

Qorti tal-Appell  
(Kompetenza Inferjuri)  
Imhalled Anthony Ellul  
Appell numru: 14/2017

**Hamza Aslan Chakir**

**Vs**

**Direttur tac-Cittadinanza u tal-Expatriates**

26 ta' Jannar, 2018.

1. Hamza Aslan Chakir (appellant) appella minn decizjoni tal-Bord tal-Appelli tal-Immigrazzjoni tat-3 ta' Frar, 2017 li taqra:

*"This is an appeal from a decision of the respondent department dated 28<sup>th</sup> July 2015 stating that it has not been found possible to accede to his request.*

*According to the relative submissions, it appears that at least until 14<sup>th</sup> November 2016, the appellant was a student at the Malta College of Arts, Science and Technology (MCAST). However, the Board observed that no evidence of this was brought.*

*From the relative appeal as well as from the respondent department's submissions, it further appears that in his last application, it was indicated that the appellant has a pending appeal before the Court of Appeal (Superior Jurisdiction). The nature of this court case is unknown.*

*Having seen all the submissions and supporting documentation, the Board notes that it agrees with the respondent department that having a pending case before a court of civil jurisdiction does not automatically entitle a person to be issued with a permit to stay in Malta.*

*For this reason as well as in the absence of evidence that the appellant is still pursuing his studies at MCAST, the Board rejects the appeal and confirms the decision of the respondent department".*

2. B'rikors prezentat fit-13 ta' Marzu, 2017 l-appellant appella mid-decizjoni bl-aggravju jkun li m'ghandu ebda proceduri pendenti f'Malta. Zied li l-Bord ma zamm l-ebda seduta sabiex l-appellant jispjega l-posizzjoni tieghu. Ghaldaqstant il-Bord iddecieda minghajr ma ta l-opportunita' li jaghmel il-kaz tieghu.

3. L-appellat wiegeb:
  - i. Mid-decizjoni tal-Bord tal-Appelli m'hemmx appell.
  - ii. L-appell hu null ghaliex sar *fuori termine*.
  - iii. F'kull kaz l-appell mhuwiex fuq punt ta' dritt ta' ligi kif l-artikolu 25A(8) jezigi li jkun.
  - iv. Kemm jekk m'hemmx proceduri pendenti u wkoll jekk m'hemmx, ma jezisti l-ebda jedd awtomatiku li l-appellant jinghata permess ta' residenza temporanju.

4. Il-qorti qrat l-atti.

5. B'ittra datata 28 ta' Lulju, 2015 l-appellant kien infurmat li l-applikazzjoni tieghu biex jirrisjedi Malta giet michuda. B'ittra datata 14 ta' Novembru, 2016 l-appellant kien talab li jigi mgdedd il-permess ta' residenza tieghu. F'kummenti li l-appellat baghat lill-Bord tal-Appell, ara *email* datata 19 ta' Jannar 2017, infurmah hekk dwar l-appellant:

*" .... The last application for a residence permit was submitted on the 27/04/2015. It was refused on the 28/07/2015. It does not appear that the subject has a valid authorization to stay in Malta. The only reason to stay indicated in his last application is a pending appeal in front of the Court of Superior Jurisdiction. Identity Malta has been informed that the subject may be represented in the appeal process through a special mandatory, therefore there is not a valid reason for a person to be issued with a residence permit".*

6. Mill-atti ma jirrizultax li l-Bord tal-Appelli kien ta l-opportunita' lill-appellant biex jaghti l-kummenti tieghu. Bord li fil-mod li jopera ghandu jizgura li jaddotta *procedural fairness* li jinkludi dak tal-gustizzja naturali.

7. Dan apparti li fl-atti m'hemmx dokument ufficjali li juru li l-appellant kellu xi kaz pendenti fil-qorti. Ghalkemm f'paragrafu 8 tar-rikors tal-appell ghal dak li qal il-Bord dwar jekk l-appellant kellux kawza pendenti fil-qorti, mid-decizjoni tal-Bord hu evidenti li qies li din ic-cirkostanza kienet immaterjali fir-rigward ta' kellux jinghata permess ta' residenza jew le.

8. Ghall-qorti hu evidenti li r-raguni ghalfejn il-Bord cahad l-appell tal-appellant kien minhabba li ma tax prova li kien ghadu jsegwi l-kors tal-MCAST. F'ittra datata 16 ta' Novembru, 2016 li ntbaghtet mill-Bord lill-appellant, gie nfurmat li, *"You have 15 days from the filing of this appeal to provide all evidence which must be in document form, since no open hearings are held"*. Il-qorti tosserva li:

- i. Mill-atti ma jirrizultax li l-appellat qatt ikkontesta li l-appellant hu student tal-MCAST;

- ii. Ma jirrizultax li l-Bord qatt talab lill-appellant sabiex jipprezenta dokumenti ufficjali li jikkonfermaw li huwa student tal-MCAST. Hu minnu li l-appellant inghata hmistax-il gurnata sabiex jipprezenta dokumenti, izda fil-fehma tal-qorti jkun iktar utli li fl-avviz jigi ddikjarat x'dokumenti hemm bzonn li jigu pprezentati biex jikkunsidra u jiddeciedi dwar l-appell tal-appellant. Dan iktar u iktar meta jirrizulta li l-Bord ghazel li ma jzommx seduta sabiex jisma' lill-appellant x'kellu xi jghid.
9. Pero' irrispettivament mill-konsiderazzjonijiet li saru hawn fuq, skont l-Artikolu 25A(8) tal-Att dwar l-Immigrazzjoni (Kap. 217):

*"Id-decizjonijiet tal-Bord ghandhom ikunu finali hlief ghar-rigward ta' **punti ta' dritt decizi mill-Bord rigward decizjonijiet li jkunu jolqtu persuni bhal dawk imsemmija fit-Taqsima III**, li minnhom jista' jkun hemm appell fi zmien ghaxart ijiem quddiem il-Qorti tal-Appell (Gurisdizzjoni Inferjuri)...."*

Il-qorti tosserva:

- i. M'hemmx prova li l-appellant hu cittadin Malti jew ghandu cittadinanza tal-Unjoni Ewropea. Il-qorti fehmet li l-appellant hu *third country national*, minkejja li twieled f'Malta. M'hemmx provi li l-appellant hu persuna li jissemma fit-Taqsima III tal-Att dwar l-Immigrazzjoni (ara sentenza **Daham Al Hamed vs Ufficjal Principali tal-Immigrazzjoni**, deciza minn din il-qorti fis-26 ta' Gunju, 2009). Hu biss fir-rigward ta' dawk il-persuni li jista' jsir appell quddiem din il-qorti.
- ii. Fid-decizjoni tat-3 ta' Frar, 2017 il-Bord tal-Appelli ma ddecieda l-ebda punt ta' dritt. Appell quddiem din il-qorti hu limitat ghal punti ta' dritt li jkunu gew decizi mill-Bord tal-Appell. L-appell gie michud ghaliex l-appellant ma tax prova li kien ghadu jistudja l-MCAST. Raguni li zgur li m'hijjex punt ta' dritt deciz mill-Bord.

**Ghal dawn il-motivi tichad l-appell bl-ispejjez kollha kontra l-appellant.**

Anthony Ellul.