Qorti tal-Appell
(Kompetenza Inferjuri)

Imhallef Anthony Ellul

Appell numru: 21/2018

Andrea Isabella Guevara Nunez

Vs

The Central Visa Unit

1 ta' Frar, 2019.

1. B'rikors prezentat fit-13 ta' Marzu, 2018 ir-rikorrenti appellat minn decizjoni tal-Bord tal-Appell dwar l-Immigrazzjoni li ddecieda:

> *"By means of a written decision, the appellant was informed that her application for a visa was refused on the grounds that information regarding the justification for the purpose and conditions of the intended stay was not provided.*
>
> *In its submissions, the Central Unit Visa (CVU) stated that the appellant had a lack of lesson attendance.*
>
> *After having examined the relative appeal and supporting documentation, the Board noted that in its report for October 2017, IELS Malta (the language school) stated that the appellant's attendance percentage was that of 90%.*
>
> *However, during the relative hearing, the director of the said school tendered evidence on oath and stated that the appellant's attendance rate had decreased to 68.73%.*
>
> *In the Board's view, such a percentage is unsatisfactory and on a balance of probabilities, does not consider it probable that such attendance rate can be taken to mean that the appellant has serious acadamic intentions"*.

2. L-appell tal-appellanti hu bazikament kritika ghad-decizjoni tal-Bord fis-sens li l-ligi ma titlobx li jkun hemm xi persentagg ta' attendanza. Fir-rikors tal-appell ghamlet ukoll riferenza ghall-Legislazzjoni Sussidjarja 217.09 (*Regolamenti dwar il-Kondizzjonijiet ghad-Dhul ta' Cittadini ta' Pajjizi Terzi ghall-finijiet ta' Studju*) u r-Regolament 810/2009;

> *"15. Illi għalhekk l-appellanta thossha illi kien hemm apprezzament tal-ligi hazina meta ma gewx interpretati b'mod korrett r-regolamenti 6, 8 u 9 tal-Ligi Sussidjarja 217.09 tal-Ligijiet ta' Malta kif ukoll Artikolu 14(1) u (4) u l-artikolu 2 fl-Annex II tal-EC Regulation 810/2009. Ghal din ir-raguni l-Immigration Appeals Board applika l-ligi w r-regolamenti zbaljati billi applika kriterji aktar oneruzi u mhux misjuba fil-ligijiet u regolamenti fuq citata u minn dawk li kienu u li ghandhom japplikaw ghall-esponenti"*.

3. Fit-22 ta' Marzu, 2018 l-appellata pprezentat twegiba fejn tat ir-ragunijiet ghalfejn l-appell ghandu jkun michud.

4. L-appellanti kienet applikat ma' Central Visa Unit ghall-hrug ta' *national long stay D Visa* sabiex tkun tista' toqghod Malta bejn *Settembru 2017 u April 2018*, cjoe' tmien (8) xhur. L-appellanti ġiet Malta sabiex titgħallem l-Ingliż mal-istituzzjoni IELS.

5. Fir-rikors tal-appell l-appellanti ghamlet ukoll riferenza ghar-rekwiziti li hemm bzonn skont l-artikolu 14(1) tar-Regolament 810/2009 tal-Unjoni Ewropea. Issostni li dik id-disposizzjoni, *"... fl-ebda istanza ma jghid illi l-attendenza hija necessarja. Illi anke jekk inharsu artikolu 14(4) tal-istess Regulation ma jsemmi l-ebda attendenza"*.

6. Pero' Artikolu 1 ta' dak ir-regolament jipprovdi:

> *"This Regulation establishes the procedures and conditions for issuing visas for transit through or intended stays in the territory of the Member States* ***not exceeding three months in any six-month period****".*

7. Fil-fatt ghal finijiet ta' dak ir-regolament, il-kelma visa:

> *"means an authorisation issued by a Member State with a view to:*
>
> *(a) transit through or an intended stay in the territory of the Member States* ***<u>of a duration of no more than three months</u>*** *in any six-month period from the date of first entry in the territory of the Member States;*
>
> *(b) transit through the international transit areas of airports of the Member States"*

8. Fil-kaz in ezami l-applikazzjoni ma kinitx ghal visa ta' tlett xhur, izda ghal *national long stay D visa*, cjoe l-visa li tippermetti lill-*holder* li jibqa' f'Malta ghall-perjodi ta' iktar minn tlett xhur.

9. L-applikazzjoni tal-appellanti kienet rifjutata ghar-raguni li:

> *"The information submitted regarding the justification for the purpose and conditions of the intended stay was not reliable"*.

10. Inoltre, l-appellanti ma tikkwalifikax bħala 'student' taħt l-imsemmija Leġislazzjoni Sussidjarja ġialadarba hu ovvju li t-tagħlim tal-Ingliż m'huwiex 'edukazzjoni ogħla' (ara definizzjoni f'regolament 2 u definizzjoni ta' 'edukazzjoni ogħla' f'artikolu 63 tal-Att dwar l-Edukazzjoni). Il-qorti zzid li ma ngħatatx prova li l-appellanti kienet qegħda ssegwi full-time course ta' studju li jwassal għall-edukazzjoni ogħla rikonoxxut mill-Malta Qualification Recognition Information Centre. Wisq inqas m'hemmx prova li IELS hi istituzzjoni ta' 'edukazzjoni oghla'.

11. Minn dak li fehmet il-qorti, ir-rifjut tal-applikazzjoni kienet bażata fuq ir-raguni li l-appellanti kienet falliet hafna lezjonjiet mill-kors li kienet qeghda ssegwi ma' IELS. Ghall-qorti hu ragonevoli li jekk l-istudent ma jkunx qieghed jattendi regolarment ghal-lezjonijiet, allura l-awtoritajiet jistghu jaslu ghall-konkluzjoni li l-istudent ma jkunx gustifikat li jfittex li jitlob ghall-visa ghall-skopijiet ta' studju. Dan ovvjament fejn ma jkunx iggustifika n-nuqqas tieghu li jattendi ghal lezjonijiet. Barranin li jigu Malta sabiex jitghallmu l-Ingliz f'wahda mill-hafna istituzzjonijiet edukattivi li jghallmu l-Ingliz lill-barranin, ikollhom jattendu l-lezjonijiet jekk genwinament ghandhom l-intenzjoni li jitghallmu l-lingwa. Fil-kaz in ezami l-provi wrew li fil-kaz tal-appellanti sad-19 ta' Jannar 2018 kienet attendiet ghal 68.73% tal-lezjonijiet. Il-qorti taqbel mal-appellata li, *"Tali attendenza ma tirrispekjax studenta li trid tiehu t-taghlim tal-lingwa Ingliza bis-serjeta"*.

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

Anthony Ellul.