

Court of Appel
(Inferior Jurisdiction)
Application no: 20/2018

Bojan Balaban

Vs

Director of the Department of Citizenship and Expatriate Affairs

25th January, 2019.

1. After the preliminary judgment delivered on the 16th October, 2018 the court will now decide on the merits of the appeal.
2. The appellant complains that respondent failed to inform him that
3. By letter dated 24th November, 2017 Identity Malta informed the appellant that his application for a Single Permit as regards Residence and Work had been refused, *'as the alleged referee failed to confirm the authenticity of the reference letters provided. The Department cannot confirm that you are suitable for the position you have applied for'*.
4. By email dated 27th July, 2017 Jobsplus requested the foregin referee was requested to, *'confirm the content of the attached reference letter. We would also like to enquire if * the period of employment on the reference letter is correct, * and what did his/her employment duties entail ?'*. Since no reply was received, the application was refused.
5. It does not transpire that the appellant was informed that no reply was received with regards to the email dated 27th July, 2017. In his appeal in front the Immigration Appeals Board, the appellant complained:

"I must point out that I was never notified of request for futher information in writing, as clearly stated in provisions of SL 217.17, thus being in breach

thereof. Identity Malta were obliged to contact me and seek clarification of the above”.

6. Unfortunately, the decision of the Immigration Appeals Board does not address appellant’s complaint explained in his letter to the Board dated 23rd November, 2017. Furthermore, the Board strangely declared that it, ‘... *also noted that evidence that **such communication had in fact been sent to the pertinent Maltese authorities was submitted***’ and then refused appellant’s appeal.

7. It is evident that at no point in time was the appellant informed that no reply was received from the person who issued the reference letter. Furthermore, it seems that the local authorities did not send a reminder to the author of the reference letter. Neither is there any evidence that they tried to contact by telephone the signatory of that letter, notwithstanding the contact details printed on the same. Common sense should have dictated that respondent send a reminder or seek another means of contact, this if the respondent truly wanted to determine that the document was genuine. In these circumstances, the Court has no doubt that the respondent failed to act reasonably. This also based on the fact that according to regulation 16 of the Subsidiary Legislation 217.17:

“(1) If the information or documents in support of the application are incomplete, the Director shall notify the applicant in writing of the additional information or documents required, setting a reasonable deadline for the applicant to provide them and, in such case, the time limit referred to in regulation 12 shall be suspended until the Director has received the additional information”.

The Court finds no justification why the respondent did not contact the appellant and inform him that his previous employer did not reply to the email sent on the 27th July, 2017 by Jobsplus. After all, there is no proof that appellant was at fault. A relevant consideration which the respondent should have taken prior to his refusal of the application.

8. Therefore under these particular circumstances, the court is of the view that appellant's application should not have been automatically refused by respondent.

9. In view of the above, there is no need for a decision with regards to the first grievance whereby appellant complained that the Immigration Appeals Board did not grant him a fair hearing since it decided the appeal without appointing a sitting for the parties to produce evidence and make submissions.

For these reasons the court upholds appellant's second grievance and revokes the decisions of the Immigration Appeals Board of the 23rd February 2018 and that of the respondent as notified to the appellant by letter dated 24th November, 2017, with costs against respondent.

Therefore the respondent has to reconsider the appellant's application.

Anthony Ellul.