



MALTA

QORTI TAL-APPELL
(Sede Inferjuri)

ONOR. IMĦALLEF
LAWRENCE MINTOFF

Seduta tat-12 ta' Marzu, 2025

Appell Inferjuri Numru 76/2024 LM

Amor Correa Estefanio (K.I. numru 336698A)
('L-appellanta')

vs.

Uffiċjal Prinċipali tal-Immigrazzjoni
('L-appellat')

Il-Qorti,

Preliminari

1. Dan huwa appell magħmul mill-appellanta **Amor Correa Estefanio (Karta ta' Identità Numru 336698A)** [minn issa 'l quddiem 'l-appellanta'] mid-deċiżjoni tat-22 ta' Awwissu, 2024, [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 tagħha mid-deċiżjoni ta' ritorn u ta'

ordni tat-tneħħija tal-intimat **Uffiċjal Prinċipali tal-Immigrazzjoni** [minn issa 'l quddiem 'l-Uffiċjal Prinċipali appellat'] li saru fil-konfront tagħha.

Fatti

2. L-appellanta kienet qiegħda Malta bis-saħħa ta' permess uniku validu bejn id-9 ta' Frar, 2024, u d-19 ta' Frar, 2025, reġistrata bħala mpjegata ta' Support Services Ltd bħala *care worker*. Hekk kif saret spezzjoni kongunta mill-uffiċjali ta' Jobsplus u tal-Uffiċjal Prinċipali tal-Immigrazzjoni fil-fond kummerċjali bl-isem 'Art du Style' ġewwa Birkirkara, hija nstabat hemm mingħajr il-permess neċessarju ta' xogħol. B'hekk l-Uffiċjal Prinċipali appellat fit-28 ta' Frar, 2024, ħareġ deċiżjoni ta' ritorn u ordni tat-tneħħija fil-konfront tagħha. Sussegwentement l-appellant irċieva ittra mingħand Identità Malta bid-data tal-11 ta' Marzu, 2024, fejn gie nfurmat li l-permess ta' residenza tagħha kien qiegħed jiġi revokat.

Mertu

3. L-appellanta stitwiet proċeduri ta' appell quddiem il-Bord fl-1 ta' Marzu, 2024, permezz tal-avukat tal-fiduċja tagħha, sabiex b'hekk ikkontestat id-deċiżjoni ta' ritorn u l-ordni tat-tneħħija.

Id-deċiżjoni appellata

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

"Return decision and removal order dated 28th of February, 2024

The grounds upon which return decision, removal order and entry ban have been issued are:

- You landed or are in Malta without leave from the Principal Immigration Officer;*
- You contravened the provisions of the Immigration Act or any of the regulations made thereunder;*
- You are unable to show that you have the means of supporting yourself and your dependents (if any) or you or any or your dependents is likely to become a charge on the public funds;*
- The circumstances which determined the granting of leave to land or to land and remain in Malta or the extension of such leave or the granting of a residence permit ceased to exist;*

During the hearing of this appeal, appellant requested the Immigration Appeals Board to consider bail request, which request was upheld on the 12th of March, 2024 under conditions as imposed.

Facts of the Case

Inspector in charge of this return decision and removal order informed the Immigration Appeals Board that a joint inspection by Jobsplus and the Immigration police was carried out at Art du Style in Birkirkara. Appellant was on the premises and was found carrying work related to beauty therapy.

Appellant was requested to show to the inspectors her residence permit and upon checking it resulted that appellant was registered for work as a care worker. A temporary permit was not provided.

It resulted that appellant arrived in Malta a year and 3 months ago.

Various witnesses from amongst the Inspectors from Jobsplus and the Immigration Police testified and stated that appellant was found inside the premises and at the time she was doing a massage. Appellants prospective employer was also spoken to who told the inspectors that appellant was on trial. On the day the Inspectors who were present clearly explained to the owner of the salon that there is no such thing as trial.

On the 2nd of May, 2024 Helen Lee Farrugia, owner of Art du Style testified and stated that on many occasions appellant visits her salon as she is friends with one of her employees. She also helps her in buying online products. Helen Lee Farrugia stated that and on the day of the inspection appellant asked her if she could practice on a

friend and at the time of the inspection according to witness, appellant was only practising on a friend. Helen Lee Farrugia also confirmed that she was interested in offering appellant a part-time job since appellant is also a beautician.

Considerations

From evidence produced the Immigration Appeals Board notes that the Principal Immigration Officer provided sufficient evidence, corroborated not only by evidence tendered by Jobsplus inspectors and Immigration Police who were on site on the day of the inspection, which evidence was also confirmed by Helen Lee Farrugia who testified that on the day of the inspection appellant was on trial. There is no such thing as trial. When an individual is employed, that individual is on probation and the employer can terminate the employment during the probation period as is prescribed by law.

On the day the return decision and removal order were issued, appellant was working and tried to convince the inspectors and this Board that she was on trial. Facts clearly show otherwise. It so results that she was carrying out a second job without the necessary permit or authorisation from the regulator.

*In the judgement **Ray Kumar Gurung vs Uffiċjal Prinċipali tal-Immigrazzjoni**, delivered on the 8th of May, 2024 (56/2023 LM) the Court of Appeal in its inferior jurisdiction stated,*

“għandu jiġi ppuntwalizzat illi l-permess li kellu l-appellant kien jippermettilu biss jidhol f’Malta, u l-permess ta’ xogħol li nħareġ f’ismu, kien biss sabiex huwa seta’ jaħdem mal-kumpannija JTI Limited. Barra minn hekk l-eżerċizzju ta’ diligenza dovuta li sar qabel inħarġu l-permessi meħtieġa sabiex l-appellant seta’ jivvjagġa lejn Malta, kienu marbuta max-xogħol li l-appellant kellu jagħmel mal-kumpannija JTI Limited, u l-appellant ma kellux permess jagħmel l-ebda xogħol ieħor. Id-deċiżjonijiet li ħa l-appellant fil-konfront tal-appellant, ittiegħdu għaliex l-appellant inqabad isuq mutur tal-kumpannija BOLT u jagħmel kunsinni ta’ ikel permezz tal-pjattaforma ta’ din il-kumpannija, meta ma kellux permess jagħmel dan, u aghar minn hekk, kien qiegħed jaħdem b’permess maħruġ lil ħaddieħor. Fil-fehma tal-Qorti dan jindika li l-appellant kien jaf li ma kienx qiegħed in regola, u li ma kellux l-awtorizzazzjoni u l-permessi meħtieġa biex jagħmel dak ix-xogħol. Huwa fatt stabbilit li kull min jaħdem f’Malta jrid ikollu l-permessi neċessarji u l-liċenzji meħtieġa anki sabiex jiġi assigurat li fix-xogħol li jsir, l-individwu la jipperikola saħħtu u lanqas ikun ta’ periklu għal terzi. Fil-każ odjern, l-appellant inqabad isuq mutur meta ma kellu l-ebda awtorizzazzjoni

jagħmel dan, u mingħajr ma sar skrutinju dwar jekk il-liċenzja li kien qiegħed isuq biha hijiex valida għall-użu f'Malta jew le”.

L-Appell

5. L-appellanta pprezentat ir-rikors tal-appell tagħha quddiem din il-Qorti fit-2 ta' Settembru, 2024, fejn qiegħda titlob sabiex jogħgobha:

“...tikkanċella id-deċiżjoni tal-Immigration Appeals Board u kif ukoll tikkannċella l-Ordni ta' Ritorn, l-Ordni ta' Tneħħija u kif ukoll Projbizzjoni fuq id-Dħul datati 28 ta' Frar 2024.”

6. L-Uffiċjal Prinċipali appellat wiegħeb fid-29 ta' Novembru, 2024, fejn jsostni li d-deċiżjoni appellata hija waħda ġusta u korretta, u għaldaqstant timmerita konferma.

Konsiderazzjonijiet ta' din il-Qorti

7. Il-Qorti ser tikkunsidra qabel xejn kwistjoni ta' natura preliminari li qiegħda tiġi ssollewata mill-Uffiċjal Prinċipali appellat, fejn qiegħed jinsisti li l-appell odjern huwa irritu u null a tenur tad-dispożizzjonijiet tas-subartikolu 25A(8) tal-Kap. 217. Jispjega li skont id-dispożizzjonijiet ta' dan is-subartikolu, appell minn deċiżjoni tal-Bord jista' jsir biss fuq punt ta' dritt, imma l-aggravju tal-appell odjern jolqot biss ir-reviżjoni tal-provi li tressqu quddiem l-imsemmi Bord. L-Uffiċjal Prinċipali appellat jagħmel riferiment għal diversi sentenzi ta' din il-Qorti, anki kif diversament ippreseduta, u jiċċita dak li qalet in sostenn tal-argument tiegħu. Jikkontendi li l-appellanta permezz tal-appell odjern, qiegħda tistieden lil din il-Qorti tagħmel apprezzament tal-provi li ġew prodotti quddiem

il-Bord, anki dawk li l-Bord straħ fuqhom sabiex wasal għad-deċiżjoni appellata. Isostni li dan mhux permissibbli f'appell bħal ma huwa dak odjern.

9. Il-Qorti tgħid li l-Uffiċjal Prinċipali appellat għandu raġun. L-appellanta fir-rikors tal-appell tagħha tikkontesta l-fatti li fuqhom jistrieħu r-raġunijiet li waslu għall-ħruġ tal-ordni ta' ritorn, iżda tikkontendi wkoll li l-ordnijiet li ħarġu fil-konfront tagħha jmorru kontra l-prinċipju ta' raġonevolezza u proporzjonalità. F'dan kollu l-appellanta ma tqajjem l-ebda punt ta' liġi deċiż mill-Bord, u li għandu jiġi dibattut fl-appell tagħha. Għaldaqstant il-Qorti tgħid li hija m'għandha l-ebda kompetenza li tiddeċiedi dan l-appell.

Decide

Għar-raġunijiet premissi, il-Qorti tiddikjara l-appell odjern irritu u null, u tastjeni milli tiegħu konjizzjoni tiegħu.

L-ispejjeż tal-preżenti proċeduri fiż-żewġ istanzi għandhom ikunu a karigu tal-appellanta.

Moqrija.

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

**Rosemarie Calleja
Deputat Registratur**