċiżjoni appellata mhijiex finali *ai termini* tas-subartikolu 25 (8) tal-Kap. 217; (b) id-deċiżjoni appellata hija nulla għaliex ma segwietx ir-rekwiziti tal-Kap. 12; (ċ) il-Bord ma kkunsidrax id-dokumentazzjoni li huwa kien ipproduċa in sostenn tal-pożizzjoni tiegħu; u (d) il-piena mposta mill-Uffiċjal Prinċipali ntimat hija sproporzjonata.

6. L-Uffiċjal Prinċipali appellat wieġeb fis-17 ta' April, 2023 fejn issottometta li d-deċiżjoni appellata hija waħda ġusta u tajba, u għandha tiġi kkonfermata fl-intier tagħha.

Konsiderazzjonijiet ta' din il-Qorti

7. Il-Qorti ser tgħaddi sabiex qabel xejn tikkunsidra l-ewwel kwistjoni li jqajjem l-Uffiċjal Prinċipali appellat fir-risposta tiegħu, dik tan-nullità u tal-inammissibilità tal-appell odjern stante li skont id-disposizzjonijiet tas-subartikolu 25A (8) tal-Kap. 217 id-deċiżjoni tal-Bord hija finali għajr għal dawk il-persuni msemmija fit-Taqsima III li għandhom dritt ta' appell fuq punt ta' dritt biss. Jikkontendi li l-appellant mhuwiex persuna msemmija fit-Taqsima III, għaliex la huwa ċittadin ta' Stat Membru u lanqas jinsab legittimament fit-territorju ta' xi Stat li huwa marbut bi Ftehim dwar Fruntiera. Huwa jiċċita żewġ sentenzi ta' din il-Qorti sabiex isaħħaħ l-argument tiegħu.

8. Il-Qorti tikkunsidra li l-Uffiċjal Prinċipali appellat għandu raġun, u l-pożizzjoni tal-appellant mhijiex waħda korretta. Tgħid li l-appellant ma jistax jitqies li kien jinsab hawn Malta legittimament galadarba rriżulta li huwa (a) ma kienx ġie hawn Malta mill-Italja bil-permess tal-Uffiċjal Prinċipali ntimat; (b) ma setax juri li huwa kellu l-mezzi sabiex isostni lilu nnifsu għaliex ma kellu l-ebda impjeg; (ċ) ma kienx ottempora ruħu mal-kundizzjonijiet tal-*Visa Type D* maħruġa lilu bil-għan li jsib xogħol hawn Malta fejn huwa kellu 60 jum sabiex jiffinalizza l-proċedura tal-applikazzjoni għall-permess uniku, u minflok siefer lejn l-Italja wara jumejn u saħansitra ma kellu l-ebda ħsieb li jirritorna lura lejn Malta, u l-biljett tal-ajru lura għal Malta inxtara proprju hekk kif twaqqaf fl-

ajruport ta' Ruma mill-Awtoritajiet Taljani. Konsegwentement huwa kien ukoll kiser id-disposizzjonijiet tal-Kap. 217. Dawn il-fatti li jirrizultaw lill-Qorti mill-inkartament tal-Bord, sew mid-dokumenti esebiti kif wkoll mill-atti l-oħra, bl-ebda mod ma jirrizultaw b'xi mod ikkontestati mill-appellant, u għadarba huwa mar kontra d-disposizzjonijiet tal-artikolu 5 tal-Kap. 217, għandu jitqies bħala immigrant ipprojbit għall-finijiet tad-disposizzjonijiet tal-imsemmi Att, li jfisser li huwa ma kellu l-ebda dritt jappella mid-deċiżjoni appellata.

Decide

Għar-raġunijiet premissi, il-Qorti tastjeni milli tieġu konjizzjoni tal-appell intavolat mill-appellant.

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**